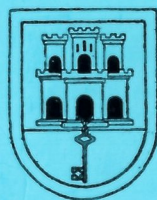


GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

3RD NOVEMBER, 1986

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY .

The Thirteenth Meeting of the First Session of the Fifth House of Assembly held in the House of Assembly Chamber on Monday the 3rd November, 1986.

PRESENT:

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

GOVERNMENT:

The Hon Sir Joshua Hassan KCMG, CBE, LVO, QC, JP - Chief Minister
The Hon A J Canepa - Minister for Economic Development and Trade
The Hon M K Featherstone OBE - Minister for Health and Housing
The Hon H J Zammit - Minister for Tourism
The Hon Major F J Dellipiani ED - Minister for Public Works
The Hon Dr R G Valarino - Minister for Labour and Social Security
The Hon J B Perez - Minister for Municipal Services
The Hon G Mascarenhas - Minister for Education, Sport and Postal Services
The Hon E Thistlethwaite QC - Attorney-General
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

The Hon J Bossano - Leader of the Opposition
The Hon J E Pilcher
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon J C Perez
The Hon J L Baldachino
The Hon R Mor

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 8th July, 1986, having been previously circulated, were taken as read and confirmed.

DOCUMENTS LAID

The Hon the Minister for Economic Development and Trade laid on the table the following document:

The Gibraltar Registrar of Building Societies Annual Report, 1985.

Ordered to lie.

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

The Tourist Survey Report - 1985.

Ordered to lie.

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

The Employment Survey Report - April, 1986.

Ordered to lie.

The Hon the Minister for Education, Sport and Postal Services laid on the table the following documents:

- (1) The Scholarship Awards Committee (Amendment) Regulations, 1986.
- (2) The Accounts of the John Mackintosh Hall for the year ended 31st March, 1986.

Ordered to lie.

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

- (1) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No. 9 of 1985/86).
- (2) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.2 of 1986/87).
- (3) Statement of Improvement and Development Fund Re-Allocations approved by the Financial and Development Secretary (No.1 of 1986/87).
- (4) Supplementary Estimates Consolidated Fund (No.2 of 1986/87).

(5) Supplementary Estimates Improvement and Development Fund (No. 2 of 1986/87).

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 1.05 pm.

The House resumed at 3.25 pm.

Answers to Questions continued.

The House recessed at 5.35 pm.

The House resumed at 6.00 pm.

MINISTERIAL STATEMENTS

The Hon the Minister for Economic Development and Trade and the Hon the Minister for Health and Housing have given notice that they wish to make statements. I will therefore now call on the Minister for Economic Development and Trade.

HON A J CANEPA:

Sir, during the course of a speech in the House of Assembly on 8 July 1986, after having asked why industrial relations within the Government were not as good as in the MOD, the PSA or, generally speaking, the private sector, I said:

"I have no doubt what the answer is and the answer was clearly not said by me. The ACAS conciliators tell you what the answer is. Mr Phayre has said what the answer is."

The statements I made call for some explanation. In the course of meetings with Mr Phayre, I left him in no doubt that my view, shared by others in the Gibraltar Government, is that the question of industrial relations with the Government is bedevilled by political overtones. That is my view and I wish to make it clear that I know that neither Mr Phayre, nor anyone connected with ACAS, has at any time made any comment on any political issue in Gibraltar and that they are most careful to ensure that their approach is impartial and independent. I accordingly regret having made any statement to the contrary. I clarified this matter in a letter to the 'Gibraltar Chronicle' published on 28 July and wish now to put the record straight in this House.

MR SPEAKER:

I now call on the Hon the Minister for Health and Housing.

HON M K FEATHERSTONE:

Mr Speaker on Thursday 18th September, 1986, the Gibraltar Government started a series of meetings with the Gibraltar Taxi Association with a view to reaching an agreement that would resolve all the problem areas encountered within the taxi trade.

Both sides have now agreed to a process of consultation and co-operation for the future aiming at producing stability as well as improving the services currently being provided.

The following are the points on which agreement in principle has been reached.

A. RATIONALIZATION OF ROAD SERVICE LICENCE FOR TAXIS

A.1. It has been agreed that any road service licence for taxis transferred following this agreement will be on the condition that the taxi is to be full time owner driven. Exceptions will only be made in the case where the beneficiary of the road service licence is the widow of the licence holder.

B. CITY SERVICE FOR GENERAL PUBLIC

B.1. A new service of 10 vehicles, operating on a permit basis, will be introduced. This new service will be termed 'City Service' and will operate under permit regulations and conditions to be introduced by the Traffic Commission.

B.2. In addition, a minimum of 15 taxis will also operate in this service from the taxi ranks and will attend to all radio calls as well. None of the vehicles employed on City Service will be allowed to conduct Rock Tours or be hired by time.

C. CROSS FRONTIER TAXI SERVICE

C.1. The basis upon which Gibraltar taxis will provide services across the frontier has been agreed and will be introduced after consultation with the relevant authorities.

D. REPRESENTATION IN THE TRAFFIC COMMISSION

D.1. The Taxi Association and the Public Services Vehicle Operators Association will be represented in the Traffic Commission and each will nominate a representative to be a member of the Traffic Commission.

E. NAMED DRIVERS

E.1. During the transitional period of 1 year, and in order to regulate the relationship between those existing licence holders themselves not driving their vehicles and their named driver, both parties will enter into agreement which will include a minimum of six months tenure and 1 month notice of termination by either side. These agreements will be lodged with the Gibraltar Taxi Association and a copy with the Traffic Commission. All second drivers will be afforded part time status and their hours regulated.

F. PRIVATE HIRE CARS

F.1. On the question of private hire car licences, Government after further investigation, considers that the vehicles so licenced would carry out work similar to, and in areas already well catered for by the taxis. It is therefore the policy of Government to recommend the limitation of the private hire car licences to the present level.

Other points on which agreement in principle has been reached are:-

- A) Publication of Tariffs at ranks and in the taxis
- B) Passenger facilities
- C) Standardisation of taxi vehicles
- D) Taxi at Ranks (the first two have to be available)
- E) Positioning of Ranks (a study will be conducted)
- F) The setting up of a Department of Transport to deal with all aspects of transport and traffic.

Details will be publicised later.

Subject to the increase of 10 vehicles which will operate with other taxis the City Service, Government agrees that the present level of taxis are adequate and it is the policy of Government to continue to adhere in future to the limitation in force.

In order to implement many of the points in this agreement, substantial amendments to the Traffic Ordinance and its subsidiary regulations are required. These are being drafted as a matter of urgency and, where applicable, will be brought to this House as soon as possible. Thank you, Sir.

HON CHIEF MINISTER:

Mr Speaker, perhaps I should clear one point. If, in fact, we can have the legislation pretty soon we will not wait for the next House of Assembly. If by the time we finish the proceedings of the House we know that we may have that legislation then we

will recess to a day in which we can take that Bill and then have a meeting in mid-December but if we can get that in time to fix a date we will recess to do that and bring it into operation as soon as possible.

HON J C PEREZ:

Mr Speaker, is one allowed to comment on it or just ask questions?

MR SPEAKER:

To ask questions for clarification.

MOTIONS

HON CHIEF MINISTER:

Mr Speaker, I beg to move in the terms of the motion standing in my name in the Order Paper as follows: 'This House resolves that - (1) the Gibraltar Broadcasting Corporation be authorised to provide and operate sound signal origination equipment for the purpose of recording or broadcasting the proceedings of the House of Assembly subject to the directions of the House or a committee empowered to give such directions; (2) no signal, whether direct or recorded, made pursuant to this Resolution shall be used by the Gibraltar Broadcasting Corporation in light entertainment programmes or programmes designed as political satire; nor shall any record, cassette or device making use of such signal be published unless the House or a committee so empowered shall have satisfied themselves that it is not designed for such entertainment or satire'. There is a second resolution, Mr Speaker, but I would like to shorten my contribution if I were able to address the House in both cases and then move the second resolution, I shall refer to the second resolution but I will not move it and in that case I can deal with the two matters that go, really, together. In the first place, as Hon Members know, the question of the broadcasting of the proceedings of the House has been the subject of discussion for many years and it has been finally agreed, the expenditure was voted last year and I think it was re-voted because it had not been done within the year and now the Gibraltar Broadcasting Corporation is in a position to make the signals and to broadcast the proceedings. In order to do that it is necessary to pass a resolution. I would like to pay tribute to the Clerk of the House for the great research that he has made and the study that he has made on the report of the Select Committee on Sound Broadcasting and whose advice has been invaluable to the Speaker, to myself and to the Leader of the Opposition in the original meeting we had in order to bring these motions to the House. I wasn't terribly happy, as the Chronicle quite rightly reports, about the broadcasting of the proceedings of the House in the past because I

feared that instead of having the proceedings of the House broadcast, it would be the other way about, that people would come here to have what they say here broadcast rather than broadcast what they say here and that is to say that there should be, and this of course is the experience of the Speaker as quoted in Gibraltar Chronicle this morning of Mr Speaker Thomas who told me in December of last year that if he were to think again he wouldn't broadcast, in fact, I am radical enough to realise that there comes a time when whether you like something or not, the trend of opinion is such and the circumstances are such that it is ridiculous to resist it. I had the same view of the amalgamation of the City Council and the Gibraltar Government, that there it was, it was the tide of amalgamation and you couldn't fight against it and I didn't but I don't know whether it was the right decision or not. Sometimes I see clear cases that it was not the right decision but I am not dwelling on that. I hope I will not have or I will not have later the same feeling about the broadcasting of the proceedings of the House. If I may say so with due honesty and I have changed slightly my mind because of the conduct of the Opposition in this House as opposed to the previous Opposition. I think that whatever our differences may be and with the odd exception, I think Members opposite and Members on this side of the House say what they have to say and no more. It is true that some of us like to hear the sound of our own voices, others don't, but I am quite satisfied and quite happy, certainly now. If this morning's proceedings had been broadcast I don't know who would have been interested in the whole morning on the details that we have been dealing with but there it is, we will have said that we have made a contribution by means of broadcasting so that those who want to know what is happening will know, some of us will find it interesting, others may find it a little boring. I think the time has come when if people are to take a little more note of the proceedings of the House and the part that the proceedings of the House play in the life of Gibraltar, broadcasting judiciously put and fortunately, for the moment, not edited because that is really the difficulty and I think the Hon Leader of the Opposition is quoted as saying that he would like, and I think he said it the other day at the meeting, the proceedings to be heard live as they happen. I do not think, with the greatest respect to the resources of GBC, that there is the know-how or the technique sufficient to take up debates and report on them and then take bits and pieces. We are not, I think, ready perhaps later on in years to come we may be ready I don't think we are ready now because there would be all sorts of difficulties as to the time allotted and so on. Britain, of course, is different in many ways. They have Members of Parliament. We do not have the worry that Speaker Thomas found which is partly quoted but he doesn't say where it came from. When he said that they were going to have the proceedings of the House broadcast he said. 'It so happens

that on the first day of permanent broadcasting Question Time dealt with Welsh questions and I was staggered when I reached the bar of the House to see at least sixty to eighty Members in for prayers on the day when the Secretary of State for Wales was answering questions. Normally, I would be lucky to see a dozen people there but I knew at once that broadcasting was going to have a major effect on our proceedings, my instinct was not wrong'. Then he went on to say what is quoted that he found that people who appeared to have been dead suddenly were revived to come. Here because of the limited numbers and because we all take part in the proceedings, that kind of change is not likely to happen. I very much hope that we will deal with the broadcasting of the House in the same way as we have dealt with other matters in the proceedings of the House courteously and correctly and concisely and not longer simply because the House is being broadcast and do our business as we have to without fear or favour. I have no doubt that that will be the case and it is for this reason that I am pleased to move in the terms of the motion standing in my name. Before I do so I would like to also as an adjunct to that move the necessary motion in order that the procedure which is followed in the House of Commons be followed here to and that is: 'that a Permanent Select Committee on Sound Broadcasting consisting of the Speaker, as Chairman, the Chief Minister, the Leader of the Opposition and three other members two to be nominated by the Chief Minister and one to be nominated by the Leader of the Opposition, be appointed with the following terms of reference:- To give direction and perform the duties in accordance with the provisions of the Resolution of the House passed earlier on in these proceedings in relation to Sound Broadcasting'.

MR SPEAKER:

You will be moving it at a later stage.

HON CHIEF MINISTER:

Yes, but I just want to make one address and not two. This is the necessary requirement, it also follows the procedure in the House of Commons because, in fact, in the House of Commons it was on a trial basis for rather a long time until it was decided definitely. We are small enough to consider the matter on our own initiative without pre-conditions. In any case, I think it would be a good thing to review the position and keep the matter under review to make sure that the matter is put in the most attractive way and that we get a feedback from the public whether we are doing the right thing or not as to what part of the proceedings of the House are being broadcast or not which is ultimately the responsibility of the Select Committee. I now move in the terms of Resolution (1) standing in my name.

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

HON J BOSSANO:

Mr Speaker, we of course favour the broadcasting of the proceedings of the House and, indeed, the televising of the proceedings of the House. I think the packed Public Gallery
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HON CHIEF MINISTER:

I am sorry, I should have said that one of the purposes of broadcasting would be not to have to increase the size of the Public Gallery.

HON J BOSSANO:

I think that is an indicator of why we feel it is a necessity. We are looking at it not from the point of view of giving Members of the House another opportunity to make speeches and to win votes. We have got party political broadcasts available to us, we have got election campaigns every four years and we get reports of what happens in the House in the media but we think that it is an essential part of democracy for those of us who are in the House of Assembly to make the rest of our fellow citizens aware that decisions are being taken which affect them and that they ought to interest themselves in the arguments for those decisions and, in particular, from a Government point of view I would have thought that since most of the legislation that gets passed in the House of Assembly, it is only on very rare occasions that we manage to get the Government to accept amendments from this side, most of the legislation are the implementation of Government policies, then it is a healthier democratic situation that people should be aware of the arguments in favour and against the legislation rather than people should not take an interest in what is going on while it is going on and then wake up to the fact that the legislation has been passed and try then to mount a lobby to reverse what has already been decided. To the extent that people become better informed and either support whatever view we are putting on this side if we feel that the Government is making a mistake or support the Government if they think the Government is right, it can only be to the betterment of the democratic process, to a more informed citizenship, to a more responsible citizenship in terms of filling a part of the process of what a Parliament is all about and therefore it is essential, we feel, that we look at this from a Parliamentary standpoint and not from a party political standpoint. We are a little bit concerned therefore that the first decision that we agreed on which was that it should be only Question Time

which we made public in a Press Release issued by your office, Mr Speaker, on the 23rd October we should find that now the Government is having second thoughts on it when, in fact, in the first meeting when this was agreed it was the Government that convinced us that it made sense if we are starting on a venture to tread warily as we go along and let us experiment, first of all, with Question Time and then let the Select Committee review the situation in the light of experience and decide what more, if anything more, needs to be done and how fast it needs to be done. The position that we put forward, Mr Speaker, was that everything should be broadcast in toto and I was persuaded by the Hon and Learned the Chief Minister who tends, generally, I think, in most issues to say that you take one step at a time, I was persuaded that that made sense and I agreed and I went back to my colleagues and said: 'I have agreed with the Chief Minister that this is the way we should proceed' because after all none of us know what we are talking about. We don't know what either technical or political problems we may face when we start doing it so it makes sense to try it out for a couple of meetings of the House on this basis and then let the Select Committee take a second look at the situation and either say 'you are being over-cautious' or 'you are not being cautious' enough'. But the fact that now that agreement is no longer an agreement and the Select Committee is going to take a decision in a situation where the Select Committee has got a Government majority, I think requires that we should at this stage put on record certain misgivings that things should appear to be going wrong even before we have even got off the starting mark. I need to say that because we have not objected to a Government majority in the Select Committee but clearly there would be little point in having a Select Committee if what we are going to have is that Select Committee taking decisions on how the broadcasting is being done constantly on the basis of three to two. I think we must proceed on this on the basis of consensus. I think if we find, if either the Chief Minister feels that Members on this side are changing their approach and instead of sticking to the point of the debate trying to make party political broadcasts in the House, then I would be only too happy to have that brought to my notice and seek to make sure that it doesn't happen and I would expect that the same thing should work on a reciprocal basis with the response of Government Ministers on individual issues. It is not the Opposition's intention to lower the tone of the proceedings of the House, on the contrary, it is the Opposition's intention that the proceedings of the House should be conducted in a responsible and cogent and rational basis so as to persuade the electorate outside who have put us here that we are doing a job conscientiously even when we disagree fundamentally on what is being done and how it is being done but that we are both doing what we think to be right and that that should be manifest from the way we conduct

our affairs. I believe that if we are determined to do it we can only enhance the standing of the House in the eyes of the people of Gibraltar and therefore I sincerely hope that when we start the broadcasting and when the Select Committee considers it it will consider the issues on a non-partisan fashion of what is better for the Government or better for the Opposition but what is better for the House of Assembly, Mr Speaker.

HON A J CANEPA:

Mr Speaker, I have over the years changed my mind and my attitude towards the question of broadcasting the proceedings of the House and I have done that for much the same reasons as the Chief Minister has indicated. I remember when the matter was being discussed with Members of the then Opposition that they took the view that the order of business in the House should be changed to accommodate broadcasting. First of all, that only Questions and Answers should be broadcast and that that should be done in the afternoon when they hoped that there would be more listeners and I was totally opposed to that. Today, Mr Speaker, I am an enthusiastic supporter of the whole concept of the proceedings of the House being broadcast, I support the idea in principle and, what is more, I am of the view as with the case of the Leader of the Opposition, that all the proceedings of the House should be broadcast. After all, Mr Speaker, this House doesn't meet that often. We may meet for a total of twenty days in the year, not 200 days and editing is a problem. Editing will be the subject of controversy, there will be accusations of bias and I say that the editing should be done by the listeners at home. If he is not interested in what he is listening to, if he is bored by Question Time then let him switch off at Question Time. If he is bored by what goes on during the Committee Stage of the proceedings of the House let him switch off the radio then and per contra if he happens to be interested in one particular matter of the business of the House and that is all that he wants to listen to, the choice should be his. Who is to judge what is more important? Who is to judge what is of greater interest? You only have to look at the business of the House today. Obviously, Question Time always tends to be interesting because there is an element of cut and thrust about it and usually Opposition motions also tend to be interesting because the Opposition rightly tends to highlight matters which are of great public interest which are controversial but there is today, I would suggest, on the Agenda a Bill which I will have the honour to move before very long, and that is the amendment to the Town Planning Ordinance which having regard to the controversy of the last couple of months ago should be of great public interest. Why, after what has happened in the House today should Questions and Answers only be broadcast and not the debate on that particular Bill? I just mention that as an example. I am all in favour, Mr Speaker, of all the proceedings of the House being

broadcast and I would only agree to a truncated version if it is to be experimental for a meeting or two or perhaps three meetings but I would withdraw my support on the concept of broadcasting if after two or three meetings I were to be told that there are grave technical or other reasons why all the proceedings of the House cannot be broadcast. I hope, Mr Speaker, that the business of the House will continue to be conducted in the manner in which it has been conducted since 1984. It is not that we want to be patronizing, I think that the fact that debates in the House these days are not as lengthy as what they used to be is not indicative of the fact that previous Houses went into the matter more deeply, it is by and large a question of approach and a question of personalities. There was a particular Member in the House whom I used to accuse of speaking on every subject that came up. Whether he knew what he was talking about, whether he knew anything about the subject that was being discussed or not, he would get up and speak and he had a reason for doing that and one could understand and see behind the reason. What I hope Hon Members will do, Mr Speaker, will be to resist the temptation of getting up and speak on subjects that they don't know about. I think that that is bad, I think it is better to keep quiet and to be told perhaps outside: 'Well, you don't seem to have a great deal to say'. The answer to that is: 'I speak when I know that I have something valuable to contribute and not just for the sake of being heard'. I think that that is a great error, Mr Speaker, and I have, over the years, learned that one can resist the temptation of contributing when one shouldn't. I remember in my early months, the early meetings of the House in 1972 and early 1973 that I used to get seriously worried when there was a lengthy piece of legislation, in particular, something that had nothing to do with me and that I knew very little about, and I remember one particular one because it was a lengthy Bill, something involving the Medical Department and actually going to my colleague, Aurelio Montegriffo, and asking him to explain what the thing was all about because I really felt that I had conscientiously and assiduously read through every single clause of the Bill and then to come to the House and find how many Members of the Opposition got up and participated in the debate when I felt that I had nothing to say and I think that that is better, Mr Speaker. Over the number of meetings that we have in the course of the year most of us get sufficient opportunities to take part in the proceedings of the House to convey to the members of the public who may so wish that we are performing a useful function here usually in the areas of responsibility or of shadowing for which we are responsible. It is a small House, we only meet for a few days and I think that to continue along the lines in the spirit in which has been a feature of the proceedings of the House over these last two and three-quarter years is important. This is the fourth House that I have had the honour to be a Member of, Mr Speaker,

and I can honestly say that the extent of personal invective, we sometimes criticise each other, we sometimes have had harsh words to say but it is not a feature of the proceedings of this House and I think that personal invective has been kept to a minimum and that is how it should be because it is not an indication that we are in cahoots, that we agree, we don't, we passionately believe differently and approach political issues differently and sometimes, in fact, the battle has been taken out of the House as with the case of the Brussels Agreement when there was almost something akin to an election campaign. We have felt about issues to that extent. Party political broadcasts on television are becoming, because we are now ourselves participating more, are becoming a feature of political life in Gibraltar and I think that the broadcasting of the proceedings of the House on radio should also be a step in that important direction of making the public generally aware that the House of Assembly is not a place where people come to waste their time, where people come to discuss nonsense or where people come just to air differences for the sake of those differences. There is a body of opinion in Gibraltar that there shouldn't be a House of Assembly, that the House of Assembly should be reduced to a municipal level and I think at a time when the international dimension of the Spanish question continues to be so important that there should be people who should suggest that because they say that there are matters of a municipal nature which are important but when seen against the struggle of the people of Gibraltar for their survival or their way of life, I think they have to be seen in their proper perspective. I hope that the resolution before the House today will, in fact, enhance the standing of this House, that it will reawaken interest in the proceedings of the House and if there aren't as many people in the Public Gallery because they don't need to come along like the ladies who came here this morning from the Police Barracks, more of them can switch their radio on at home, continue to do the washing-up and the cooking and be listening to the proceedings of the House. Mr Speaker, I support the motion.

HON J E PILCHER:

Mr Speaker, when the new House was constituted I was the Member to ask initially about the broadcasting of the proceedings of the House obviously asked by my party to do so, as the Member to sort of initiate in this House the broadcast of the proceedings I have to, I think, say something about the proceedings. I think in answer to both the Hon and Learned the Chief Minister and the Hon Mr Canepa, I think we have been here for three years and we know each other by now well enough in the House of Assembly to know what it is that we do normally in the House and what it would be that we were doing in the House as a result of broadcasting. I think the House of Assembly certainly being a new Member I have enjoyed every moment in the House in the toings

and froings that is part of the normal democratic process and I think, certainly from this side of the House, the proposal to broadcast the proceedings of the House was not in any way seen as a party political ploy to gain us votes, it was seen as a system of public awareness and I think I concur with the Hon Mr Canepa and, indeed, obviously, with the Hon the Leader of the Opposition when I say that I also favour the broadcasting of the whole of the proceedings of the House and the editing should be left up to the individual. I don't know what technical problems, if any, there are not being a technician, but I am sure that it is important for the people of Gibraltar to decide what aspects they want to listen and what aspects they don't want to listen to. I think it is particularly important when we come to legislation, when we come to Bills where sometimes what is missing in our democratic process is the feedback of people who actually do not know what is happening and the first time they realise that the Bill has been passed is when they read it in the Chronicle. The first time they realise that something has happened is when they see it on television. At that stage it is too late in the democratic process for that analysis to be put into the balance and discussed. I think it is important, particularly for Bills, for everything, but for Bills in that there is a move, for example, in this town planning system for people to have more input into the decisionmaking. I think for Bills if the democratic process and the Government know how we feel about First and Second Readings of the Bills being taken in one House and the Committee Stage and Third Reading being taken in another, that in itself produces a public awareness of the system of legislating that could well force the Government to move to one area or another and would create in itself a pressure coming from the electorate in a feed in into the system and an input into the system for that to produce a desired effect. Unfortunately, we are sometimes in a situation where we sit here and not enough people are coming to the Gallery and sometimes, perhaps because we do not like the reporting in the press because we feel that perhaps what we said which we thought was important has not been taken up by the press. I think it is important that if all the proceedings are broadcast then it is up to the individual listener to discard whatever part he thinks superfluous and to take an interest in that part that is important to him. I don't think any editor in the world, with all due respect to all the members of the press and the media in general in Gibraltar, it is not up to any individual to do that, it is up to the person who is listening and who is reading the reports. It is obviously impossible for my media to just give hours and hours of what people said so I think the only possible option is to broadcast the whole of the proceedings and to have the editing done, as was very rightly pointed out, by the individual listener. I think the broadcasting of the proceedings of the House can do nothing but better the proceedings of the House. The only purpose of the

Committee would be where abuses in the system were to be registered and discussed and as the Hon the Leader of the Opposition said, the abuses would be registered and corrected. It is not a situation where we would in a Select Committee decide what was put on and what wasn't put on. It is not our suggestion that it should only be Question Time, it is a sort of interim arrangement pending our maturing in the broadcasting but we would be all in favour for the whole of the proceedings to be broadcast. It can only better the proceedings and with a little help from each and every individual Member can only enhance the political maturity of the people of Gibraltar.

MR SPEAKER:

Are there any other contributors. Does the Mover wish to reply?

HON CHIEF MINISTER:

Thank you, Mr Speaker. It is not often that one gets one's motions supported by both sides, I think it is very pleasant. First of all, let me say that the question of limiting it at the beginning to Question Time was not only as a trial for ourselves but also in fairness as a trial for CBC itself who require arrangements and, in fact, it will mean much more expense though we are not worrying about that, in having all the proceedings broadcast because we are paying the extra hours and people will have to work for it and, of course, it is one thing to have an extra day, for example, up to 5 o'clock today when we finished Question Time or continuing this evening and tomorrow hopefully not much later than tomorrow or the day after. Let me also say that the idea of having a majority in the Select Committee was not in order to exercise majority for the purposes of running the show in that way. For one thing since it is so important that the Speaker is our Chairman, one of the reasons why I thought that that was a better idea was that I did not want to put him in the position of having to exercise a vote one way or the other if there was a decision in which both sides differed. I entirely agree with the Leader of the Opposition that it is not going to be a place where we are going to start taking votes but it will be a question of consensus. With regard to the contribution of my colleague, Mr Canepa, reminded me of the young MP who had very enthusiastically arrived in the House of Commons and asked Benjamin Disraeli who was then Prime Minister for advice. He wanted advice as to what to do and what to say and he told him: 'It is better that people should wonder why you didn't speak than that they should wonder why you spoke'.

Mr Speaker then put the question and on a vote being taken all Hon Members voted in favour except the Hon Major F J Dellipiani who voted against.

The motion was accordingly passed.

HON CHIEF MINISTER:

Mr Speaker, I move in accordance with the terms of the second motion standing in my name which reads as follows: 'This House resolves as follows - that a Permanent Select Committee on Sound Broadcasting consisting of the Speaker, as Chairman, the Chief Minister, the Leader of the Opposition and three other members two to be nominated by the Chief Minister and one to be nominated by the Leader of the Opposition be appointed with the following terms of reference:- To give directions and perform the duties in accordance with the provisions of the Resolution of the House passed earlier on in these proceedings in relation to Sound Broadcasting'.

Mr Speaker then put the question and on a vote being taken all Hon Members voted in favour except the Hon Major F J Dellipiani who voted against.

The motion was accordingly passed.

MR SPEAKER:

I would like to make a comment in respect of the second motion. As all Members are aware the Speaker, under the provisions of the Constitution, Section 44(2), has not got either an original or a casting vote. I am honoured to be asked to be Chairman of this Select Committee but I would like to make it public now, at the first opportunity, that I will never exercise a vote either original or casting in the Select Committee itself.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I beg to move in terms of the motion which stands in my name and I hope the House will allow me not to go through the details of the motion which I think are explained in the notice of motion which was circulated. The purpose of the motion is to amend Item 10 of Schedule 1 of the Licensing and Fees Ordinance and to adjust the level of fees for tavern licences downwards, of course. The purpose of the adjustment is to make the fees, first of all in the light of representations by the Gibraltar Licensed Victuallers Association, secondly, in the light of the increase in rates for commercial premises generally following the recent revaluation and having regard to the increase in the number of premises which are now paying at the top rates of fees compared with, say, 1983, it was decided by the Government to make this adjustment in favour of the holders of tavern licences. This is being done by maintaining the existing five fee steps as shown in the notice, the lowest being £160 per annum and the top being £400 per annum for the highest rated premises but also by raising the limit for each rateable band, in effect, raising the rateable bands three times and the effect

of this, again compared with 1983, will be that whereas in 1983 the average fee payable in respect of a tavern licence was £313, in 1986 before this proposed revaluation it would have been £347 and as a result of the revaluation, if the House passes this motion, it will fall to £252 on average. The amount of Government revenue lost is not great, Mr Speaker. In 1983 the annual yield from tavern licences was approximately £36,000; in 1986 before this proposed revaluation it would have been £40,000; with the proposed revaluation there will be a fall of about 38% to just under £30,000. I commend the motion to the House, Mr Speaker.

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

HON J C PEREZ:

Mr Speaker, whilst welcoming the move of the Government, there is something which I feel we need to point out and which is, to a certain extent, incomprehensible in that one of the reasons that the Hon Financial and Development Secretary has given for having to make this move is the recent increase in rates. No argument has been put to support that tavern licences should be linked to rates at all. We have a situation where tavern licence holders on occasions have to suffer thrice because you might have a situation where the rent is increased and because the rent is increased the rates are increased and because the rates are increased the tavern licence is increased. One of the points raised by the Hon Member was that this was being done because of the increases in rates and we might have a situation where some of the tavern licence holders are again adversely affected if their rents go up because the rates automatically go up and they pass from one hand to another. In looking at the whole question of tavern licences, if the Government sees that the revenue yield as it has said now, they are prepared to see the revenue yield being £30,000, I think that the measure should be one of regularising it in a different manner and not attaching it at all to the question of rates and be aimed really at raising the revenue which the Government feels they need to raise from that measure. It is, after all, a revenue raising measure and if they see fit to lower the yield from £40,000 to £30,000, perhaps in looking at it in a different manner they could come up with the same yield and at the same time not have it linked to rates where, as I said before, if there is an increase in rent the tavern licence is affected because the rates are affected or if there is an increase in rates only then the tavern licence again is affected. That is all we have to say on the matter.

MR SPEAKER:

Are there any other contributors to the debate?

HON J BOSSANO:

One point that I would like to make which has not been mentioned by my colleague, Mr Speaker, is that in fact to my knowledge the people in the trade have been making representations over the years that tavern licences in Gibraltar were out of line with what is normal in their trade anywhere else particularly, I think, they made the point in relation to what would be paid in the UK with whom they have links through the Association for licensed victualliers in UK and here. I think if the Government is in a position which presumably it has not been before to look at their case in the past because in the past it was not able to consider a drop in revenue and now apparently it is, otherwise it wouldn't be bringing this motion to the House, then it should be looked at both in the context of having a system which is not on a built-in escalator like my colleague has pointed out and a system which makes people in that particular area of business have to bear costs that are reasonable by comparison with the competition. I think it is a reasonable case that they have made in the past and if the Government is in a better position now to look at that case than it has been before we would expect it to see that sympathetically reflected in a policy change.

HON CHIEF MINISTER:

Following representations made by the GLVA we went to the extent to which the motion deals with and they were informed and they have naturally come back on the 26th September with a reiteration of some of their grievances which are being looked into and they should not think that they are forgotten but things must be done carefully and they are grateful for what we have done and also for the dire consequences that no amendment would have made with the increase in rates.

MR SPEAKER:

Any other contributors? Does the Hon Member wish to reply?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

No, Mr Speaker, I think the Chief Minister has made the point.

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

The House recessed at 7.00 pm.

TUESDAY THE 4TH NOVEMBER, 1986

The House resumed at 10.50 am.

BILLS

FIRST AND SECOND READINGS

THE TOWN PLANNING (AMENDMENT) ORDINANCE, 1986

HON A J CANEPA:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the Town Planning Ordinance in order to give the Development and Planning Commission discretion to approve development projects which do not accord with approved planning schemes 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 the Bill be now read a second time. Mr Speaker, the current City Plan or planning scheme as it is referred to in the Town Planning Ordinance, dates from September 1976. It was exhibited in September, 1976, for a period of three months during which the public could view the exhibition, if you like, and prepare and submit representations, views, comments on it. The representations that were received initially were referred to the Development and Planning Commission for their consideration and from there subsequently the process was one of submitting the views and comments of the Development and Planning Commission on these representations to Council of Ministers and Gibraltar Council. The process of consideration by the DPC was not that long but due to an administrative oversight the planning scheme was not finally taken to Gibraltar Council to be approved and therefore to become the planning scheme under the Town Planning Ordinance until November, 1979, so from a legal point of view it could therefore be said that the current City Plan is seven years old but from the point of view that it was first exhibited in September, 1976, the ideas, the concepts, the policy in the current City Plan therefore are really ten years old. The consideration to reviewing the City Plan first commenced in 1981 because the DPC was working to five years from the date of the exhibition, namely, from September, 1976. But in 1981, there was a great deal of uncertainty, firstly, about the future of the dockyard, secondly, about the opening of the frontier, by 1981 the aborted Lisbon Agreement was a fact of life and because of the uncertainties surrounding the future of the economy the DPC considered that it should renew the planning scheme on a yearly basis and await developments, wait and see until the situation regarding the future of Gibraltar

politically and economically became clearer before we get down to drafting a new City Plan. The situation though is now much clearer and I think that there is therefore every prospect, there is no good reason why a new City Plan should not see the light of day during the course of next year. To this effect the Government has employed a young graduate town planner in order to assist the Chief Planning Officer since the Chief Planning Officer has a dual role in that apart from being Chief Planning Officer he is also one of the two Deputy Directors of Public Works, so in order to assist him and give the whole matter some momentum, these administrative arrangements have been made and that is the reason why the powers which we are seeking which are contained in this Bill are intended to be of limited duration. The Ordinance would expire at the end of 1987 or earlier if a new City Plan is implemented then as it ought to be. But in the meantime, Mr Speaker, the present planning scheme does not take account of the new economic situation or of the demands that this is making underlying, in fact, the need to have some flexible town planning policies. Recent rulings of the Courts have also cast doubts on the extent of flexibility actually contained in the present approved City Plan, contrary to what the then Chairman of the DPC, Mr Abraham Serfaty, and he then Chief Planning Officer, Mr Mario Sanguinetti, stressed in the survey and analysis and in the introduction to the City Plan, as being important. Some of the important projects which are now in the pipeline probably breached the City Plan. For instance, the proposed development at Rosia Bay and here you have a situation, Mr Speaker, in which the Government of Gibraltar had detailed and difficult negotiations with the Ministry of Defence, in the context of the negotiations of the future of the dockyard it managed to get the Ministry of Defence to agree to hand over certain properties there, MOD land, with a view to a substantial tourist orientated development in the Rosia Bay area that could make an important contribution to the economy. A brochure was prepared by the Drawing Office of the PWD, approved by the Government and by the DPC, and it was on the basis of this brochure which envisages development on Rosia Bay itself that the Government invited proposals, invited tenders. In the 1976 City Plan Rosia Bay is designated as an open space. Hon Members may well wonder how has this come about? But that is not the end of the story, there is another scheme that has been considered by the DPC and approved which has been the subject of considerable airing in this House and I refer to the former ex-Shell Petrol Station site at Corral Road. The DPC has approved a four-storey building on that site. In the 1976 City Plan that is designated as an open space. Why has this happened? And in the case of IES, let it be said, and as Hon Members know, the matter has been going and froing for six or seven years. Let me say first of all, let me declare most solemnly that neither the DPC nor the Government were advised at any stage in regard to these two developments when considering

proposals for them that to build on Rosia Parade, to build on the ex-Shell Petrol Station could be contrary to the City Plan. I don't know whether Hon Members know what are the procedures when a building application is received. A building application is submitted to the Crown Lands Department for consideration, if necessary, ultimately by the DPC, copies of that building application go to the relevant Government Departments, invariably these are the Public Works Department from two points of view, the Public Works in order that they can consider the adequacy or otherwise of the services, water, sewage and so on insofar as the development is concerned. Public Works again from the point of view of the Drawing Office so that architectural and town planning aspects of the proposed development can be considered. City Fire Brigade, the Environmental Health Department, Telephone Department and Electricity Department in order that all the Government Departments can put an input and comment on these proposals. In the case of the two schemes that I have mentioned even though the former, Rosia Bay, the brochure itself was prepared by the Drawing Office, I regret to have to state that the Chief Planning Officer did not advise the DPC about the aspects that I have mentioned that, in fact, these proposals could be contrary to the City Plan. It may sound incredible but it is a fact of life and one would imagine that it would be logical that when a building application is sent to the Drawing Office for their comments one of the first things that they should do prior to considering the architectural merit is to look at the City Plan and say: "What is there in the City Plan for this site or this area and is this proposal in conflict with the City Plan or isn't it?" That has not happened and it is a matter for regret but it is a fact of life and that is one of the main reasons why I am having to bring the Bill to the House today. Because there are development projects which are important, which the present DPC consider should get off the ground and in respect of some of which the Government, I think, has a quasi contractual obligation to deal with people who have submitted proposals in good faith, properly, in an efficient and in a proper manner because if you ask people to submit proposals for development in Rosia Bay you cannot twelve months later say to them: 'Sorry, there cannot be any development in Rosia Bay because we hadn't realised that it should be an open space'. That is from the point of view of the Government, the position in which the Government has been put into by this oversight. As I mentioned yesterday, arising from questions, the Government has taken a decision in principle to have a greater element of public participation particularly in the effect that building applications can have on persons occupying, owning or living adjoining properties. There is no difficulty about that in principle, the only problem might be whether we just follow blindly the procedures in UK or whether and to what extent we adapt them to meet the realities in Gibraltar. The reality being, for instance, that you have a DPC as being the planning

authority which is not the same as the planning authority in the UK. In the DPC there are people appointed by the Ministry of Defence as a relic, if you like, of the days when the Ministry of Defence were represented in the old City Council because they were important rate payers, it is a residue of that, but they make an important contribution because they aren't just members of the DPC to look after MOD interests, they are there in order to appraise the DPC at an early stage about the implications that any proposed development can have for the Ministry of Defence. For instance, a reclamation scheme in the Port can have implications in the harbour, say, in respect of silting and the Ministry of Defence need to know at an early stage in order that they can come back with their comments. They perform a very useful function but they are individuals who are not involved in public life in any way, services representative, a United Kingdom civil servant, and I have got serious doubts in the context of public participation whether, for instance, the proceedings of the DPC can be made public to the extent that those of the Transport Commission are. I don't think that people who are here for two or three years and who are appointed to the Commission in the capacity in which I have explained are going to be prepared to be pilloried in a public hearing. That is a matter for politicians because we have got certain responsibilities and when we go into public life we know what we are letting ourselves in for but it is a different matter, I would submit, for members of the MOD or for civil servants, in fact, I would say, I think a distinction has got to be drawn. We are not in a parallel situation with the planning authorities in the United Kingdom and I think that whatever we come up with at the end of the day that will allow a greater element of public participation has got to be tailor-made to meet the reality of the situation in Gibraltar. There were recommendations, as Hon Members know, from Sir John Farley Spry in this respect. The DPC has already looked into the United Kingdom legislation, it has made a preliminary submission to the Commission which the Commission in respect of one or two matters is seeking legal advice and I think I indicated yesterday as to the areas that it deals with, namely, to what extent there should be a right of appeal, should just anybody have a right to appeal or should it be limited to those who are aggrieved, who are affected in any way because they own adjoining properties and so on. Once this matter has been resolved the DPC will then submit these recommendations to the Government and I therefore very much hope indeed that before next summer there will be fresh legislation brought to the House amending the Town Planning Ordinance to permit a much greater element of public participation. In the meantime, Mr Speaker, I hope also that in the first half of 1987 a draft City Plan will be exhibited and the public will be given an opportunity, naturally, to submit their comments on the proposals contained in that City Plan. But we are, regrettably, in a situation in which unless the DPC acquires the powers which

are proposed in this Bill, we are going to be effectively fettered in respect of important developments. It will be extremely difficult for the developments to proceed and the attitude that I take as Minister for Economic Development is that development is important in Gibraltar. It is important because it entails an expansion of the economy, in the short-term it produces employment for the construction industry but in the medium to long-term it entails the creation of permanent jobs principally in the tourist industry and in the financial centre and I think that it is important to strike a balance between the need to abide by sensible town planning policies and the need to develop the economy. The Government itself whenever it has been able to do so has been anxious to preserve the character of certain parts of our city and the work over the years that has been done on modernisation of old housing in spite of all the decanting problems, in spite of the very high expenditure that that has entailed and the criticism that it has had because the pace at which you are providing new housing through modernisation is much slower, the Government has given a lead in that respect. The Government has given a lead in Town Range by converting a building that used to be a school in the past which went into disrepair by refurbishing it and today it is an attractive building and it provides a first-class school and across the way, again, there are Government offices in a building that was worth preserving. Not only has that function been met but also the other requirement that the Government public service are not working in terribly good conditions, anybody that takes a walk around some of the Government offices will see the deplorable state in which many civil servants are working in and that cannot be a permanent feature of life particularly when many offices in the private sector are far more lavish than those in which the Government civil servants are working in. We are trying to strike a reasonable balance in these matters but, as I say, it has become necessary for the DPC to acquire these powers unless, to all intents and purposes, over the next six to nine months it is to have very little to do and unless these developments by which the Government has laid a great deal of store in the development of the economy are otherwise to remain on the drawing board for another six to nine months. Mr Speaker, I commend 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 and merits of the Bill?

HON J BOSSANO:

We are opposing the Bill, Mr Speaker, and the House has only

been given half or even a quarter of the story by the defence of the Bill presented by the Minister for Economic Development. This is, in fact, no more and no less than the implementation of the threat issued over television by the Hon Mr Featherstone in a political broadcast when he said that if people take it into their heads to challenge Government action because it conflicts with the law then let them be warned that the law will be changed and here we have the law being changed. Of course, the Government has just demonstrated to the House of Assembly that it has no difficulty in changing the law very quickly when it suits it. It has not been able to bring legislation to this House to give pensions to people who have been retired since the 1st January, 1984. It took between 1978 and 1985 to legislate for pensions for part-timers. It has taken from 1983 to 1986 to legislate for the use of the MOT Testing Station and it has taken two months between the threat to bring legislation to give it the powers that it is seeking and the implementation of that threat. Of course, this is not the first time the Government has been challenged in Court on something it was doing. I remember one particular Bill that was brought by the Minister for Economic Development to the House and carried with the Government votes and my vote, I was the only Member of the Opposition that voted in favour and the Government was challenged in Court by the Chamber of Commerce and the Government was found to be in conflict with the Constitution the way the law was drafted and the Government had to come back and change back what they had introduced. They brought no new arguments, they just said: "We have been found to be in conflict with the law and what we are going to do now is we are going to go back and re-draft it". I am still waiting for it to be redrafted, I think it is now ten years since they took it back for redrafting and it was an important matter of policy and I was convinced by the Minister for Economic Development, this is why I supported the Government, that the measures that they were introducing giving Consumer Protection Inspectors access to businesses was essential in order to protect people against excessive pricing and having come here, having taken a policy and introduced that policy they found that the policy that they had implemented was in conflict with the law and they quite rightly came back here and said: 'The Government cannot be in conflict with the law, we are going back again to the drawing board'. But they never came back again ten years ago, so much for Government policy. This time round they have tackled this with a haste which is exemplary by comparison with anything that I have ever seen them doing in fourteen years in this House of Assembly. I don't think the arguments that the Minister for Economic Development has used in support of the Bill hold water. We know that this has nothing to do with IES and this has nothing to do with Rosia Bay, this has got to do with the Command Education Centre, this is what it has got to do with and this is, in fact, the Government doing what they said they were going to do after the

question of the Command Education Centre. But of course, it tells us something of which, again, this is not the first example. Many people were very upset by what appeared to be a departure on the part of the Government in saying: 'We are here to govern and we are going to do it whether people like it or not'. But, of course, Mr Speaker, this is not the first time that they have done it. In the earlier part of this year when they changed the way of calculating rates, or last year, I cannot remember if they did it in this budget or the last budget, it was after the Opposition had brought to their notice that the way that they were calculating rates, which they might have been doing historically, had no provisions in the law and what did they do? They came along and they changed the law so they simply legitimised what they had been doing all the time. And if they are having to bring this law now here it can only mean that what they did on the Command Education Centre they didn't have the legal power to do otherwise why change the law? Nor is it true that we are on the verge of a major expansion and that if there is a six or nine month delay in 1987 the whole economy of Gibraltar is going to come to a halt. The reality of it is as Members of the opposite side must know and if they don't know then they don't read their own statistics which would not surprise me in the least, the level and the volume of work already in effect in practice in the construction industry and programmed for the construction industry is as much as the construction industry can cope with, that is the reality. The reality is that if you have got an economy that has been with minimal construction work and declining in terms of employment, the construction industry has come down from employing 800 people to employing 400 people and now it is back to employing 600 people according to Government statistics. The reality of it is that you cannot switch an economic system on and off like throwing a switch in the wall. If you are gearing up from an economy that is simply surviving on public sector contracts from MOD and from ODA funded development programmes and there is a steady constant flow where really all you have got is the same workers moving from employer to employer as one employer loses a contract then another one gets it and you move from that into a phase of expansion, firms cannot in fact cope with that situation unless they do what is tending to happen in many sectors in the private sector which is that they are all chasing a limited supply of labour and pushing the price up and that is not a good way in which to run the economy because what we are facing at the moment is what could well be the gold phase of a stop gold economic system which was something that people were very critical of in the 1970's in UK where you go from a period of boom to a period of depression and back again. We do not have a steady programme of saying: 'This is what we are going to do next year and the year after that and the year after that and that is the volume', and it is better to run the economy on a system of stretching out the

work so that we have got continuity of employment rather than importing a lot of labour at one stage and then laying a lot of people off. As well as that, we have a situation where when we are talking about planning, the Minister has said they have now taken a policy decision of introducing a greater element of public participation. I thought that was the policy decision they took in 1975, they made a big song and dance about it in 1976, of course, it was an election year and they tend to do that, they tend to make a big song and dance in election years and then become dormant for another three and a half years and then you have got a six month phase of activity again. But, of course, I remember that the House was asked to vote money for some of the stands that were put up in Mackintosh Hall to show people what was being planned and everybody came along and they saw the pretty pictures and they saw the models and everybody went away and that was the end of the story. They never saw the reality of the situation. So, in fact, as far as we are concerned on this side of the House our understanding is that the Government has been committed to a greater element of public participation for the last ten years, it is not a new policy that they are announcing. It is not quite as old as free association which is twenty years old and it is just going to be considered again but it goes on for that length of time. As far as we can tell the Bill is, in fact, a Bill which seeks to give the Government the right at their sole discretion to depart from what they have publicly invited views on ten years ago. It is not the fault of the public and it is not the fault of the conservationists and it is not the fault of the Opposition that in 1986 they have done nothing about up-dating the 1976 City Plan and if it took them from 1976 to 1979 to approve the old one I don't see why they expect us to believe that they are going to be able to approve the new one in thirteen months, between now and December, 1987, at the latest. So what will we have, Mr Speaker, the Government coming back as they did with the notorious Landlord and Tenant Ordinance, coming back every six months extending the thing or as they did at one stage with the Trade Licensing Ordinance extending the life of the thing every time they put a deadline which they had no intentions of meeting and they couldn't meet? I think the issue on the general principles of the Bill is an important issue. It is one thing to say: 'We invite public participation in the decisions and then we legislate to give us the discretion to ignore the views of anybody and do what we think is in the public interest'. Well, this is not as simple as taking a decision which is reversible. If the Government decides to do something on building independent of whether it is the right economic policy to bunch too much in too shortened a period of time which is a question of an approach on economic management, independent of that, from a point of view of the quality of life in Gibraltar, decisions taken to put up

buildings are irreversible. Nobody could come along tomorrow and reverse the decision on the Command Education Centre and rebuild the place as it was originally and the same applies to other decisions. Once decisions are taken they are there for life. If the Government wants to be honest with us and honest with the conservationists and honest with the whole of Gibraltar let them forget all about town planning and let them decide to do what they like for four years and then if they are out in 1988 we come in and we decide to do what we like for four years and then Gibraltar will look like a jigsaw puzzle. I think the whole philosophy of the City Plan, I remember, that Mario Sanguinetti used to put forward, was that this was too important an area to be dogged by party political differences and, in fact, it has not been dogged by party political differences because nothing has been happening since 1976. In fact, the City Plan was there, it was an attractive piece of work, a lot of important arguments were being put then in that document not just on the question of development, a great deal was said that was important on housing, on how to deal with the housing problem, on the need to spend money on maintenance otherwise at the end of the day if you let the buildings deteriorate you find the only thing you can do is pull them down, 90% of it was ignored so it wasn't a question of saying: 'Well, the Government would like to do it and is being frustrated by a hostile negative Opposition that is opposing for the sake of opposing'. The fact is that it was there but nothing was done to give effect or to reflect in the policies of the Government what they had put forward. Much of it made a lot of sense, well defended by professionals, defended in this House by Abraham Serfaty when he was a Member of the Government, Mr Speaker, and if we are now ten years later and nothing has been done to replace that original document, then what the Government needs to do is to come to the House or to come to the people of Gibraltar and say: 'This is what we want to change in the old document and this is why we want to change it, so that we finish up with a new City Plan that is an improvement on the old City Plan' and that takes into account what has happened in the intervening ten years but not simply one that says: 'Since it is my fault that I have done nothing for ten years I am now giving myself the power to do what I like to make up for the fact that I have done nothing for ten years'. They will not get the support of this side of the House on that approach and we cannot accept and we do not believe that, in fact, we are going to see in the next six or nine months anything dramatic happening in Rosia Bay which would not be better seen in the context of where Rosia Bay is going to fit in the overall development of the whole of Gibraltar because it isn't just a question of the people who live next to Rosia

Bay or the people who go swimming in Camp Bay, it is a question of the people who live in Gibraltar which includes all of us in this House and all the people outside. We have yesterday debated the importance of broadcasting the proceedings of the House in order to make people interested in the decisions that we are taking and when we are talking about allowing change of use in buildings and allowing development, we are taking decisions for generations to come. We are not just talking about decisions which can be changed in 1988, we are talking about decisions for generations to come so it is even more important to get people to understand what is being done and why it is being done and it cannot be seen in any sensible fashion unless one is looking at it in an overall context. If you are just looking at what they are doing in Rosia Bay and they are doing nothing else in Gibraltar you might say: 'Well, it doesn't really matter if in Rosia Bay they put up a hotel or a tower block or whatever they want to put up'. But if you are going to have a string of tower blocks all the way from Rosia Bay to the frontier you might take a different approach. I think the importance of a City Plan is not just what you are going to do on one individual bit of land, on the Shell Petrol Station or in Rosia Bay, it is that you see where it fits in in the whole context and what Gibraltar is going to look like if it comes to fruition after a number of years. The people who are drawing up the plan are drawing up the plan with a vision of the physical appearance of the place in the future and the people who are looking at the plan must look at it in that way and therefore the question of views and right of appeal is not just because you happen to live next door and you don't like a lot of noise, this is a different consideration altogether, it is because we have all got a right to say what kind of Gibraltar we want in the future and not just the people who happen to be in Government who might find the idea of having an extra 500 construction workers for an extra six months paying income tax an attractive thing to be able to come back to the House and say: 'Look how well the economy is doing. We have got an extra £2m in income tax this year'. We need to look at it with the seriousness and the importance that it merits. I do not believe the Government needs this power and I do not believe that this is the correct way in which to approach it and we are opposed to it in principle. I have myself, Mr Speaker, been convinced by seeing the difference between good development of old buildings and the destruction of irreplaceable buildings and the replacement by buildings that are destined to become slums and are recognised and many other communities have made those sort of mistakes because of the short-term attractions of seeing a lot of development and a lot of money coming in and paying in the long-term a heavy price because at the end of the day the developer has made his money, the developer sells the

property, the developer gets out and the residents who live in the place are then left with the relic for a very long time to come and I believe that sound re-use of buildings that can be safe and preserved enhances the quality of life, enhances the attraction of the place and makes in the long-term economic sense provided you take a sufficiently long-term view. I was not of that persuasion myself, having seen it myself I can understand the arguments which I could not understand before because I have tended, generally, to side with the view that it is better to create jobs and it is better to generate income and it is better to develop an economy than to preserve old buildings, what is the point of preserving old buildings, what are we talking about?

HON A J CANEPA:

In other words, no longer a Philistine.

HON J BOSSANO:

I am less of a Philistine that I was before but I have had to see it myself. I don't know how I can convince other people in the House but I have been convinced by seeing it myself and having seen the difference and having had it explained to me by people who have been through that learning curve themselves, who have taken me to see parts of a city where the original idea was economic development, growth, demolition, put up a skyscraper the more the better, the bigger the better, and then coming back and saying: 'Now we are finding the kinds of problems that that creates', where you have got people moving out of city centres and you have got a total collapse of the whole economic development and infrastructural development of that city centre and you are left with white elephants behind whereas old buildings regenerated and given a new lease of life prove to be assets, they improve the quality of life for the people who live there and they improve the attractions of the place and people do not just then go. What we don't want in Gibraltar is simply a mirror image of another plastic tourist resort because I think that once the novelty of coming to the Rock passes it is the attractions of the Rock that must keep on getting people back here to visit us and contribute to our economy. I believe that those assets are recognised by the Government and have been recognised by the Government in the kind of approach that was reflected in the thinking behind the 1976 City Plan and I say we stick with that until the Government comes up with something better to put in its place. The opposition will not give the Government the right at their discretion to depart from it as they wish and when they wish.

HON CHIEF MINISTER:

Mr Speaker, I really have been very surprised and disappointed at the earlier remarks - I will deal with the latter remarks - at the earlier remarks of the Leader of the Opposition about the question of the pensions and the question of the price control. In the first place this amendment is a short one and if you know what you want it can be drafted and prepared at short notice, it is a one or two clause amendment and it has been explained, I am not going to repeat that, and it is an amendment to a law that we have passed ourselves. We were responsible for the Town Planning Ordinance. If we go further back we were responsible for the first ever town plan in Gibraltar. I remember Clifford Holliday who was a very eminent town planner who came out to Gibraltar in the early 1940's when I was in the City Council and said that Gibraltar was the only territory abroad that he knew that didn't have a town plan ever and this was the first outline town plan which later was administered by the Central Planning Commission which I had the privilege of presiding over many years with quite a number of representatives of all interests and we dealt with applications in accordance with the outline town plan of Mr Clifford Holliday. Then we had Mr Kendall and it was as a result of our desire to look to the future planning of Gibraltar in an orderly way that the Town Planning Ordinance was introduced by this Government in 1973. We do not need, if I may say so with respect, any lectures on recently converted conservationists to know exactly what we want. It is true and I said so at the Heritage Conference in the Rock Hotel where I think the Hon Leader of the Opposition spoke completely differently to what he has been saying today, I wish we could convert him on other matters as easily, it must be a very strong conservationist lobby that can change the Leader of the Opposition's thinking so dramatically in such a short time unless there are, of course political considerations and conveniences to be explored and exploited. But there were two different things, first of all, in the case of the price control it was found that the proposal that came before the House and amended, it was found that it was contrary to the Constitution. Well, everybody knows that we cannot change the Constitution and anything which is unconstitutional must be put right and that is exactly what the Government of the day did. It was found by a declaration of the Court despite the advice given by the Attorney-General of the day who no doubt should have looked at the matter to see whether it was constitutional or not that is a rule of law, that is the advantage of having a judiciary that overcomes the Executive, that can tell the Executive where it goes wrong and that is why we amended the law because it was found to be contrary to the Constitution

and any law which may be passed here by any Government which is found by the Courts, the highest Court, if necessary, up to the Privy Council but initially if it is found by a Court of First Instance that it is contrary to the Constitution the Government has got a duty to amend the law in order to comply with the Constitution. But the Government has also got its power to amend what it has brought to this House if it thinks it necessary and this is an amendment of a law which the Government of the day and this Government, not another Government, passed in order to organise and better the town planning in Gibraltar. That really is no comparison at all, with the greatest respect. Nor is it a comparison of the rapidity with which an amendment was obtained compared with the question of the pensions. Hon Members opposite know that we have decided that and we have had endless difficulties not of our making because pensions is not completely a defined domestic matter, it affects other people and it requires the consent of other people and we are as disgusted and as fed up as Hon Members opposite at the fact that we have not been able to deal with that matter earlier and Hon Members know that and they will know that when we come to the motion on the problem, it is not of our making. We are not sovereign to that extent of deciding everything that we want. We may be a little more sovereign if we get free association, we don't know, certainly we are not going to go much further if we want to declare independence. Those two examples are really not at all relevant. In fact, the first exercise which happened to be in 1976 of a City Plan was also the creation of the Government and of a very enthusiastic town planner who appears to have lost part of the enthusiasm in the course of time because if he was the one who made the town plan and he was the Chief Planning Officer at the time we must hold political responsibility that must be sacred Sir Humphrey, we must hold that responsibility but it is rather ironical that the City Plan was prepared by the Chief Architect who later on forgot about it. Such is human frailty, I suppose, and we have to pay for it and we have to pay for it in the criticisms that have been made today because eventually we are the ones that have to face the public. But the extent of the amendment is not as drastic or as sinister as had been made out by the Leader of the Opposition because it is obvious that town planning is an on-going thing, it is never finished and what is today something which is sensible in five year's time may not be because the environment changes, people's habits change, the character of a place may require an element of change and you have to make sure that you do that within the parameters of what you want generally and hence the Town Planning Ordinance provides that there has to be a new City Plan every five years otherwise we would be stuck with a City Plan fore-

ever and there could be no progress at all. The fact that the City Plan was not reviewed in 1981 or 1982 is also very deplorable but it may well be, too, that those were not the days where you could look ahead with any element of confidence of what was in store for us after twelve or eleven years of a closed frontier and the expectation possibly of an open frontier where things could change not only in the development of offices for the Finance Centre but generally the aspect of life, the people who come, the people who live here require to have a new situation looked at by the planners. Therefore it may well be that that was one of the reasons why not much more progress was made in the review of the City Plan but a lot of work, I understand, has already been put into it and I must say that despite the progress I saw a paper recently, I forget, but somewhere in the course of my duties about planners who are, I suppose, idealists then they don't put the thing into effect. We are thinking that we ought not to have a City Plan for another ten years until we knew exactly what the City Plan across the way was so that we could match it in. You have to strike a reasonable balance between what is in the very distant future and what is in the more immediate necessity and more immediate requirement of a community which has had this jolt, very dramatic difficulties imposed on it, one was the segregation and the isolation from the mainland and the other one after a period of time was the connection again as part of life with an open frontier situation. Precisely because the powers that are required are only interim pending the new town plan, the Ordinance only seeks to have this power and because it is past the five years of the original town plan the Bill seeks to obtain powers to deal with the interim problem which will be done with all care. I do not think, in fairness, that the reference to the broadcast by my colleague, Mr Featherstone, has been properly understood nor is it fair to say that because that is not what we do. We didn't do that in other cases, we have to deal with the matter as it stands but this is one of general public importance and, of course, once the Leader of the Opposition has been converted then I am sure all the members of his party have been equally converted to conservatism and we can see the reason for the opposition to the Bill. We feel that this is good for Gibraltar, that this is what is required, that is why the Minister has proposed it and that is why we propose to use it in the best interests of the purpose for which it is brought to the House.

HON J E PILCHER:

Mr Speaker, on the general principles of the Bill I think most has been covered by both the interventions of the Hon

Mr Canepa and the Hon Leader of the Opposition. However, there are various points which the Hon and Learned Chief Minister has brought up in his intervention, that need to be answered. He started off by saying that the difference between this amendment brought before the House and other amendments that have been delayed through perhaps years or months was that the Government know what they want, these were words that he used. In this particular case the Government know what they want and therefore can act on it quickly

HON CHIEF MINISTER:

If the Hon Member will give way. I think he is misquoting me. I said that this was something which we had done and we know that we can do it. I referred to the pensions as being entirely outside our province.

HON J E PILCHER:

I accept that and obviously there is a motion in the name of one of my colleagues which will bring to light all the problems of the pensions but the Pensions Regulations are not the only ones mentioned by the Hon Leader of the Opposition that have been delayed through the years, this is just a one-off. It is, I think, important that in fact this amendment is not passed because if the Government know what they want and they know what they want to do with the City Plan, the provisions of this amendment, what it does is it gives the Government the right to relax, to sit back and be inactive on the City Plan until it suits them to do otherwise. If this amendment had not been brought to the House given all that has been said by the Hon Mr Canepa, the pressure on the Government to change the City Plan and to make Gibraltar aware of the new City Plan would be much greater than if we pass this amendment giving the Government the right to do what they like over the past year is such that the pressures would not be as great on the Government to actually sit down and change the City Plan. The Hon and Learned the Chief Minister also gave us a history of how the City Plan and the Town Plan came into effect and said that it had been the AACR Government that had initially since 1975, if I am not mistaken, brought the City Plan with the 1976, passed in 1979, being the City Plan of today. With that history behind them it should be more so evident to them that what they are doing in this amendment is doing away with the City Plan altogether and our Leader, recently converted conservationist, was recently converted conservationist in the United States of America not because of the votes that that can give us in Gibraltar but what has happened is that

there has been a contradiction, a change over from the Leader of our party being the Philistine and now the recently converted conservationist, to the prospective Philistines on that side of the House now and because the Leader of the Opposition is now a converted conservationist, the Hon and Learned Chief Minister says that the rest of the Opposition must therefore be converted conservationists. If the Hon and Learned Chief Minister has always been a conservationist how is it that now because he has a Deputy Leader who is a Philistine the rest of the Government are prospective Philistines and it must only be that. The Hon and Learned the Chief Minister talks of the extent of the amendment and he talks of changing this to give the Government the right and the time to be able to amend the City Plan. If we look at the amendment, Mr Speaker, it says 'and in any particular case grant a permit for the demolition of any building or for the erection and subsequent use of any building even though the demolition of the building or the character of the building to be erected and its proposed use would be incompatible with the planning scheme approved on the 22nd November, 1979'. That, Mr Speaker, completely denies the 1979 scheme and gives the Government the power to do what they like for a year without having to even bother about the 1979 scheme. I think, Mr Speaker, that is what the extent of the amendment is and that is how this side of the House sees the extent of that amendment. The City Plan is not being revised at this stage, the City Plan is just being put in a drawer so that people can forget about it.

HON A J CANEPA:

That is what they were doing, unfortunately.

HON J E PILCHER:

That is not our problem, Mr Speaker, that is the problem of the Government who if their civil servants are not doing their work properly that is not a political problem that the Opposition have to take into account. The only other thing, and I know it is not a point made by the Hon and Learned the Chief Minister in any way related to Government policy but it is a point that was made and one which we want to add our little piece and that is that if - and I think this was in fact mentioned by the Leader of the Opposition - it is not the thinking of the GSLP, quite the contrary, that we have to match our City Plan against that of the adjoining neighbourhood of the Coast. The opening of the frontier might have had an effect on our economy, might have had an input into our economy but our City Plan must be made in such a way as to keep Gibraltar unique, completely different to the coast and completely unique. Thank you, Mr Speaker.

HON M A FEETHAM:

Mr Speaker, one final point that I wish to make which, in fact, was the final point of my colleague on my left and that is that the Chief Minister said that he came across some documents which argued in favour of having no City Plan and waiting to see what happens on the other side of the frontier. It is a fact that on the other side of the frontier there has been a stagnated period in many respects in the same way as there has been in Gibraltar where the build-up of the Costa del Sol philosophy has not reached the other side of the frontier and already today there are many in Spain who because of their new ideologies in the matter of planning and conservation and preservation and so on are already very much against the mass market mentality build-up which the population in the Costa del Sol are suffering as a consequence of the philosophy of the previous regime in Spain. I want to make it quite clear that if any of those planners who exist obviously in the civil service think for one moment that if there is a GSP Government in power that we are likely to want to wait and see what happens on the other side of the frontier before we start making a move in any particular direction, I think they had better go and find themselves a job in private practice as some other people are doing and leave the job to us because we will do a better job than they are doing or thinking of doing. The final point that I wish to make is, and I don't wish to disappoint conservationists, I am not a totally converted conservationist, let us be clear about that. What I am totally converted to is to the fact that if conservation can be blended in with development and where we can preserve some of Gibraltar's historical uniqueness as part of our enjoyment - not only of life and environmental being in Gibraltar but as part of our product in selling Gibraltar, then that has to be something which has to become a priority in our development strategy, there is no doubt about that. To that extent I am in favour of conservation but I am not in favour of total conservation for other reasons which I am not going to get myself involved in at all. And the final point which has not been answered by the Hon Member opposite is why did Government, in fact, break the law and he hasn't given an answer to that.

MR SPEAKER:

Are there any other contributors? I will then ask the Mover to reply.

HON A J CANEPA:

I will deal with the last comment first if I may, Mr Speaker,

and that is that I lay store by the final judgement of Mr Justice Kneller and that one vindicated the DPC. I want to make one thing abundantly clear. The Hon Joe Pilcher kept on talking about the powers that are being given to the Government. The Government has no powers on town planning matters. The statutory planning authority is the DPC and the Government cannot influence directly the DPC in any way or take away any of their decisions. The Government has no authority to approve any building application, that is a matter for the DPC and in the DPC the politicians are in a minority, they are not in a majority. Mr Speaker, I have a great deal of respect for the powerful intellect of the Hon the Leader of the Opposition. I have tremendous admiration for the logical way in which invariably over the years he has been able to string together an argument but on conservation matters, on town planning matters, he has to go much further than to the United States before he is not guilty of getting a number of things wrong as he has done this morning. It was very interesting to hear Mr Joe Pilcher reveal that it was actually in the United States that Mr Bossano was converted, I thought that it had been on the road to Damascus but, of course, these days Damascus is a much more dangerous place than what it was 2000 years ago. But more nearer home, of course, there are wonderful examples in the United Kingdom of what conservation is all about and I am referring, of course, to some of the more notable ones like the London docklands and Covent Garden. But one of the essential aspects about these examples of conservationist planning which has been left out is the question of viability. Is a conservation project viable or isn't it? And that is the difficulty that, of course, we had with the Command Education Centre but in the case of the Command Education Centre you had a building which only had two floors and it was extremely difficult to adapt it in a way that would make it viable and that is why when we invited tenders with very stringent conditions about the treatment that the Command Education Centre should be given, namely, in 1982, there were no takers. There were no takers because the project was not viable. I think that to make comparisons between Gibraltar and the United Kingdom in respect of what is happening in the inner cities there is invidious. For one thing you haven't got the relativities of scale. You cannot compare what happens in a city centre such as Manchester or Liverpool or Birmingham with Gibraltar and it isn't as if even in the case of the Command Education Centre, whatever anybody might say about the demolition, it isn't as if we are going to put a tower block there, a fifteen storey office block, we are not doing that, the treatment that that important part of Gibraltar is being given is much more in consonance with the urban environment in the area. We have learned in many other matters from the mistakes that are made in the United Kingdom, a notable case

in point for instance being the mistakes they have made there with comprehensive education. We don't have comprehensive schools of 2000, ours are of moderate size and that is why they work so sometimes you need a period of time to elapse before you are able to learn the lessons of the mistakes that others are making. The Government is able to change the law, as the Chief Minister has said, much more expeditiously when it is a defined domestic matter than otherwise and I think to level criticism as Mr Bossano has done with the legislation in terms of the Pensions Ordinance and in terms of the amendment to the Price Control Ordinance, to level criticism at me personally, I think, is really hardly fair on his part if he has regard to the fact that I am the elected Member who has probably brought more legislation to this House than anyone else in its history because I have been dealing with matters that have been the subject of a great deal of legislation and I have always on matters where I have direct Ministerial responsibility, I have always endeavoured over the years to give the whole question of legislation the drive and the push that is necessary and I think that my record over the years in this respect, my record in bringing important legislation to the House expeditiously is second to none and I think at least he should have granted me that. He said on the question of public participation that what I had announced in the House yesterday and today, of course, was not the end of the story because we had had that since 1976. No, he has got it wrong, the public only had limited right to participate in respect of the City Plan and the City Plan only once every five years. What is now being contemplated is that the general public should be able to make representations and make their views known in respect of every building application and the intention is not to limit the right to make representations just to people in adjoining properties. The qualification that I made was only in respect of the right to appeal. In other words, if a building application proposes to erect a fifteen storey office block here where we are now sitting, someone living at Europa Point is perfectly entitled to make representations and views on the matter. But once the DPC has considered those representations and taken a decision on the matter, the question is on which we are seeking advice, whether the right of appeal should lie with somebody living on the other side of Main Street or with that person in Europa Point, that is the point really that is worrying us. But as regards making general representations it is intended, of course, that it should be the general public including Members of the Opposition and I look forward to very many valuable representations from the new convert to conservation, perhaps the latest member of the Conservation Society, I know that he attended the last general meeting of the Conservation Society in the person of the Hon Mr Bossano.

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 Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon C Mascarenhas
The Hon J B Perez
The Hon Dr R C Valarino
The Hon H J Zommitt
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members voted against:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

The Bill was read a second time.

HON A J CANEPA:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken at a later stage in the meeting, if necessary, today, if Hon Members opposite do not agree then, of course, it will have to be tomorrow.

MR SPEAKER:

Do Members agree that it should be taken today if we should get to the Committee Stage?

HON J BOSSANO:

No, Mr Speaker, we are opposed to the Committee Stage being taken today and we shall be making the point that once again we are going to have to complain about the Committee Stage being taken at the same time as the First and Second Readings of the Bills. The point was made in the last House and we were told by the Government that they appreciated the point but it is not being reflected.

MR SPEAKER:

Then it will be taken tomorrow, if need be.

THE TRAFFIC (AMENDMENT) ORDINANCE, 1986

HON M K FEATHERSTONE:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Traffic Ordinance (Ordinance 1957 No.4) 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 M K FEATHERSTONE:

Sir, I have the honour to move that the Bill be now read a second time. Sir, this is a long-awaited Bill to get the Vehicle Testing Centre into full use. Basically the Bill gives the Government powers to make regulations for the use of the Test Centre and matters relating to the issue of licences. Regulations will follow very shortly to enable the Test Centre to be used to test all vehicles over the age of ten years initially before they can be issued with a licence and, progressively, the age of the vehicle will be reduced until vehicles from five years onwards are being tested at the Test Centre. Sir, Clause 1 of the Bill designates the Test Centre, who is to run it and the requirement that vehicles and trailers should be tested and for test certificates to be given. Unless a vehicle has a test certificate no licence will be issued for that vehicle so if you don't have a test certificate you won't get a licence and you won't be allowed to be on the roads. Clause 5 is a series of new provisions amongst which are regulations for powers given to a Policeman in uniform to request a roadside test on any vehicle he suspects is not road worthy and for the examiner to suspend the motor vehicle if it is found to be unfit. Public services vehicles are included in these tests but if a public service vehicle is to be stopped on the road for such an inspection, the inspecting Police Officer must be above the rank of sergeant. Clause 6 insists that before a licence is issued duty must have been paid and the vehicle must have a certificate of a valid test. Clause 9 says no one can drive without a valid driving licence for the category of vehicle driven and further describes the requirements for having a valid licence and the category of such a licence. Licences will in future be valid for a ten year period or until the driver reaches the age of 70, whichever is the sooner. For a driver over 70 licences will only be issued on a three-year scale so once you get to 70 you will have a licence issued to you for three years and then if you are certified as medically fit you get another licence for another three years, etc. The new driving licence will cost

a little more, it will be worth £1 a year so it will be £10 for such a licence. Licences must also be produced if requested by a Police Officer. Clause 13 deals with the suspension of licences and their renewal and includes an appeals procedure. The other Clauses are either consequential or clarifying except Clause 15 which removes restrictions on prosecutions for speeding and other offences. Clause 23 is a saving Clause on licences already in issue. As I said, Sir, the main purpose of this Bill is to allow Government to make regulations to get the Testing Centre working fully and I undertake here and now that these regulations will be forthcoming very quickly indeed so that we can have the Test Centre working well before the new year. Thank you very much, Sir, I commend 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 and merits of the Bill?

HON J C PEREZ:

Mr Speaker, Members of the House are aware that since 1984 when I first became a Member of this House I have been pressing the Hon Member opposite on when the legislation to make the MOT Test Centre fully operational should be brought to this House. The main argument being that since September, 1985, an asset built at the cost to the taxpayer of some, I think, £300,000 has been lying to a great extent idle because the legislation had not been promulgated in time for the asset to be utilised at the time of its completion and not only that but we have had to wait for three years afterwards to be able to get the legislation off the ground. The wisdom of having an MOT Test Centre or not is certainly at this stage not a matter for debate. The decision to have an MOT Test Centre was the Government's certainly prior to my being a Member of this House since when I became a Member of this House the MOT Test Centre was already built and one cannot discuss now whether it is better to have one or not. Perhaps the Hon Member can give us some of the arguments used by the Government in favour of MOT in the context of Gibraltar. I know that in other places it has been argued that MOT testing would certainly reduce the number of accidents and it is a safety measure and it would be indefensible and unforgivable if that was the reason why the Government opted to have MOT in the first place that three years should have elapsed since the Centre was completed before legislation was brought to this House because it has meant that it has been a risk to life if that was the argument. Be that as it may, Mr Speaker,

we would need to see how the Test Centre operates in practice and what the regulations provide for which I accept can only be made available once this piece of legislation is passed so that we are able to review our own position on whether MOT is good for Gibraltar or not. Therefore the Opposition will be abstaining on this Bill, Mr Speaker.

HON M A FEETHAM:

I want to clarify, Mr Speaker, something which will have a bearing as to why the Opposition is abstaining apart from everything that has already been said by my Hon colleague, and that is having followed the Traffic Ordinance now for a number of years what is being implemented here, I think, is going to be difficult unless we introduce amendments or have a rethink and come back again because, for example, what enforcement is there going to be - we are talking about enforcement in Gibraltar with Gibraltar traffic and transport - what enforcement is there going to be in the areas where vehicles coming into Gibraltar are breaking Gibraltar laws? There is such a thing as an oversized vehicle where you have to have a special permission to circulate in Gibraltar which has to be enforced in the context of this legislation which means that at this point in time every vehicle which is circulating in Gibraltar coming in from Spain without an oversized disc is breaking the law all the time. What provisions are being made to cover this in this legislation? For example, if you go into Spain and your car is stopped and put to one side because you are breaking the law in various respects of this, that and the other, what provisions are there in this legislation that would ensure that it will be enforced? The main thrust of what I am saying is, how are you going to enforce the oversized vehicle aspects of the legislation which exist in respect of lorries coming into Gibraltar and circulating regularly as they are, buses and so on and so forth? Unless these things are cleared, unless these things have been thought out there is no way we can vote in favour of this legislation.

MR SPEAKER:

Are there any other contributors?

HON ATTORNEY-GENERAL:

I don't quite understand this point, Mr Speaker, about the oversized vehicles. The oversized vehicles coming into Gibraltar are presently controlled under our existing legislation, they have to be of a certain size they can only circulate in certain areas and they must have the disc. With regard to the other vehicles and the condition of vehicles

there are going to be three sets of regulations. The first one will be the Vehicles Construction (Equipment and Maintenance) (Amendment) Regulations and this applies the EEC Directive as to steering gear, brakes, direction indicators, windscreen wipers, fuel tanks, emission of smoke and vapour and it converts all the various measurements from the imperial measure into the metric measure. That is the first set of regulations which are here and which are with the printers. The second set of regulations are the Motor Vehicles (Test Centre) Regulations and these regulations provide for the procedures to be followed in the testing of vehicles. It provides for the roadside tests which are to be carried out and how they are to be carried out and it also deals with appeals against refusals of test to vehicles. The third set of regulations and it is this third set that is still giving us a problem and this third set of regulations deals with the testing of drivers as distinct from the testing of vehicles. It deals with the thorny problem of medical examinations for candidates for driving licences. This is causing us a real problem, this is implementing an EEC Directive and it makes provision for the issue of EEC driving licences. This set really brings into force the EEC provisions as to EEC driving licences and what you have to do and how fit you have to be to get such licences and it is the fitness that is still giving us the problem.

MR SPEAKER:

Does the Mover wish to reply?

HON M K FEATHERSTONE:

I have very little to say, Sir. Firstly, I think it was not the taxpayer of Gibraltar who paid for the Vehicle Testing Centre but the ODA, so perhaps it was the taxpayer of the United Kingdom. I am a little upset that after two or three years of pushing us to get this legislation and after it was a feature in a recent political broadcast by the GSLP, that they would wish to abstain on the legislation but I presume abstention is better than voting against it so I will commend the Bill to the House.

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 Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon G Mascarenhas
The Hon J B Perez

The Hon Dr R G Valarino
The Hon H J Zammit
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members abstained:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

The Bill was read a second time.

HON M X FEATHERSTONE:

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, today if everybody agrees, otherwise tomorrow.

MR SPEAKER:

Do Members agree that the Committee Stage and Third Reading of the Bill should take place today?

HON J BOSSANO:

Mr Speaker, on the Committee Stage we are going to make our position clear and therefore we are not prepared to see the Committee Stage of any Bill being taken today except the two Bills from the last House, of course.

THE TRADE LICENSING (AMENDMENT) ORDINANCE, 1986

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the Trade Licensing Ordinance be read a first time.

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

SECOND READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the Bill be now read a

second time. Mr Speaker, this Bill is on the lines of a legal opinion given by me that the insertion of 'welding' and 'Shipping Agent' in Schedule 2 to the Trade Licensing Ordinance was contrary to the standstill provisions contained in article 62 of the Treaty establishing the European Economic Communities. Article 62 requires that Member states shall not introduce any new restrictions on the freedom to provide services which has in fact been attained at the date of the entry into force of the Treaty. Mr Speaker, so far as Gibraltar is concerned, the Treaty entered into force on the 1st January, 1973. Mr Speaker, on that date anyone had the freedom and the right to carry on business as a welder or as a shipping agent without the necessity of a business licence under the Trade Licensing Ordinance 1972. The Trade Licensing Ordinance 1972 was repealed and replaced by the Trade Licensing Ordinance 1978. The 1978 Ordinance came into force on the 1st January, 1979, and on the 1st January, 1979, Mr Speaker, with the new Ordinance, the position was still unaltered. Anyone had the freedom and the right to carry on business as a welder or as a shipping agent without the need for a licence under the 1978 Ordinance. Mr Speaker, it wasn't until the 8th May, 1980, when the 1978 Ordinance was amended, that a business licence became necessary to carry on business as a welder. On the 19th July, 1982, when the 1978 Ordinance was again amended, shipping agents were required to have a business licence. Mr Speaker, while drafting the first European Communities (Amendment) Ordinance, 1985 - this is the Ordinance giving the effect of advance implementation - I realised that the standstill provisions had been breached with the insertion on the 1st August, 1983, of carpentry, decorating, joinery, painting, plumbing and woodwork into the Second Schedule of the Ordinance. This breach of standstill, Mr Speaker, was corrected by the last item in the First Schedule to the European Communities (Amendment) Ordinance, 1985. Mr Speaker, I must bear the responsibility for not realising at that time that the standstill provisions had also been breached with the insertion of welders in 1980 and shipping agents in 1982. If I had so realised, Mr Speaker, I would have ensured that the First Schedule to the European Communities (Amendment) Ordinance 1982 corrected the situation and thus avoid the need for this Bill and the situation in which I find myself today. Mr Speaker, I believe that my opinion on this matter is correct and for that reason I commend 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 and merits of the Bill?

HON M A FEETHAM:

Mr Speaker, I can well understand the explanation given by the Hon and Learned Attorney-General on the matter that under Article 62 we are forced by the rule of law to change our own laws to comply with that Article because we entered the European Community on the 1st January, 1973. You know what our position on this matter is and I am not going to repeat it, on the question of the EEC. Here is another item where we are opening up ourselves because we didn't attempt at an earlier date to re-negotiate our terms of membership of the European Community at the time of Spanish accession, is another item where we are opening up to competition because we are doing this because there is not just a requirement by law, we are doing this because we are under pressure from the Spanish side to do it because there is a Spanish company that wants to compete under the Treaty of Rome with the right of establishment with Gibraltar companies. That is what this is all about and what worries me and worries the Opposition is that the resources which are available within the territorial waters of Gibraltar and with the bay being just across and with the wider competitive pool that there is on the Spanish side as against our little Gibraltar on the question of, for example, taking agencies away from each other, that we are unfortunately putting at this point in time the members of the Shipping Association which make up our shipping community at very serious risk. Should we do it or should we not do it at this point in time and why have we done it at this point in time, and what could we do about it before bringing this Bill to the House? Those are the questions which the Hon and Learned Attorney-General has not answered.

HON CHIEF MINISTER:

I will.

HON M A FEETHAM:

That is why I am standing up asking these questions. I am therefore saying that we are going to oppose this Bill. I am just going to quote as far as I can possibly recall the recent statement by the Hon and Learned Attorney-General when he said in reference to a decision on Bigib where he said that he didn't want a certain Judge to hear the case because of certain remarks that he made and that even if he lost the case he was prepared to go all the way up presumably to Privy Council or the European Court or whatever.

HON ATTORNEY-GENERAL:

Mr Speaker, if the Hon Member will give way. I didn't say anything at all, I was represented in Court by Counsel, I didn't say anything.

HON M A FEETHAM:

Then his Chambers said it so therefore I am just recalling what his Chambers have said, they were prepared to take it all the way. Therefore on an issue like this we ourselves should put ourselves in a position of taking it all the way if we are forced into complying and that is the argument that we are trying to put over. If what I now detect from the comments which I have heard from across the floor in passing, from the Chief Minister that he will have something to say, if he is saying that rules are going to be introduced which will give protection, of course, we will want to hear about it and I will want to hear to what extent, quite seriously, to what extent it is going to protect this particular sector of the Shipping Association because it is not just simply the Shipping Association and the business that they generate for themselves, it is also the spin-off of the business that they generate for others. For example, we talk about crew changes and they get their fees for crew changes and they bring those crew members to Gibraltar and they can stay in Gibraltar hotels and they take Gibraltar transport and they spend money in Gibraltar whilst in many cases they are waiting for the ship to come through. In some cases they go straight off but there is still a spin-off. It is not just simply a narrow issue, it is a wider issue so therefore I want to know because it is already happening and we are not able to control it. They are already encroaching on our business in that area and we are finding it difficult to control it. Doing away with this section, doing away with the need to have a trade licence as part of the protection is opening us more and more into a takeover in that area unless we put something in its place from the Spaniards across the way. One of the things which was drawn to my attention was the fact that whilst we became members of the European Community on the 1st January, 1973, and the Italians were there a long time before us, they actually only introduced rules to protect themselves in 1977 of similar effect for people in the shipping profession. These are the things that are worrying us and that is why we are opposing this Bill.

HON CHIEF MINISTER:

Mr Speaker, in the first place I would like to answer what is now a preface to everything to do with anything of our

obligations under the European Communities that we didn't do anything to safeguard our right, that is not true, simply not true. We tried to safeguard the interests of Gibraltar long before Spanish entry. We had the then Mr Hannay who was the Head of the European desk at the Foreign Office, he came on two visits and took a number of notes, he saw the whole spectrum of Gibraltar, went back to Brussels and did his best. In some respects he found some easing of problems, in other respects he wasn't able to. But with regard to the particular point made by Mr Feetham, the House will see from Clause 2(1) of the Bill that the amendment to the Second Schedule is to come into force on a day to be appointed so, in fact, we will be taking the Committee Stage at another meeting of the House, there won't be any need to ask for it to be taken today or tomorrow because, first of all, even if we did it would not come into force until a day appointed in the Gazette. The reason for this is that the Gibraltar Shipping Association are extremely concerned about the possibility of shipping agents from outside Gibraltar operating here as such but without being properly established and therefore competing unfairly with local agents. I have received them, I have heard their grievances and they have made written representations which have been of great value to us. The Association considered, for instance, that a shipping agent operating in Gibraltar should have properly equipped office accommodation in Gibraltar which should be open to the public during normal working hours. That shipping agents obviously should be staffed by locally employed personnel capable of attending to vessels' requirements on a 24-hour basis, that is what they want, that proper books of accounts subject to annual audit by locally registered companies should be kept and that agents should be subject to the laws of Gibraltar, including tax laws. The Association has made strong representations to the Government on this matter and have submitted proposals as well as information on the practice in this respect in other European countries where they have made regulations not in substance but in practice in order that there should be no unfair competition from outside. All this material is now being studied and it is proposed, subject to legal advice, to make regulations to safeguard the position. We want to make regulations so that the position when the law comes into effect is safeguarded. As the House knows, Gibraltar complies with the Community obligations and judging by the questions we have had from the other side, it looks as if we are not doing enough because they are asking us when are we going to implement this legislation, when are we going to implement the other Directives? But that, of course, is one slant of the other one which will bring the amendment they are opposing. I don't know why they are so concerned about Directives that have not been implemented. Such regulations that we propose to do will not infringe Community principles provided they

do not result as discrimination against Community nationals or companies. But there certainly appears to be a case for introducing safeguards. Indeed, if for instance a Spanish company were to establish itself as a shipping agent in Gibraltar, I am sure it would wish to see itself protected against the sort of operation which gives rise to the concern which is now expressed by the Association. The Government's approach is to have appropriate regulations ready as soon as possible and to make such regulations at the same time as the amendment proposed in the Bill comes into effect. We have now asked for early advice and will take the matter further as soon as it is available.

MR SPEAKER:

Any other contributors?

HON J BOSSANO:

Mr Speaker, perhaps I can enlighten the Hon and Learned the Chief Minister as to why we say to him and his Government when are they going to comply with this Directive or that Directive. We believe that Gibraltar should have renegotiated its terms of membership and we moved a motion in that respect on the 7th July, 1980, in this House and what the Chief Minister then at the time did was to set up a Committee in order to kill the idea which is a thing he is always very good at doing, killing ideas by either employing consultants or setting up Committees or studying it or whatever. The reality of it is that the Government has got to defend the position and therefore we are entitled as an Opposition to demonstrate that if they are not facing a problem it is because the problem has not yet caught up with them as this one has caught up with them because it must be absolutely obvious to the House that if the House is now being told that we are removing what we added then when it was brought to the House by the Government the Government was infringing Community law. Is the Government aware that they also added road transport contracting after the date and we are leaving it there and that is not in conflict with Community law? Or is it that we only correct the law when somebody complains? That is to say, if a native complains about the Government breaking the law then you punish the native by changing the law and if a Community national complains about us breaking the law then we change the law to come into line with Community law, is that the philosophy that the Government defends.

HON CHIEF MINISTER:

Transport contracting is being considered between now and

the Committee Stage of the Bill for a number of reasons.

HON J BOSSANO:

Let us be clear that we believe that the Trade Licensing Ordinance as it stands is only able to give protection, and we have seen a number of examples of this, until it is challenged and every time it is challenged we back-track. We don't believe that that is the proper way to do things, it would have been far better if the Government had taken a policy stand on this at the time when I could, which is very difficult to do now, and they would have been able to do it even before the GSLP had seven Members of the House because the other party that was here was also committed in the EEC Committee to getting protection. We took the initiative in bringing it to the House, the Government set up a Committee and therefore in that Committee everybody accepted that Gibraltar had a need to seek special treatment based on its size. The reason why a local transport contractor cannot compete with a transport contractor from across the road is because the local transport contractor doesn't have the resources, if the local transport contractor was a subsidiary of a multinational he wouldn't have any problem and we know from experience in areas which are not covered by the Trade Licensing Ordinance, we have seen it, Mr Speaker, happening in the Government-owned Gibrepair. In the Government-owned Gibrepair somebody can be painting a ship and doesn't need a trade licence but he cannot paint a house without a trade licence although it may be the same painter working for the same employer. We have had a situation where sub-contracting has gone to Spanish firms and it is only the stand of the workforce in the yard independent of what the law has said on the subject that has succeeded in protecting local interests in that area. But the Government has been able to do nothing about it although they are the owners of the yard because they have not interfered with management decisions as to who gets what contract and the management decision has been 'we will give it to the cheaper contractor' although the cheaper contractor may, in fact, not be paying local taxes or local rates or local insurance or anything else. We have had in the yard people who have come in from Cadiz who have been doing work in the yard and it has been well known and nobody has stopped it and the company is saying: 'Well, I am a commercial manager and if I can get it cheaper, well, then I get the ship painted cheaper'. Nevertheless, is it cheaper for Gibraltar? That is what we have got to ask ourselves. If this is happening in a publicly-owned subsidised enterprise, one can well imagine the logic commercially operating even more when people are spending their own money. So either we are talking about Gibraltar being able to stand up to

open competition from a position of limited resources which are never going to disappear because it is a function of size, it is not a function of saying: 'We need a period of adjustment'. If we say 'we need a transition period to cope with competition from across the way' that would be one kind of argument. But it is not that kind of argument at all, it is not a matter of saying 'we are going to adjust after we have had a frontier open for seven years', like Spain is having to adjust to the impact of entering into the European Community and Spanish manufacturers are being given time to adjust to the competition from Northern Europe. We, however much time we have got, however much time we were given, would never be able to adjust to the fact that there is a domestic market of 7,000 households because the essence of having a protective barrier is that you build up a base in your domestic market which enables you then to face competition from another market provided you are talking about similar sizes of market. If a local transport contractor has got 1½ broken down lorries how is he going to compete with anybody? How is Ready Mixed going to compete with the stuff from across the frontier? And the same applies in many areas because the private sector in Gibraltar relatively to the size of Gibraltar is understandable, a big employer in the private sector is one that employs fifty people. In most of the EEC legislation they only start talking about taking notice of employers from fifty up, they forget the ones under fifty because there may be many hundreds of them but collectively they account for a very small proportion of the national economy whereas in Gibraltar, in fact, the private sector consists of many, many small family firms and a few biggish employers employing forty, fifty, sixty but very few over that figure, one or two maybe in the whole of Gibraltar. Even that size would be considered minute outside Gibraltar and companies of that size get swallowed up one hundred a day in any other national economy. We have got a particular and a specific situation and if we are just looking at our legislation in the Trade Licensing Ordinance in the context of how compatible is it with Community law, the answer is it is totally incompatible, of course it is. If you try to introduce national trade licensing for the whole of Spain or national trade licensing for the whole of the United Kingdom it wouldn't make sense but if you were to have a rational way of controlling business activity in a town the size of La Linea then the conditions and the criteria and the factors are applicable there as they are here. Since La Linea is part of the Spanish nation state they are not able to seek a regime of their own. But the problem that we are facing with this amendment is that, okay, it has highlighted one area and the Government may now try and get protection for that particular area in another way and certainly we will support any attempt that they make to give protection to that

area because we feel we have to start looking after our own because nobody else will. But at the end of the day it doesn't address itself to the real problem of this amendment and that is that each time a successful challenge is mounted against the Trade Licensing Ordinance then the concept of the Ordinance is undermined and watered down and clearly each time it makes more and more of a nonsense of the law. When the Government in the law to which the Hon and Learned Attorney-General has made reference of the amendment to the European Ordinance said that carpentry, decorating, joinery, painting, plumbing and woodwork were being retained provided they were undertaken in the context of building contracting, it shows how, in fact, we are trying to camouflage things rather than tackling the situation head on. What are we saying then, that electrical contracting requires a trade licence and building contracting requires a trade licence. If somebody has got an electrical contract and following the electrical contract they have to do painting, then painting for the electrical contract doesn't require a trade licence but if it was being done for a building contract it would require a trade licence, that is what we are legislating here. We have to come to terms with the thing and either we tackle the thing in its roots and redraft it in a way that gives us protection or we have to face the reality that it is not going to stand the pressures and the passage of time and then how do we give the protection that we need to give because we certainly need to do it. It may be that in twenty years time the economy of Gibraltar will be so transformed and the economy on the other side will be so transformed that these issues will not be important but in the current stage where we have had a situation where many businesses through the period of the closed frontier have been surviving on a market that was unchanging but not able to produce enough return on their capital to be able to face an onslaught of competition with an open frontier, we are now in a situation where their attempts to adjust to the new situation economically and their attempts to put business on a right footing by investing more could suddenly be wiped out because the rug would be pulled under their feet the moment somebody challenged it. The situation is that it isn't just a question of people being able to set up shop here with or without a trade licence, what is clear is that de facto already we have got a flow of competition from people operating from a cheaper base, that is the real threat. The real threat is not just one produced for us by the accession of Spain, it is that we have been operating an island economy and we are now joined physically to the mainland and, of course, if you are able to enter and supply the Gibraltar market without the overheads of having to set up shop here then you are on a winner, you cannot go wrong and the people here cannot do it in the opposite direction so it is a recipe for closing down, perhaps not a

big chunk of the private sector in terms of numerical representation because we all know that 80% of the private sector at least in terms of employment is made up of the commercial dockyard, the construction industry and the hotel industry, take that out of the private sector and you are left with 20%. But there are people providing specialist services in specialist areas who are making a living and who have been making a living for many, many years and they are entitled to expect of the rest of us the protection so that they can continue making a living and continue providing the service and this amendment is not doing that. This amendment is opening the door for further inroads.

MR SPEAKER:

Are there any other contributors? Does the Hon Member wish to reply.

HON ATTORNEY-GENERAL:

Mr Speaker, perhaps I could explain this business about carpentry, decorating, joinery, painting, plumbing and woodwork. Each one of those were put in the Second Schedule in contravention of standstill and so in the European Communities (Amendment) Ordinance we brought it into the context of standstill because building contracting was always there and we said, well, a painter will need a licence if it is in the context of building contracting work but if it is not in the context of building contracting work he won't need a licence and therefore.....

HON J BOSSANO:

If the Hon Member will give way. He hasn't even done that, surely, because it is not a painter, a painting company will need a trade licence because if it is a self-employed painter he won't need it because he has exempted self-employed people as well so even in the context of building contracting you can go tomorrow as is happening, the Hon and Learned Member only needs to go down to where the Naval Base is being refurbished and he will find that there is a company there which employs 90% self-employed people and 10% employees. None of those self-employed people are covered by the Trade Licensing Ordinance and all they have got to do is commute and they sell their own services.

HON ATTORNEY-GENERAL:

As a cross frontier service, actually. But this is the position under the Community. We tried to protect it in 1983 and we found we couldn't do it because of the standstill

provisions, Mr Speaker. So far as the Trade Licensing Ordinance, generally, is concerned, I think we must try and maintain the Ordinance as much as we can and indeed this question of Bigib although I didn't use the words myself which the Hon Mr Feetham quoted, I think we should fight the question to the highest Court in the land and I think we should protect our Trade Licensing Ordinance by fighting in this way. There is just one other point I would like to mention and that is the protection that we can offer to the local shipping agents and the local welders. We are obviously going to protect Gibraltar and the local agents against criminals, against bankrupts and against incompetence and the sort of legislation that I have prepared, the sort of subsidiary legislation is based on the Italian legislation which Mr Feetham quoted earlier. This is legislation the Italians passed in 1977 so presumably, Mr Speaker, this legislation is, shall I say, EEC proof, if it is good enough for the Italians it should be good enough for us. The sort of legislation which the Italians have is on these lines, Mr Speaker. Anyone who wants to carry out shipping agent activity shall apply for registration in the shipping agent register as indicated by Article 7. The candidates for registration must have full exercise of their civil rights, have attained a high school degree, reside in the locality where they intend to carry out the shipping agent activity, have had no convictions for offences against the public administration, against administration of justice, against public faith, against public economy, against industry and commerce, against patrimony for smuggling or for any other non-negligent offence for which the law establishes a minimum imprisonment of two or a maximum of five years or for foreign currency offences for which the law establishes imprisonment; not to be in bankruptcy; have done at least two years of professional training; submit to an oral examination before the Commission indicated by Article 7 such examination is. (a) to check the knowledge about the usual commercial shipping document, about the legal knowledge as to the professional activity and the English language'. And it is that sort of legislation that I think we can introduce to try to protect the local businesses and certainly shipping agents and we will have to try and devise a formula to try and protect welders if they need to be protected, Mr Speaker.

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 Major F J Dellipiani
 The Hon M K Featherstone
 The Hon Sir Joshua Hassan
 The Hon G Mascarenhas
 The Hon J B Perez

The Hon Dr R G Valarino
 The Hon H J Zammit
 The Hon E Thistlethwaite
 The Hon B Traynor

The following Hon Members voted against:

The Hon J L Baldachino
 The Hon J Bossano
 The Hon M A Feetham
 The Hon Miss M I Montegriffo
 The Hon R Mor
 The Hon J C Perez
 The Hon J E Pilcher

The Bill was read a second time.

HON ATTORNEY-GENERAL:

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

THE SUPREME COURT (AMENDMENT) ORDINANCE, 1986

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Supreme Court Ordinance 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 ATTORNEY-GENERAL:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, under the existing law any person who has been called to the Bar in England, Northern Ireland or the Republic of Ireland or who has been admitted as an Advocate in Scotland may be called to the Bar in Gibraltar. It is felt, Mr Speaker, that the existing law is too wide in that it enables English and Irish Barristers and Scottish Advocates: (a) to be called to the Bar and to practice in Gibraltar without having had one day's pupillage or one day's practical training or experience as a Barrister in either Gibraltar or in their own countries; and (b) it also enables such persons to be called to the Bar in Gibraltar even though they have no intention whatsoever of practising in Gibraltar. Consequently, Mr Speaker, Clause 2 of the Bill requires that

English and Irish Barristers and Scottish Advocates who wish to be called to the Bar in Gibraltar must: (a) either have completed a period of at least six months pupillage in either their own countries or in Gibraltar; or, alternatively, must have completed an approved practical training course in their own countries; and further, Mr Speaker, and perhaps most importantly, (b) they must intend, on admission, to practice in Gibraltar either alone or in partnership. Clause 3 of the Bill deals with Solicitors, Mr Speaker. The existing law enables English, Irish and Scottish solicitors to be admitted in Gibraltar. As such solicitors have as part of their training to serve Articles of Clerkship with a practising solicitor, it is felt unnecessary to require them to serve a period of pupillage. However, before they can be admitted in Gibraltar Clause 3 of the Bill requires them to intend to practise either alone or in partnership with another barrister or solicitor in Gibraltar. Clause 4 of the Bill, Mr Speaker, amends the law with regard to Queen's Counsel. The existing law provides that no barrister who after the 31st December, 1948, attains the rank of Queen's Counsel shall perform any of the functions which in England are performed by a solicitor and are not performed by a barrister. Mr Speaker, this provision has been up-dated and clarified by providing that Queen's Counsel shall only act on instructions from a solicitor or from a barrister who is not a QC. Sir, I ought to mention the new Section 28(3) of the Bill which is contained in Clause 2 as this deals with my Chambers. Under the existing law it is only the Attorney-General and Crown Counsel who have and enjoy the rights and privileges of a barrister entitled to practise in Gibraltar. The new subsection extends the rights and privileges to the Law Draftsman who arrived today, Mr Speaker, and to Senior Crown Counsel. Mr Speaker, I commend 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 and merits of the Bill?

HON J BOSSANO:

Mr Speaker, we know what the Bill is doing because we have read the explanatory memorandum. We still don't know why it is doing it and that is what we expected to hear if we are going to be persuaded to vote in favour. Generally speaking if the Government is now embracing the closed shop in all sectors of the community and not just for barristers and solicitors then we will support them but what we cannot support is a closed shop just for barristers and solicitors which seems to be the main purpose of the legislation. What

is wrong with the current right enjoyed by barristers from the United Kingdom and the Republic of Ireland which needs to be corrected? How are consumers being adversely affected by the existing legislation because, presumably, if the House is being asked to vote for this it is for the good of the clients of the barristers and the solicitors and not for the good of the solicitors or the barristers. If this legislation is to protect their interests then there are a number of members of the profession in the House who can say how they are going to benefit or be adversely affected by the law but we cannot see that restricting the choice of the customers of barristers and solicitors is something that we can support and that seems to be the effect of the legislation. We also wonder whether, in fact, this is compatible with the policy of the European Community that we should not introduce new restrictions after entry into the EEC because at the moment we appear to be giving a privileged status to Irish Republican lawyers and United Kingdom lawyers and no other EEC lawyers. Even that might be questionable in terms of the move in the Community to allow reciprocal recognition of professional qualifications. We don't know to what extent that has already happened with lawyers, we know that it has happened with doctors and we know that it has happened with nurses and it is, of course, indicative of what a powerful lobby the legal profession is that they have been able to block it where many other barriers to trade and work and freedom of movement have fallen the lawyers have still been able to uphold the citadels of protectionism in their own area. The fact that they are able to do it round the Common Market doesn't mean that we are on this side of the House, anyway, where lawyers are notable by their absence, Mr Speaker, we are going to go along with the idea that this particular profession requires a greater degree of protection than any other one. We believe that if we have got a situation where there is a limited market for the services of barristers and lawyers and if barristers and lawyers are facing unfair competition like we have said about shipping agents, like we said about transport contracting, then we would support. We are not biased against lawyers, we would support giving them the same protection and, in fact, if we had to fight the EEC on it we would fight the EEC the same as any other member of the community. Lawyers are as entitled to earn their living by the exercise of their professions and their skills as any other member of the community. What they are not entitled to is to privileged treatment and therefore we haven't heard one single argument as to why we should support this Bill and therefore unless we are convinced to the contrary we are voting against.

HON CHIEF MINISTER;

Mr Speaker, I think I ought to declare an indirect interest, I think Queen's Counsel are not affected by the changes in the law but Queen's Counsel have other people who help them and to that extent it could be said that one has got an interest but I think the rule of the House is that if you declare an interest you can speak in favour of whatever it is and therefore, first of all, let me say that there has been no rush to pursue representations made by the Gibraltar Bar Association which was mentioned by the Leader of the Bar in the Opening of the Legal Year two year's ago, not this last October but October of last year. Although the Attorney-General hasn't got the correspondence here, representations must have been made well over eighteen months ago and it arises from one particular special circumstance which is only applicable, in a way, to Gibraltar and that is that though the professions are not fused, that is to say, barristers are still different to solicitors, from very old times solicitors because, perhaps, there were very few solicitors and the bulk of people were barristers, junior barristers have always been allowed to act as solicitors so they are acting solicitors, they are barristers and acting solicitors. But, because they had this privilege, equally, the solicitors in Gibraltar enjoy a right that they are fighting hard to get in England and that is that they have a right of audience in the Supreme Court which solicitors in England haven't got. This has grown up as reciprocity in respect of the fact that barristers have been allowed to practice as solicitors, that solicitors have got all the privileges that barristers have in England. I think the core, I hope the Attorney-General will correct me if I am wrong because I want to give the House my understanding of the rationale of this and let me say, in fairness to the Attorney-General, that he has not put in the legislation all that he was asked to put, he resisted certain things which I in no way interfered with, if that was his view, good enough. My union made certain representations which did not agree with the Attorney-General but I wasn't concerned about that. But the evil arises out of this question of once you are a solicitor you can be called as a barrister in Gibraltar and therefore we had a spate of retired solicitors coming to live in the Costa del Sol, coming here, being called to the Bar, being able to pose as barristers in Gibraltar in Spain and taking away the bread of members of the union in Gibraltar. That is the truth. They can go in Spain and say they will do the in-between with a Spanish lawyer or whatever but to say in Soto-grande 'barrister of Gibraltar' without an address and without paying all the things that we were talking about the shipping agents, makes the Bar Association claim that there should be an intention to settle here. The other question of

the barristers from Scotland and so on has been taken in the stride but the gist of the amendment really was to ensure that anybody who wants to practice will practice here that is why he has to have the intention. The other one, the question of reading in Chambers is something which in England you cannot practice at the Bar without one year's reading in Chambers. Gibraltar barristers come from England, they are called in England and they can start practising defending a murder case the day after but that is not the way it happens. The way it happens is that either you start on your own, very difficult nowadays, or you join a firm and there you do the apprenticeship whereas before you could do the apprenticeship at the same time that you are being called, if this law passes you would work and you will earn money. Nowadays in England pupillage is being paid. When I was a pupil in England I had to pay my master so things have changed because life was much more difficult. I had to pay for the year I spent in Chambers to my Head of Chambers but nowadays if you get into Chambers as a pupil you get some element of pay and you cannot practice. Also the most important matter which I should have mentioned earlier is that whether people like the members of the legal profession or not it is a necessary evil to the community and we are guided by rules of conduct and there is a disciplinary board and any member of the public or any other lawyer can complain to the Attorney-General about any malpractice or any impropriety and then we are subject to disciplinary rules and the disciplinary committee can recommend many things including suspension or perhaps going up to the Judge to be disbarred. In England it is the same. The people who are practising here are subject to that discipline but if you have a spate of solicitors who live in Spain because they are retired and they want to play golf every other day but at the same time want to take the bread from the people who are earning their living here then I think in essential trade union practices we are entitled to protection.

HON J C PEREZ:

Mr Speaker, may I commend the Hon and Learned the Chief Minister for such a strong trade union defence of the legal profession. Let me clarify that on this side of the House he has mentioned briefly, in passing, a dislike for the profession. It is not a question of dislike.....

HON CHIEF MINISTER:

I never said that.

HON J C PEREZ:

There is something which perhaps that part of the Trade Union movement of the legal profession confuses and that is why perhaps it is wrong to analogue the arguments being put on the defence of the Trade Licensing Committee with the defence of the protection of barristers and solicitors and it is because the Hon and Learned Member has reminded me that this issue first arose and was first mentioned by the Leader of the Bar whom I hold in great regard but who, unfortunately, in the same speech as he was talking about the defence of the solicitors, also attacked the Trade Licensing Committee and the Trade Licensing Ordinance because it was depriving its members of that union from exercising their right to get more clients up the Costa so there is perhaps a contradiction in the views of the Hon Member's union but certainly the position that he has put I think will be taken into account in assessing how we vote.

HON ATTORNEY-GENERAL:

Mr Speaker, each Member State remains free to regulate the exercise of the legal profession on its own territory.

HON J BOSSANO:

Mr Speaker, if the Hon Member will give way in order to give me an opportunity to ask him to explain something in relation to what the Hon and Learned the Chief Minister said. This limitation refers to six months pupillage and refers to an intention to practice, that is in Clause 2, the new section 28. What is there to stop somebody who is retired who has had before he retired six months pupillage, of asking for admittance and saying 'It is my intention to practice'? It seems to me that the Hon and Learned the Chief Minister has put up a very strong and very well argued case of very sound trade union principle which we cannot fail to respond to, obviously he knows our weak point, but have we actually succeeded in achieving what the Hon and Learned Member has said with this because given - I am talking from a position of a limited knowledge of the subject - it seems to me that if all that we are saying is somebody must serve six months we may actually be saying it more effectively with the newly qualified people than with the retired people. The retired people will still have six months, presumable, and they say: 'It is my intention to do it'. It is like all the people who have got trade licences and they never do anything and then once a year they produce a receipt to show that they mended somebody's door or window and that gives them the right to have the licence for another twelve months. If we are going to do something effective and if the Government

has, put strong arguments for protecting one section of the community we are prepared to lend our weight to that argument and support it but are we actually doing it?

HON CHIEF MINISTER:

If I may be allowed, Mr Speaker, because it is important. One thing I should have mentioned which I didn't mention before and that is that the six months pupillage will not apply to barristers who come here to do a case like in many specialities where one side wants to bring Counsel from England and the other side sometimes inevitably wants to match the equation and then they come. For that they are just called, do the case, and they are members of the Bar forever. Actually, in Hong Kong you have to be called every time you go to appear in Court and we don't think that that is proper. The number of members of the Bar that come from England occasionally are not such that we need that suggestion and in any case I don't think it is fair. Eminent members who come to do a case won't come again unless somebody is prepared to pay them to come again, they don't come to practice here. The difference between the question of a barrister and a solicitor, as the Attorney-General has said is that a solicitor in his training does work in an office whereas the barristers are allowed study at home and at the Bar but does not practice like a solicitor, he does articles and therefore part of his training is working in an office. But a barrister is the same as that story about the chap who went to an interview for broadcasting in the BBC and he was asked whether he had been selected, and he answered (with a very bad stammer): 'They said I was too young'. The barristers who have no experience require reading for a while in order to be able to acquaint themselves.

HON ATTORNEY-GENERAL:

Mr Speaker, with regard to the intent to practice in Gibraltar, all applicants for admission to the Bar in Gibraltar are interviewed by the Admissions and Disciplinary Committee who have to certify that they are fit and proper people to be admitted and called to the Bar in Gibraltar and this Committee has myself as Chairman and two other members of the Committee, another silk and a junior of the Bar and the idea being that they will have to satisfy us with some sort of evidence that they intend to practice in Gibraltar, have they negotiated office space, where, and if they are going to practice on their own or with somebody else, and it is a question that these applicants who are called to the Bar satisfy the Admissions and Disciplinary Committee that they do intend to practice in Gibraltar. They are not going to satisfy us by saying: 'Yes, I intend to practice in

Gibraltar'. Show us, give us evidence, give us proof of how you intend to practice in Gibraltar, where, with whom, etc until we are completely satisfied before we certify to the Chief Justice that they are fit and proper people to be admitted to the Bar.

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 the Bill be taken at a subsequent meeting of the House.

The House recessed at 1.15 pm.

The House resumed at 3.45 pm.

THE CRIMINAL PROCEDURE (AMENDMENT) ORDINANCE, 1986

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Criminal Procedure Ordinance (Ordinance 1961 No.24) 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 ATTORNEY-GENERAL:

Sir, I have the honour to move that the Bill be now read a second time.

Mr Speaker, the principal purpose of this Bill is to restrict the reporting of proceedings in the Magistrates Court of serious cases which will or may be tried in the Supreme Court. When a person is arrested on a serious charge which will eventually be tried in the Supreme Court that person must first appear in the Magistrates Court. There will be several such appearances before he is actually committed for trial in the Supreme Court. During these preliminary appearances in the Magistrates Court the Crown give the Magistrate the prosecution's version of the case and inform the Magistrate of any admissions which the accused has made to the Police and in the appropriate cases inform the Court of the defendants previous convictions.

Under the existing law, Mr Speaker, the press is at liberty to report everything that has been said in the proceedings. Everything which has been said until the day on which the Crown actually begins to present its evidence for committal and on that day, Mr Speaker, unless the defendant consents, the press is restricted to reporting the several matters which are presently set out in the new Section 126(6) on page 323 of the Bill, namely 'the identity of the court and the names of the examining justices; the names, addresses and occupations of the parties and witnesses and the age of the defendant or defendants and witnesses; the offence or offences, or a summary of them, with which the defendant or defendants is or are charged; the names of barristers and solicitors engaged in the proceedings; the decision of the court to commit the defendant or any of the defendants for trial, and any decision of the court on the disposal of the case if the defendants are not committed; and where the court commits the defendant or any of the defendants for trial, the charge or charges, or a summary of them, on which he is committed and the court to which he is committed; where the committal proceedings are adjourned, the date and place to which they are adjourned; any arrangements as to bail on committal or adjournment; and whether legal aid was granted to the defendant or any of the defendants'. In June this year, Mr Speaker, I received a complaint from a member of the Bar in the following terms: 'The press has been writing down the allegations verbatim and printed the story almost as if it were true. Even allegations of so-called 'verbals' are being splashed in the columns or over the air. A more obvious danger to a fair trial, particularly in a small place like Gibraltar, is difficult to conceive'. Mr Speaker, I agree with those comments which defence counsel made and the whole object of this Bill is to impose the reporting restrictions on the very first day on which an accused charged with a serious charge appears in the Magistrates Court, and that is in place of the day on which the committal three or four weeks later takes place. The Magistrates Court will, of course, lift the restrictions if the defendant so wishes and that is contained in the new Section 126(2) and (3): 'Subject to sub-section (3) a Magistrates' Court shall, on an application for the purpose made with reference to any committal proceedings by the defendant or one of the defendants, as the case may be, order that sub-section (1) shall not apply to reports of those proceedings' and that leaves the proceedings free for reporting. Mr Speaker, the Bill was seen by Sir Renn Davis before he left Gibraltar and approved by him. Mr Speaker, I commend 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 and merits of the Bill?

HON J BOSSANO:

We are supporting the Bill, Mr Speaker. The arguments put by the Hon and Learned Attorney-General are so obviously valid that I don't think it is a matter of controversy. Obviously, I think we are all in favour of a free press and we are all in favour of giving the press every opportunity to report on everything but what we cannot do is to carry that freedom to such an extent that it can lead to injustices and that I don't think is in anybody's interest so it makes sense.

MR SPEAKER:

Does the Hon Member wish to reply?

HON ATTORNEY-GENERAL:

No, Mr Speaker.

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 the Bill be taken at a later stage in the meeting.

HON J BOSSANO:

We are coming, I think, tomorrow for the other Committee Stages, Mr Speaker, but we haven't got any strong feelings on this one so if it is important to do it today we wouldn't mind in this case doing it today but we are coming for the rest, anyway, tomorrow.

HON ATTORNEY-GENERAL:

Tomorrow then.

This was agreed to.

THE MARRIAGE (AMENDMENT) ORDINANCE, 1986

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Marriage Ordinance 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 ATTORNEY-GENERAL:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, Section 18 of the Matrimonial Causes (Amendment) Ordinance, 1983, amended the Marriage Ordinance to allow females of 15 years of age to marry with the permission of the Supreme Court. The Matrimonial Causes (Amendment) Ordinance received the Assent and was Gazetted on the 27th October, 1983. However, it was not brought into operation until the 1st January, 1984. The Commissioner for the Revised Edition overlooked the fact that the date of the coming into operation of the Ordinance had been postponed and in a savings Clause which is contained in Section 15(3) of the Marriage Ordinance he stated that the new law would not affect the validity of marriages, contracted before the 27th October, 1983, that is, the date on which the Ordinance appeared in the Gazette instead of on the 1st January, 1984, the date on which the Ordinance came into force. Mr Speaker, when things begin to go wrong they go very wrong indeed. The 1983 Matrimonial Causes (Amendment) Ordinance contained nineteen fairly lengthy sections. Eighteen of those sections dealt with amendments to the Matrimonial Causes Ordinance and only one section dealt with the amendment to the Marriage Ordinance. Unfortunately, in this welter of divorce provisions the Marriage Authorities overlooked the one marriage provision and a number of marriages of 15-year old females were solemnized without the permission of the Supreme Court. The fact was discovered in early May, 1985, and consequently, Mr Speaker, in order to ensure the validity of those marriages the saving provision contained in section 15(3) of the Marriage Ordinance should be amended to protect the validity of marriages solemnized before the 30th April, 1985. Instead of putting the 1st January, 1984, in the Bill I am asking that the Bill be extended to the 30th April, 1985. With those words, Mr Speaker, I commend 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 and merits of the Bill?

HON J BOSSANO:

I think perhaps we ought to carry out a survey of those in the intervening period to find out how many want us to validate their marriages. Clearly, the intention when we passed the Bill in the House was not to create this situation and we were putting right something that through omission on the part of the authorities was put wrong then we have got an obligation to put things right so I don't think that we are setting up any new principles. I remember, in fact, Mr Speaker, that we were concerned in the Select Committee, in amending the legislation, to allow for grounds for divorce on wider grounds than then existed, that some thought should go into not allowing marriages at a very young age which ties up people for life without being totally prepared for that life and knowing the full gravity and consequences of what they are taking on and I think it is an important point that was a reflection, I think, that when the Select Committee and the House was looking at this, those who were critical of the position that was being adopted by the supporters of the Bill, both in Government and Opposition, were accusing those supporters of wanting to do away with the institution of marriage. I think our concern to make sure that the age at which it was allowed was one which increased the prospects of a stable relationship showed that we wanted, in fact, to strengthen the institution as well as to give people an opportunity to start afresh again and therefore I think it is important, at this stage, that if we are going to put it right the House has not, as far as I am concerned, changed its position about the desirability of having an age below which people should not get married too easily.

MR SPEAKER:

Does the Mover wish to reply?

HON ATTORNEY-GENERAL:

No, Mr Speaker.

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

HON ATTORNEY-GENERAL:

Sir, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken tomorrow.

This was agreed to.

THE PENALTY RATES REMISSION ORDINANCE, 1986

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance for the remission of penalty rates that became payable on and after 1st April, 1986, and may become payable thereafter in respect of arrears of general and salt water rates and penalty rates previously due and payable, 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:

Mr Speaker, I have the honour to move that the Bill be now read a second time. I would like to say something about the background to this particular Bill which may, at first sight, appear to have rather the opposite effect to that which is intended. By that I mean I would like Hon Members to consider the Bill and the proposals in the context of other measures and indeed in the context of the general problem of the arrears of rates. As the House will know there has been an improvement in the collection of arrears for water, electricity and telephones in recent years but the problem of arrears for general rates and brackish water has remained a serious one and, in fact, the seriousness has increased in the sense that the arrears have proved relatively insusceptible to reduction by the various means available to the Government at present. I think the main reason for this as everyone will recognise is that in the case of water, electricity and telephone accounts there is the ultimate remedy of cutting off the supplies of the debtor, to someone who is persistently in arrears. That particular eventuality is not available in the case of arrears of rates and brackish water. We have, in fact, considered the possibility of even going as far as to cut off water and electricity and telephone accounts as a result of persistent arrears for rates but it was felt that that would be contrary to natural justice, that is to say, just if not actually *lex*, and it would be inappropriate for the Government to contemplate that remedy or, indeed, to legislate for that purpose. One is therefore left with the various enforcement mechanisms for recovery of rates which, as the House will know, involve very lengthy court procedures. A complaint has to be made to a Justice and the Justice then summons the defaulter to appear before the Magistrates' Court to show good cause why the rates and arrears should not be paid, the defaulter may fail to appear in which case there is

a further summons or if no sufficient cause for non-payment is shown the Court may make an order for payment of the amount due. That of course is not by any means the end of the process. If, in fact, the defaulter does not comply with the judgement then it becomes a judgement debt and it is necessary to apply to the Court for a further warrant so that the recovery of the rates may be effected by means of distress of the goods and chattels of the defaulter. Then it is a question of the bailiff actually confronting the defaulter and going through the sometimes painful process, it can indeed be physically painful, I think, in some circumstances, of making some sort of appropriation of goods and chattels. I think there is nothing basically wrong with this particular procedure, indeed, it is the only one which is really known to man or at least to the Courts short of anything rather more brutal or illegal, as the case may be, but of course it does take a great deal of time and I regret to say that this is perhaps one area which in recent years has not received quite the attention which is due to it, possibly this is because the Financial and Development Secretary is the person charged with responsibility and he doesn't always carry quite the clout of Sir Humphrey in such circumstances. Nevertheless I accept this is my responsibility and of course I take responsibility for putting proposals to Council of Ministers for their consideration on such matters, I regard the collection of debts as a very important aspect of my responsibilities and, indeed, essential to the maintenance of financial discipline generally. We have a situation in which we, as a result of a measure which my predecessor recommended to Ministers in 1982, whereby we add a 5% penalty to the arrears outstanding at any particular time of any particular ratepayer. Unfortunately the Government's ability to collect the 5% penalty is just as much effective by, what I might call the lengthy procedures and indeed the lack of an effective remedy as the collection of the arrears themselves so we have had a situation in which in recent years the amount of the penalty, the penalty element, in the rate arrears has increased at an exponential rate. For example, the Principal Auditor mentioned in his Report that the arrears for rates, generally, at the 31st March, 1984, was £705,000 whereas at the 31st March, 1985, it was £838,000 and I am sorry to have to say that by the 31st March, 1986, this figure will have increased to an amount in excess of £1m. That latter figure of over £1m includes approximately £267,000 simply in respect of rate penalties and that amount represents approximately 75% of all the penalties levied since their introduction on the 1st July, 1982. As I mentioned during the House of Assembly debate on the motion which was introduced by the Hon Leader of the Opposition on the Government accounts, the non-payment of the penalty has had the effect of artificially, if

I may use that word, exaggerating the arrears. There have been two further developments, one, I think, in the form of a carrot and the other in a form of a stick and the approach I would like to recommend to the House which is really the purpose of this Bill is to consider this particular measure in the context of a stick and a carrot and an attempt to come to grips with the problem of arrears including penalties in a way which I hope, and this is of course a matter of judgement, will produce some effect. As the House will know there was a substantial increase in NAV's commencing with this financial year and as a result of that the Government decided that it would initially allow ratepayers concerned and we are, of course, talking here about commercial premises almost entirely, I believe, the Government decided that it would introduce rate rebates of 40% in the first year and 20% in the second year to soften the load of those high increases in rates. I would like the House to consider the proposals I am now making in that particular context in the sense that what we are proposing is partly by knowledge because of the ineffectiveness of the penalty in persuading people to pay their arrears, we are proposing that those ratepayers who do in fact pay their rates will be granted a moratorium on further increases in rate penalties with effect from the 1st April, 1986, that is to say, they will not be let off anything which has been accumulated to that date and, of course, to gain the benefit of the rate rebates which the Government introduced in the Budget they will have to pay their rates, that was made quite clearly a condition of the rate rebates which were introduced, and if they pay their rates they will, of course, have to pay the arrears. So, basically, those who still persist in not paying their rates or their arrears will get neither rate rebates nor a remission of penalty but we will have recourse to the mechanisms of the Court and that is what I would like to come to now. As I said, there perhaps hasn't been sufficient attention in recent years to this particular problem but we have, in fact, after a certain amount of tribulation in acquiring premises and all the necessary procedures, we have appointed a bailiff and I am glad to say that there already has been an improvement. There was an improvement in 1985 simply in the number of summons which were issued in respect of ratepayers and I am hoping that there will be a further substantial improvement in 1986. We have also arranged with the officials of the Court, with the consent of the Stipendiary Magistrate, to arrange a further day's or afternoon's sitting of the Court specifically dedicated to this particular problem, that is to say, the collection of rates and arrears and, indeed, the enforcement processes necessary to collect judgement debts. Action is, certainly in hand and I am hoping that as from this autumn the Court will be sitting twice weekly for this purpose and additional staff are being provided in the Treasury to handle

this particular activity. I think that is in general all I would like to say, Mr Speaker. I quite accept that there is in this particular proposal an element of risk that it may not be effective, my concern is, of course, primarily to collect Government debts and, as I have said, to improve the general state of financial discipline which I hope has an impact on the community generally. It is, of course, a matter of judgement and I am quite prepared to take full responsibility if it is seen to be ineffective but I would ask Hon Members at least to suck it and see for a period of twelve months after which I will most certainly report back. I commend the Bill to the House, Mr Speaker.

MR SPEAKER:

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

HON J BOSSANO:

The Hon Member, Mr Speaker, is asking us to do something else than suck it and see for twelve months. He is asking us to suck and see whenever in his discretion from time to time by notice published in the Gazette he feels we should suck it and see and he has made no mention of that. Why should the House give the Hon Member the power from time to time without having to come here and justify it, to remit the penalty. That is an important, I think, perhaps political is not the word but it is an important point of principle which we certainly don't agree with unless we are given very compelling reasons for it. The Hon Member, Mr Speaker, in his final appeal for support on the Bill has said that he takes the full responsibility for recommending this and that he asks us to suck it and see, that is to say, let us experiment it and see if it works but, of course, the Bill does more than just that, it seeks to give him the power to introduce this from time to time by notice published in the Gazette without having to come back here to the House. In Clause 4: 'The Financial Secretary may in his discretion'. We may have the highest regard for his discretion but we are not here to give him discretionary powers to put off penalties and take off penalties and we think if there has to be a penalty put on or a penalty taken off, fine, the Government has got a majority, they can ensure that they do it but the essence of the parliamentary system is that they have to justify their actions to the people through us because that is what we are here to do and we don't agree with that discretionary power. On the provision for the current financial year we don't want to be obstructive, obviously, if it is going to help the Government to get people to pay then we will

support it because we are not here to do other than act in a responsible manner when it comes to looking at equity in terms of people having to pay their fair share. Nobody likes paying rates and nobody likes paying taxes, what is wrong is that if we have a system which penalises the conscientious and rewards the people who are irresponsible then why be conscientious and why pay your bills when they come? Clearly, in any situation there are people in a position of not being able to pay but when it comes to certain sectors of the community who seem to have no problem in financing other things and they have a problem in meeting their rates then we don't look very kindly at that. At the end of the day it is the rest of the community that has to make up what they fail to pay. But I don't think the Financial Secretary has succeeded in explaining to us how this is going to help him because I thought he had said at one stage in his argument - and I will give way for him to correct me if I misunderstood him - that those who pay the rates will not pay the penalty. My reading of this unless I have read it wrong is that nobody will pay the penalty, that is, nobody will pay any penalty from the 1st April, 1986, to the 31st March, 1987, whether they pay the rates or they don't the rates. Obviously, if they pay the rates they don't pay the penalty - period - without us checking the legislation. Are we being told because we are now in November, that if somebody has not paid their rates in the first three quarters of this year, the rates are payable quarterly in advance so he should have paid on the 1st April, on the 1st July and on the 1st October. Are we saying that somebody that comes along and pays now will have the penalty deducted but somebody that doesn't pay will not have their penalty deducted or are we saying that everybody will have their penalty deducted because if it is everybody I don't see where the incentive is to pay.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

If I may interrupt the Hon Member. He is right in the sense that the moratorium will apply across the board. We did, in fact, think of the possibility of only applying the moratorium to those who, in fact, pay their rates but if you examine that particular proposition and if you consider that we are also taking action against all those who are in arrears of rates and do not pay and I do emphasise that we do propose to take action, that is what the House has to consider as well as the moratorium, the effect is the same. That is to say, those who pay their rates will get the rebate and those who don't pay their rates will be taken to Court.

HON J BOSSANO:

And get the rebate.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

No.

HON J BOSSANO:

There are three Clauses here, Mr Speaker. The first one does away with the penalty for a period of twelve months, that is, for the current financial year. The second one allows those people who have been made to pay already, presumably somebody in October could have paid and could have had a penalty in respect of April and July, it is only fair, of course, that if we are going to take it off for the people who don't pay we take it off for the people who have paid it as well, that makes sense. We are not objecting with that second part, we think that it is reasonable to reward, if you are saying to people: 'You have had to pay this penalty in the first two months but we are giving you a chance to get back what you have paid if you change your mind and you pay up now' then that makes sense and I can understand where the stick and the carrot comes in but if you are just taking it off for everybody independent of whether they pay or whether you take them to court then it might be worth being taken to court and waiting, you might be at the end of the queue and you may not have to pay for the next three years. If the Hon Member thinks that taking away the rates penalty is going to help him this year to collect it, fine, we will support it, I have made that clear already. We certainly will not support the fact that he should have the right in his discretion from time to time to decide to take the penalty off, we think that if it is a trial let him try it and then if it is working let him come back and report to the House that it is working and that he wants to carry on with it. When the thing was introduced initially, as I remember, it was, in fact, introduced as a result of a comment in the Auditor's Report saying that something had to be done to penalise people who were obviously treating the whole business of paying rates as a joke, they are just using the rate demands to wallpaper their walls with and not paying any attention and, as the Hon Member has said, there appeared to be no way of putting pressure on those people and therefore the Auditor recommended that something had to be done and the Financial Secretary at the time came along and said: 'We are going to introduce a fairly heavy penalty of 5% a quarter' which is over 20% per annum because, of course, it is compounded, in the second quarter you get the 5% on the 5% of the first quarter. It is quite obvious that people have decided not to pay the rates, not to claim the 40% rebate, not to pay the 5% on the original quarter or the 5% on the 5% as an instrument of getting the rate demands collected it is quite obvious that there is a substantial body of people against which this is having no effect at all in

that situation it is clear to us that the Financial and Development Secretary has got a responsibility to put on his thinking cap and think of another way of getting an effective collection system. If he thinks that this is going to help him do it then we will support it on that basis and we will see what happens but he hasn't succeeded in showing us how it is going to help him do it, I think we need to say that. We are saying to him: 'If you think it will work, we will give you the benefit of the doubt' but we are not convinced that it will, but as far as Section 4 is concerned we are against that and we will vote against it.

HON CHIEF MINISTER:

One would have thought that the changing financial climate might have made it possible - we had this problem years ago - that we had to refrain from executing claims because we knew that people didn't have the means to pay and you had to help them to carry on over a difficult period. We had to do that ourselves, it was done many years ago and a lot of fuss was made about it but, in fact, it was purely the original restriction in the City Council days. There was a big row about the Tisdale Report. But time proved that we had to do it again after different situations. But it seems to me now, with the improved climate, that the bulk of these amounts being owed in respect of business premises where it is perhaps, another argument about this, of course, would be for certainly companies in liquidation if they want to carry on business they will try not to, but it is also fair to say that certainly in my experience when a company fails for other reasons, the first thing that you have is a huge figure of arrears of rent, rates, etc, etc and though the Government has got priority, I think, for one year in respect of rates over other creditors but, really, if you see a balance sheet of a company, I remember seeing one seven or eight weeks ago where the Government was owed something like £9,000 or £10,000 of rates and you say: 'Why should I have allowed that to happen?' but this is, of course, the difficulty the Financial Secretary was mentioning. I can see the reservations about paragraph 4. I was the one who opposed and I would like to say this quite clearly, originally proposed by Major Peliza at the time and more recently has been proposed by the Financial Secretary, not proposed but put forward for thinking and that is the cutting off of other services. I think that that is unconstitutional, a law which is made for one thing should not be used for another and I have resisted that. I resisted it at the time of the Peliza Government and I resisted it within Government because though it is, perhaps, a strong arm, for all we know the electricity services could be run by a separate authority and the water could be run by

a water authority and still the Government could be the rating authority, one thing could not be used for the other. Obviously, any changes that were made under Clause 4 could be revealed in the accounts of the company but I just thought since it is by way of experiment and since it could be rather cumbersome to come with a new Bill every time, I wonder whether we might not put into Clause 4 the mechanism that the times of extension shall be by a resolution of the House of Assembly and then the House would have an opportunity of questioning the Financial Secretary and making a report. I think there are one or two instances in which, I think, for example, parcel charges are done by means of a resolution. There are various ways in which the Ordinance can be extended or rather that part of it, the powers concerned with that can be extended by just a resolution, you don't alter the Statute Law, the Financial Secretary comes and seeks approval of a resolution and justifies it. I think that might meet the point made by the Hon Member but we want to go carefully about this and I am sure that we want to go also carefully about the mechanism of this. My idea would be the other way about, reduce the rates of those who pay within a short time but when they told us about penalties, well, there you are, the penalties now have increased the debt and it is not a real asset. If we are owed £1m of which £240,000 is on penalties really we are owed £1m because the penalty that we have imposed we cannot see enforced so I would suggest that that might be something that if Hon Members agree we could bring a suitable amendment at the Committee Stage....

HON J BOSSANO:

If the Hon Member will give way, I can tell him straightaway that that will meet the point completely as far as we are concerned.

HON CHIEF MINISTER:

Well, I hope it meets the point of the Financial Secretary but I think that that would be so and perhaps between now and when we come to the Committee Stage an appropriate amendment can be introduced and then we can have the approval of the House on that.

HON J E PILCHER:

Mr Speaker, the Hon Leader of the Opposition made this point but in his summing up the point that certainly I would like explained, perhaps he has understood or not is, what happens if somebody has arrears of rates and has penalty rates on top of that come the 1st April, 1986, if he doesn't pay during the financial year and has to be taken to court at

the end of that year because he still hasn't paid he will not pay any penalties under this law which seems illogical and at that point I would like cleared.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

If I can answer that. It is true, Mr Speaker, that a person who did not pay his rates during the course of this particular financial year on the assumption that the legislation which is proposed is affected only for this financial year, he would not in going to court have to pay any penalty rates in respect of this financial year, yes, I agree that that is so. I can understand the Hon Member's feelings about this but it seems slightly incongruous that a person who has not paid should get the benefit. I can assure you that we have considered this very carefully and the administrative procedures involved and I think in the circumstances it is justified only - and I do emphasis - only because we intend, and this is the whole purpose of this particular measure, we intend to take more effective action through the courts. I would certainly not have put this proposal forward if we were not proposing to take action through the courts. I agree that there is a certain incongruity in that particular proposal. I welcome the Chief Minister's intervention, certainly I had no intention myself of abrogating to myself discretionary powers which the House would not wish me to exercise although I am sure they would love to see the Financial Secretary making more progress than he has already made, and that is quite considerable, with the reduction of the arrears of revenue since the beginning of 1984 and, as the Chief Minister has said, we will introduce an amendment in the Committee Stage to give effect to this change and, of course, there will be an opportunity, I think, it would probably be appropriate to take the resolution round about the time when there is an annual debate on a motion usually moved by the Leader of the Opposition on the Government accounts.

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:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken tomorrow.

This was agreed to.

THE SUPPLEMENTARY APPROPRIATION (1986/87) (NO.2) ORDINANCE, 1986

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to appropriate further sums of money to the service of the year ending with the 31st day of March, 1987, 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:

Mr Speaker, I have the honour to move that the Bill be now read a second time and in accordance with normal practice I don't propose to make a speech except to draw attention, as I believe I already have given you notice, Mr Speaker, that at the Committee Stage we will be introducing an amendment to Part I of the Schedule. I feel sure Hon Members will already have noticed that the Treasury is not, in fact, Subhead 24 but Subhead 25. Mr Speaker, I commend 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 and merits of the Bill?

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:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken tomorrow.

This was agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the House should resolve itself into Committee to consider the following Bills clause by clause: The Prison Bill, 1986; the Imports and Exports Bill, 1986; the Town Planning (Amendment) Bill, 1986; the

Criminal Procedure (Amendment) Bill, 1986; the Marriage (Amendment) Bill, 1986; the Penalty Rates Remission Bill, 1986; and the Supplementary Appropriation (1986/87) (No.2) Bill, 1986.

This was agreed to and the House resolved itself into Committee.

MR SPEAKER:

We are now in Committee and we will be taking today exclusively the Prison Bill and the Imports and Exports Bill after which we will recess until tomorrow morning and then we will continue with the Committee Stage of the other Bills.

THE PRISON BILL, 1986

Clauses 1 to 6 were agreed to and stood part of the Bill.

Clause 7

HON J L BALDACHINO:

Mr Chairman, may I ask the Government one point on Clause 7(1). As I understand it, Mr Chairman, when a Prison Officer is employed he is entitled to a quarter. Clause 7(1) states that on the termination of his employment he has to vacate possession of any official quarter but it doesn't state anywhere that alternative accommodation has to be offered.

HON J B PEREZ:

That is not stated in the Prison Ordinance. The Bill only provides in the event of a Prison Officer occupying a particular quarter, that on termination of his employment it makes it quite clear that he must vacate the quarter to allow another Prison Officer who takes up his job to go into that quarter. That is the only purpose of that particular Clause.

HON J L BALDACHINO:

I understand that but then under this Ordinance you can take possession of that quarter without giving him alternative accommodation so what happens, he becomes homeless?

HON J B PEREZ:

That is, in fact, one of the conditions of employment and it also applies, I think, to every civil servant.

HON CHIEF MINISTER:

I would like to make a statement on this because it is important in other respects, too. There is no protection under the Landlord and Tenant Ordinance in respect of any building or any dwelling which is given for the purpose of employment, there is no protection at all. There is no protection in the United Kingdom either and some quarters, of course, are earmarked for reasons of convenience, for example, the police quarters at one time it was thought as part of police strategy that all policemen should live together in case of an emergency. Now the thinking is that the more spread they are in the community the better. Things change but that is why the quarters remain in order to have them for others. But all pensioners who have finished their employment with the Government, strictly speaking, can be put out in the street but the Government never does that, the Government tries to persuade people by offering alternative accommodation the same as we do with premises which are in dangerous conditions. Naturally, when you do that they try and impose too many conditions and there may come a time when you have to take them to court. This does not place any more burden on a Prison Officer than he has now so long as he has a quarter. We are, I think, quite tolerant with pensioners, sometimes too tolerant with pensioners, who have lived in Government quarters for years because they have not been able to find accommodation. In some cases it would be a silly exercise to try and give new accommodation to somebody in an old quarter if it has passed its normal age and instead of giving it to somebody who is in the waiting list for a long time. I think that the Hon Member can take it that there is no intention here to vary the situation, it is just a reiteration of the present state of affairs.

HON J BOSSANO:

I think we are going to vote against this, Mr Speaker. I accept what the Hon Member has said but I think we get this kind of situation cropping up more than once when we are looking at legislation. We approach the thing on the basis, okay, there may be pieces of legislation on the Statute Book that are a dead letter but as far as we are concerned we shouldn't legislate if it is unenforceable legislation and there is no intention to enforce it. The Government may say they have no intention of taking a draconian stand on this and putting people out on the street and, clearly, we wouldn't want to do it either if we were on that side, but this is not the point, the point is that what we are legislating today in the House of Assembly is that if the Superintendent of Prisons gives notice to a Prison Officer and the Officer fails to

quit the premises within fourteen days then he can direct a Police Officer to enter into the person's house by force, if necessary, and remove the person and all his possessions and, presumably, put him into prison which is next door. That is what we are passing here in the House of Assembly, that is the law. We are not voting to have that law in the Statute Book and it is not enough to be told by the Chief Minister that they are too soft and too kindhearted to actually enforce it, then why legislate it?

HON CHIEF MINISTER:

I am not saying that Clause 2 is simply unenforceable, you don't do things that way, people who have been living in a quarter for years cannot vacate it in fourteen days and I don't know why it is there, to be quite frank. There may be times for disciplinary purposes that it is necessary, I don't know whether we are reproducing the old Bill. It is necessary in the interests of the service that a person should live in a particular place and there are people who are inclined, naturally, if they have been a long time in a place, not to move and sometimes they are reasonable and sometimes they are unreasonable and I think, apart from the fourteen days which I don't think is particularly relevant, the power to remove somebody on the basis of offering him alternative accommodation and not putting him out on the street, I think, must remain.

HON J B PEREZ:

Can I add, Mr Chairman, that in fact the provisions are identical to what we have today and that under the present Prison Ordinance since this one hasn't yet come into force, it is an identical Section, 7(1), 7(2) and 7(3) of the existing Prison Ordinance.

HON J BOSSANO:

But surely, Mr Chairman, the whole purpose of changing legislation is not simply to reproduce it, it might have been there from the year dot and it might have been that when there was the first Prison Ordinance in Gibraltar you could clap the persons in irons just like that but the point is that we are now legislating in 1986 and this is the 1986 Prison Ordinance, not the 1886 Prison Ordinance, and we are saying that the Head of a Department, people who are employees of the Government of Gibraltar, is being given the power by this legislation to give one of his subordinates fourteen days notice to leave his home and if he doesn't he has got the authority to call the Police, break down the door, go inside, arrest the man and his family and take away all his

possessions. That is what we are saying. It might have been there a long time, it is a dead letter, nobody has paid any attention to it but the whole purpose of bringing Bills to the House and going through a Committee Stage and we are saying we don't want to take all the Bills in one session, why, because we actually take the trouble to read it and when we don't understand it we come back here and we ask for explanations and when we read it and we don't like what we are reading we say: 'We don't want to see that perpetuated in Gibraltar's laws'.

HON J B PEREZ:

The point is, Mr Chairman, it is not as the Leader of the Opposition has just said, that the Superintendent can give fourteen days notice. It only applies in the event of a Prison Officer who has terminated his employment, it only applies in that particular case. It is not a case of giving the Superintendent the power to give fourteen days notice. When a Prison Officer takes up employment he knows that the quarter that goes with the job will have to be given up.

HON J L BALDACHINO:

That is not the point I am making, Mr Chairman. The point I am making is that we are now legislating and we are giving the power to the Superintendent that once a Prison Officer terminates his employment, either he retires or he resigns, then he has the power under this Ordinance without giving him alternative accommodation to carry out what we are legislating here today and this is the danger that I see. It might never happen and what I am saying is, if all this procedure could happen after the person was offered suitable alternative accommodation and he still refuses to move if we have this then, surely that is fair and proper but in this case we are legislating without giving the person the opportunity of being offered alternative accommodation and yet the Superintendent can throw him out and nobody can stop him.

HON J C PEREZ:

Mr Chairman, it is all very well to say: 'This piece of legislation is there and we don't intend using it'. If we don't intend using it why have it? That is basically the fundamental point and although I agree with the Hon and Learned the Chief Minister that the Government has never actually carried policies of this nature through and is lenient to pensioners as he said, notwithstanding that, on a couple of occasions the administration has seen fit, for

example, to apply strictly the rules to expatriates whose contracts have finished and have given long and loyal service to the Government. I can certainly remember on two occasions in other aspects of employment where the rules have been applied rigidly but if we are actually not going to use it it is superfluous to have it in any case.

HON J L BALDACHINO:

Mr Chairman, if I may, I think the Government has a point in having something legislated like that, the point that I am trying to make is that alternative accommodation should first be offered.

HON J B PEREZ:

Mr Chairman, I am prepared to consider the deletion of sub-clauses (2) and (3) if that would be acceptable.

HON J BOSSANO:

Obviously, Mr Chairman, we wouldn't like to see subclauses (2) and (3) stay there unless subclause (1) was qualified as my Hon Friend has said. That is to say, if the Government wanted to have a safeguard where they could actually put pressure on somebody who had been given the choice of moving out and who simply said: 'I am not moving out', that would be understandable because first you give him the option of moving out by persuasion and if they won't move out by persuasion, then you have the carrot and the stick the Hon Financial Secretary was talking about before. Our objection is that there is a stick here and no carrot so we are saying to the Government either you introduce a carrot and you keep your stick or else you take the stick away. If you prefer to take the stick away, fine, the Opposition welcomes that change.

HON CHIEF MINISTER:

I think subclause (1) must remain because otherwise they would become tenants and if it is difficult for them to move when the Government hasn't got a legal duty to provide alternative accommodation, if they have a legal duty then they will argue that it isn't reasonable and the Government would be much more hemmed in than what they already are despite the difficulty. I had a case of somebody who retired in 1976 who wrote to me suggesting that he was being badly treated - who had been offered eight flats, amongst them flats in the Alameda Housing Estate which I considered the best and yet they didn't want to move. There comes a time when Government quarters require refurbishing for another officer and

we cannot give up the right to say that it has to be vacated. This goes contrary to the principles of the Landlord and Tenant Ordinance. If you were to take subclauses (2) and (3) I don't mind but subclause (1) must remain because otherwise they will acquire a tenancy right. I think we are going a long way to meeting the point raised.

HON J L BALDACHINO:

Mr Chairman, I am not disputing subclause (1), I think that the Government should have that protection.

HON CHIEF MINISTER:

That is all we want.

HON J L BALDACHINO:

The other point is that the Hon Member has mentioned the Landlord and Tenant Ordinance which as far as I understand doesn't apply to the Government.

HON CHIEF MINISTER:

No, that is why if you take away subclause (1) then it would apply, that is what I am saying.

HON J B PEREZ:

Mr Chairman, I will then move the amendment that subclauses (2) and (3) be deleted.

Mr Speaker then put the question which was resolved in the affirmative and Clause 7, as amended, was agreed to and stood part of the Bill.

Clauses 8 to 30 were agreed to and stood part of the Bill.

Clause 31

HON ATTORNEY-GENERAL:

Mr Chairman, Clause 31(1), I have given notice of this amendment to omit the word 'Director' in the third line and to substitute therefor the word 'Superintendent'.

Mr Speaker then put the question which was resolved in the affirmative and Clause 31, as amended, was agreed to and stood part of the Bill.

Clauses 32 to 47 were agreed to and stood part of the Bill.

Clause 48

HON ATTORNEY-GENERAL:

Mr Chairman, I beg to move the amendment in the penultimate line in Clause 48(1) to delete the word 'prisoners' and substitute therefor the word 'prisoner'.

Mr Speaker then put the question which was resolved in the affirmative and Clause 48, as amended, was agreed to and stood part of the Bill.

Clauses 49 to 53 were agreed to and stood part of the Bill.

Clause 54

HON ATTORNEY-GENERAL:

Mr Chairman, I would like to move an amendment to Clause 54(1)(a) but no notice has been given.

MR SPEAKER:

There is no need to give notice, we are in Committee, and I can accept an amendment if you tell me what it is.

HON ATTORNEY-GENERAL:

It is Clause 54(1)(a) in the penultimate line to delete the words 'thirty-one days' and to substitute the expression 'six months'. This is at the request of the Parole Board, Mr Chairman, particularly with the increase in the number of short-term prisoners, the Board feels that if prisoners are to be considered before they become eligible for parole because if you consider parole you have got to consider previously their eligibility for parole and if their cases are to be assessed properly there must be sufficient time for a proper assessment to be made and this is difficult to achieve, Mr Chairman, in cases where the Parole process must be completed and a decision taken within thirty-one days of the date on which the prison sentence commenced. If there is a remand involved the difficulties are even greater. One instance is quoted to me here, in fact, I have recently been informed by the prison authorities that two short-term prisoners who were sentenced to four months imprisonment on the 3rd September, 1986, will become eligible for parole on the 13th September, 1986, because they have been on remand awaiting trial since the 4th August, 1986, so they had to

make almost an immediate decision. The position in the United Kingdom, Mr Chairman, under the Eligibility for Release on Licence Order, 1983, is one-third of a sentence or six months and it seems logical to move this amendment.

Mr Speaker then put the question which was resolved in the affirmative and Clause 54, as amended, was agreed to and stood part of the Bill.

Clauses 55 and 56 were agreed to and stood part of the Bill.

Clauses 57 to 65

HON J BOSSANO:

I don't know whether this is, in fact, simply something that we have copied from the existing Ordinance where we are saying: 'The Superintendent may, with the approval of the Governor, make standing orders to be observed in the execution of any sentence of death'. I think if we read the whole of the section of the sentence of death, quite frankly, it reads like 19th century legislation. Here we are talking about what they do with the body and they have to bury the body inside the prison walls. Presumably under the new participation that the Hon Minister for Economic Development is introducing on public inquiries under planning permission and so forth and the right of nearby residents to object there will have to be the right of appeal for the tenants of Moorish Castle to having executed prisoners buried on the other side of the wall. One reads it and it is difficult to believe that here we are in November, 1986, legislating as if we were in the 19th century and talking about executing people and burying them inside the walls of the prison and if there isn't enough room the Governor can decide to bury them somewhere else as if we were burying people in the days of the Great Siege at the rate of half a dozen a week. Do we really need to have this in the Statute Book, Mr Chairman? It is certainly most unpalatable to us on this side of the House.

HON CHIEF MINISTER:

Well, the sentence of death applies in the case of treason and piracy at sea. These procedures are normal certainly in the United Kingdom. I think it has been reproduced but the point is, in my view, that for as long as there is one offence that warrants the death sentence - very unlikely - they have to have the procedure.

HON J C PEREZ:

Mr Chairman, certainly this is not the time where one could

discuss the merits or demerits of having a sentence of death for treason or piracy but would I not be correct in saying that if by any event there were such a case that the sentence of death would in any case be carried out in the United Kingdom?

HON CHIEF MINISTER:

No, you can't. The question might have been where do we hang him?

HON J BOSSANO:

We are talking about the Superintendent having to publish the notice upon the outside of the prison walls, the fact that an execution is about to take place. Clearly, that is going to generate such an amount of public interest that we are now excluding the public from the right to be present. I know that the Government have been considering the potential attractions for tourism of Moorish Castle. This is going against the tourist policy and they are not going to be able to come in and crowd on walls. We can have coach tours from the Costa del Sol to watch our executions. It really sounds incongruous to be legislating this.

HON CHIEF MINISTER:

It may be incongruous but it is a fact. There are still quite a number of prints of the middle of the 19th century where sentence of death was carried out in Casemates, it is something like the Ceremony of the Keys.

On a vote being taken on Clauses 57 to 65 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 G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammit
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members voted against:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham

The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

Clauses 57 to 65 stood part of the Bill.

Clauses 66 to 69 were agreed to and stood part of the Bill.

Clause 70

HON ATTORNEY-GENERAL:

Mr Chairman, I have an amendment to Clause 70. The first amendment is a very small printing error. In subclause (a) 'attempts to break or escapes from prison', it should be 'attempts to break or escape from prison'. That is the first one, to take the 's' off from 'escapes'. The other is a little more substantial. To delete all the words after the word 'conviction' - 'is guilty of an offence and is liable on conviction to imprisonment for one year' - and to substitute the following words after the word 'conviction' - 'on indictment to imprisonment for one year or on summary conviction to imprisonment for six months and to a fine of £100'. Mr Chairman, this amendment is made at the request of the Supreme Court. The request to me is contained in these words; 'In another jurisdiction where escaping or attempting was the order of the day, a similar conviction was a bit of a nuisance. Is there any objection to this offence to be a summary one or at least a hybrid?' and that means tried by either the Supreme Court or the Magistrates' Court - 'The Chief Justice is aware of my views and agrees with them. There is no objection from the administration', and it is on that basis that I move this amendment.

Mr Speaker then put the question which was resolved in the affirmative and Clause 70, as amended, was agreed to and stood part of the Bill.

Clauses 71 to 74 were agreed to and stood part of the Bill.

Clause 75

HON ATTORNEY-GENERAL:

I beg to move an amendment to Clause 75(1)(k), Mr Chairman. It is not 'payment to discharge prisoners' but 'payment to discharged prisoners', so could we add 'd' to the word 'discharge', Mr Chairman.

Mr Speaker then put the question which was resolved in the affirmative and Clause 75, as amended, was agreed to and stood part of the Bill.

Clause 76 was agreed to and stood part of the Bill.

Schedule 1

HON ATTORNEY-GENERAL:

I gave notice of a small amendment here. The deletion of the word 'who' in the second-line thereof and its substitution by the word 'whom'.

MR SPEAKER:

May I ask who the proof reader was?

HON J BOSSANO:

We want him executed.

HON ATTORNEY-GENERAL:

I didn't do it myself it was done in my office, Mr Chairman. I am told that the amendments were made in my office but they weren't made when it was printed.

Mr Speaker then put the question which was resolved in the affirmative and Schedule 1, as amended, was agreed to and stood part of the Bill.

Schedule 2 was agreed to and stood part of the Bill.

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

The House recessed at 5.10 pm.

The House resumed at 5.40 pm.

THE IMPORTS AND EXPORTS BILL, 1986

Clause 1

HON ATTORNEY-GENERAL:

I beg to move an amendment to Clause 1(2) of the Bill, Mr Chairman, to delete the expression '1st day of October, 1986' and substitute therefore '1st day of January, 1987' as the date on which the Ordinance shall come into operation.

Mr Speaker then put the question which was resolved in the affirmative and Clause 1, as amended, was agreed to and stood part of the Bill.

Clause 2

HON ATTORNEY-GENERAL:

On Clause 2 one very slight amendment in Clause 2(1) on page 91 the last definition of 'Vehicle', Mr Chairman, 'vehicle' includes a motor vehicle, a motor bicycle' I think in 1986 we might call it a 'motor cycle', Mr Chairman.

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

Clauses 3 to 11

HON M A FEETHAM:

Mr Chairman, under Clause 3(1), (2) and (3) it is clear that what we are doing here is taking away the responsibility held up to now by the Financial and Development Secretary and passing it on to the Collector of Customs and at the same time if we take that into account with the rest of the Ordinance which is a consolidating Ordinance and bring it up-to-date and incorporate new sections taking into account various other factors. I just want to ask one question to the Government, particularly under Clause 3(1) which says: 'The Governor shall, by notice in the Gazette, appoint a Collector of Customs and such customs officers as he may consider necessary for the proper carrying out of the provisions of this Ordinance' and then Clause 3(3) says: 'The Collector may, by writing under his hand, delegate all or any of his powers under this Ordinance to such customs officers or other persons as he may think fit'. In the light of that, is Government considering because this is a major piece of legislation in the sense that an awful lot of things have been put together, new sections have been put in, we are now following EEC pattern, we are now following European pattern, is the Government considering more staff or a staff inspection to back this piece of legislation up?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Not specifically in the case of this legislation, no, Mr Chairman, but obviously the Customs Department like every other Department will be subject to review. There is, in fact, a review due of the grading of the post of Collector of Customs.

HON M A FEETHAM:

I am not asking about any particular grade as you will appreciate, what I am talking about is the principle of the workload that this is going to entail. Is Government thinking in terms of the employment of more staff or a staff inspection, yes or no?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I wouldn't necessarily agree that this is going to cause more work. The essence of the legislation is one of simplification, Mr Chairman, I would hope that it would, at the very worst, leave things as they are and not cause any additional work.

Clauses 3 to 11 were agreed to and stood part of the Bill.

Clauses 12 and 13

HON M A FEETHAM:

Clause 13 says: 'For the purpose of implementing Community obligations, the Collector shall co-operate with other customs services on matters of mutual concern and, without prejudice to the foregoing, may for that purpose give effect to any reciprocal arrangements made between Member States, with or without other countries' and so on. Has anything been done up to now in this respect in recent times where this has been necessary to invoke, just to seek clarification.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Not so far as I am aware in the case of additional arrangements brought about by membership of the EEC. There have been one or two Directives. There was one, for example, called the, if I can remember it had a very long title, the harmonization of frontier facilitation or something like that. We discovered that in actual fact and this is the point which I think was made earlier in the meeting of this House, that many of the EEC Directives are a way of putting into bureaucratic language for the sake of EEC Directives and probably to justify the activities of some of the civil servants employed there - although please don't quote me on that - ways of enforcing or giving legal sanction to what is already taking place. There are day to day arrangements, naturally, between the Head of Customs and his counterparts across the frontier, for example, and we found that in most cases he is already doing it when the Directives come in.

Clauses 12 and 13 were agreed to and stood part of the Bill.

Clause 14 was agreed to and stood part of the Bill.

Clause 15

HON ATTORNEY-GENERAL:

Mr Chairman, I beg to move that sub-clause (a) and (b) of Clause 15 be omitted and the following substituted therefor: '(a) Where the drug is a Class A or a Class B drug - (i) on summary conviction, to a fine of £1000 and to imprisonment for 12 months; (ii) on conviction on indictment, to a fine of such amount as the court may determine and to imprisonment for 14 years. (b) Where the drug is a Class C drug - (i) on summary conviction, to a fine of £1000 and to imprisonment for 6 months; (ii) on conviction on indictment, to a fine of such amount as the court may determine and to imprisonment for 5 years'. Mr Chairman, the reason for the first amendment is to delete the words 'on summary conviction, to a fine of three times the value of the goods'. If you are dealing with a Class A drug, what value does a Class A drug have, the street value on the streets of Gibraltar, the street value on the streets of London or where? It seems to me a stupid way of putting it so let us have it just very clearly 'to a fine of £1000 and to imprisonment for 12 months' and forget about this business of three times the value. The second reason is specifically with regard to sub-clause (b). Class C drugs are often dealt with in the Magistrates' Court having regard to the amount but if it is a large amount to the Supreme Court and therefore let us make provision not only for summary conviction as the present Bill does but to conviction on indictment if the quantity of drugs is large.

Mr Speaker then put the question which was resolved in the affirmative and Clause 15, as amended, was agreed to and stood part of the Bill.

Clauses 16 to 23

HON M A FEETHAM:

Mr Chairman, Clause 20(1)(a) on page 99 where it says: 'Save with the approval of the Collector, goods arriving from any place outside Gibraltar - (a) by sea, shall not be unloaded at any place other than the public quay at Waterport or the North Mole, or at the Dockyard'. Under the interpretation in the Ordinance there is no reference to the Dockyard, I haven't even seen it under the general interpretation so that is one point I want to clarify. The other one I want to clarify is, will this unloading be done by the dockers registered under the Dockers' Registration Ordinance or whatever particular Ordinance refers to the dockers?

HON ATTORNEY-GENERAL:

The Dock Work (Regulation) Ordinance.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Within the GSL area, that is to say, the commercial yard area, goods which are intended for shiprepair will be unloaded by Gibrepair staff, that is the intention. Any goods which are not intended for shiprepair will, of course, not be allowed the similar facility, that is to say, any goods which are to be sold into town will be if necessary taken into bond. That is the purpose of this particular provision.

HON J BOSSANO:

But, surely, there is a conflict between this and the Regulation of Dock Work Ordinance which says that only registered dock workers can engage in dock work and the loading and unloading of ships and the stevedoring and so forth can only be done by people who are registered by the Dock Labour Board as registered dock workers. If we are saying that people can engage in dock work in areas which are outside the areas defined in the Ordinance, then you cannot stop anybody discharging any cargo anywhere else.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Yes, in practice, Mr Chairman, general cargo does not come into the commercial yard and in the event of any cargo which was not intended for shiprepair, that is to say, machinery and equipment, then it would not be unloaded into the yard and it would not be unloaded or used by Gibrepair. I don't think that the question would arise in practice.

HON J BOSSANO:

When the Hon Member says it will not be allowed, in what capacity is he saying that? He is no longer the Chairman of GSL and when he was the Chairman of GSL he didn't interfere very much in what they were allowed or not allowed to do. If GSL decides tomorrow to unload whatever they like there is nothing here to say they cannot do it and if they do it are they engaged in dock work and if they are engaged in dock work do they then not have to register all their employees as registered dock workers?

HON ATTORNEY-GENERAL:

Would this amendment satisfy the Leader of the Opposition, to delete the word 'Dockyard', first of all, and to insert

the words 'commercial yard' - because that goes along with the definition contained in Section 2 - 'in respect of goods required for use for repair by Gibraltar Shiprepair Limited'?

HON J BOSSANO:

This Section does two things. One is it proposes that with the approval of the Collector, goods arriving by sea should be unloaded at any place and, secondly, even without his approval, they should be unloaded at the Dockyard. Why is it that we want to place the Dockyard in that advantageous position of not requiring the approval of the Collector? The reason why we have Waterport and the North Mole is because they are areas already specified in the Ordinance where they are defined as part of the Port where dock work takes place.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

The commercial yard is not a part of the Port where dock work takes place, that is the answer I think to the Hon Member's question, it is exclusively for shiprepair. I don't think the Government could accept that ships carrying equipment, materials, machinery intended for shiprepair should be unloaded other than at the commercial yard but if we can meet the rest of the Hon Member's concern about this then, obviously, we will try to do so.

HON J BOSSANO:

This is a piece of legislation intended, Mr Chairman, to regulate the question of imports and exports from the point of view of ensuring the control of prohibited imports on the one hand and dutiable goods on the other. In an Ordinance which is concerned with dutiable goods we have got references to the work of unloading cargo for which there is another Ordinance which regulates the unloading of cargo and where in the past assurances have been given in this House and directed to the workforce in that area that their monopoly would not be in any way interfered with with the setting up of the commercial dockyard and that monopoly is one which is enshrined in the law when we removed casual dock labour and we effectively said that only people who are registered as dock workers can engage in dock work. Why should, in fact, the commercial dockyard be allowed through the Imports and Exports Ordinance, which has nothing to do with the Regulation of Dock Work, to have one law where we appear to be saying something which I am putting to the Government is in conflict with what we are saying in another law assuming, of course, that GSL could get any of its employees who are not employed to carry out dock work or to unload ships, get them

having employed them to do something else to engage in stevedoring work which I don't think they will, independent of what the law says, let us be clear about that. From a practical point of view GSL does not employ people to load and unload ships and therefore if a ship arrives with a load of machinery for GSL, GSL will probably find that the people that they are employing as shiprepairers and fitters and painters and what not would say: 'I am not employed here to unload ships anyway'.

HON CHIEF MINISTER:

What is happening now?

HON J BOSSANO:

What is happening now is that the stuff comes in by road on a truck whether it comes in across the frontier or whether it is unloaded in Waterport, it is not unloaded in the Dockyard, that is what is happening now.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

There is no conflict.

HON J C PEREZ:

Mr Chairman, just to say that previous to the commercial yard some ships were unloaded in the Dockyard and the people who used to do it were the registered dockers.

HON J BOSSANO:

No, I think the situation was that before you had RFA's bringing in cargo for the Ministry of Defence and that was done by the Ministry of Defence. When there was a commercial ship which for convenience could better discharge its cargo directly then the stevedores used to go from the Waterport area into the Naval Dockyard and do the discharging but there were special provisions for that situation.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

No, Mr Chairman, I don't accept that there is any conflict between this and the provisions of the other Ordinance which the Hon Member has mentioned. I think it is quite clear that the commercial yard is a commercial yard and the commercial yard is only concerned with specialised material, quite legitimately so, concerned with shiprepair. Dock work, as the Hon Member has described it is, of course, concerned with

general cargo at the Port, the two are quite distinct, but as far as the Imports and Exports Ordinance is concerned, well, it is not exclusively concerned with duties, the title of the Ordinance is Imports and Exports. This, I accept, is an import and therefore it is proper to provide for it in these circumstances. It has certainly always been the clear intention that materials brought into the yard for the purpose of shiprepair should be brought in to the commercial yard.

HON J BOSSANO:

Mr Chairman, if the Government policy is to do that which is not being done now and that is a matter of Government policy, then presumably in this situation Government is prepared to give a directive to the commercial yard requiring them not to import their materials through Waterport like they are doing today and to import it directly, that is what the Hon Financial and Development Secretary is saying, no? The Hon Member says it is quite proper and because it is quite proper he is introducing into the Imports and Exports Ordinance that goods arriving from any place outside Gibraltar by sea can only be unloaded in Waterport or the North Mole where under the Dock Work (Regulations) Ordinance we are talking about a Port area and where the Ordinance says that unloading these goods is dock work and that the only people who can do the unloading are registered dock workers. Here we are saying, no, what the Imports and Exports Ordinance permit is that the goods can be unloaded in Waterport or in North Mole or in the commercial yard. The moment they are unloaded in the commercial yard since they do not fall within the definition of what Port means and since the definition says 'Dock work means the operation within the Port of loading and unloading ships', it means that a ship can be unloaded in GSL according to this law.....

HON ATTORNEY-GENERAL:

As defined in the Port Ordinance.

HON J BOSSANO:

According to the Dock Work (Regulation) Ordinance it says: 'Port means' and it specifies the areas of water, the fore-shore and so forth and the area of land commonly known as Waterport and part of the North Mole and it doesn't include the commercial yard so the commercial yard is not part of the Port. It then says 'Dock work means loading or unloading ships within the Port'. Therefore if you are allowed to unload a ship in the commercial yard, if you unload the ship in North Mole or in Waterport you are then engaged in dock work accord-

ing to the Dock Work (Regulation) Ordinance but if you are unloading a ship in the commercial yard you are not engaged in dock work and therefore you do not have to be a registered dock worker. Well, that is a major matter of policy which the Government hasn't said the reason why we are bringing the Imports and Exports Ordinance to the House is to allow dock work in a different area to be done by people who are not registered dock workers. That is not the purpose of this legislation but that is the effect of the legislation. We are permitting what is defined in this law as dock work to be done in an area where currently it cannot be done because currently you can only unload ships in Waterport or in the North Mole, that is where you can unload it. You cannot now unload ships in the commercial dockyard and at the moment in the commercial dockyard the materials are brought in by land even if they have arrived by sea at the Waterport unless exceptionally they move the stuff on a barge because it happened when we had the situation of the Viaduct Bridge being limited on the load it could take and sometimes the stuff was moved by the registered dock workers who took the container off the ship and put it on a barge and went with the barge over to the other side and put the container on site and they delivered it to the client like they deliver a container to Liptons and then once the client receives the container the unstuffing was done by its own employees.

MR SPEAKER:

So what you need is an amendment to the Port Ordinance to extend it to the commercial dockyard.

HON J BOSSANO:

Either one or the other, yes.

HON J E PILCHER:

Mr Chairman, but doesn't the Clause say: 'Save with the approval of the Collector'? Why add 'or at the Dockyard'? Irrespective of the policy matter which the Hon Leader of the Opposition is mentioning, I do not see the purpose of having 'or at the Dockyard' there because under Clause 20(1) 'Save with the approval of the Collector' that means that if there is any need for that, irrespective of the policy decision, 'Save with the approval of the Collector' comes into force so why have that included there, I don't understand it.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Is the hon Member suggesting the deletion of the words 'or at the Dockyard'?

HON J E PILCHER:

Yes.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

There seem to be two views on the matter. Hon Members opposite, as I understand it, feel that, and after all this must be the substance of the representations which have just been made, that materials for Gibrepair should not be unloaded in the commercial yard.

HON J BOSSANO:

The Hon Member has said that they are prepared to qualify what can be unloaded at GSL in order to meet the point that we are making but, clearly, in their original proposal with this Bill they were allowing anything to be unloaded because there isn't any qualification. That is the first point. The second point is, we are saying why should the commercial dockyard be in a position of being free to have things unloaded on its doorstep which is a position that nobody else in Gibraltar has got and which they don't apparently have at the moment and which they are not exercising? If the commercial dockyard has been in operation from January, 1985, to November, 1986, and the Government in November, 1986, wants to provide for materials for the commercial dockyard to be unloaded directly there, that is a matter for Government policy which they can stand up in this House and defend. If at the end of the day we disagree they can vote with their majority but this is not what this law is about. This law is about the Imports and Exports Ordinance, that is what it is about. It is not about facilitating the flow of materials to GSL which seems to be what concerns the Financial and Development Secretary who clearly now has the interest of GSL more at heart than he ever did when he was the Chairman, that is what I cannot understand. What has it got to do with the Financial Secretary whether GSL brings the stuff in directly there or drops it in by parachute, what has it got to do with him?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I can tell the Hon Member that I am very anxious to see that GSL costs are kept to a minimum. But as far as his other point is concerned, allowing anything to be unloaded, no, I don't agree that the force of the existing provision is that it would allow anything to be unloaded. As I have explained, the only things which normally come into the yard are materials which are used in connection with shiprepair which

is a legitimate activity, after all, that is what they were set up to do. Nor do I accept that they are putting the shiprepair yard in a special position. I accept that it is something of a specialised activity for which there is nothing comparable but it is in the nature of the work on Gibrepair that they should use materials and machinery and plant for the repair of ships and that is all we are concerned with. However, as I have said, if we can find a suitable formula which will satisfy what I take to be the Hon Member's concern that nothing other than what is used in connection with shiprepair should be unloaded in the commercial yard, then certainly we will consider that.

HON J C PEREZ:

Mr Chairman, following what my colleague, the Hon Mr Pilcher, was saying if we were to delete any mention of the word 'Dockyard' and in extraordinary circumstances when it was needed to facilitate the unloading of certain material the Collector of Customs would approve it then one would understand that it is because of extraordinary circumstances where the cargo cannot be unloaded at the wharf but if we open it up without regard to the Dock Labour Regulation Board what we are telling the dock workers is that a large chunk of the work that they do today will not be carried out by them because a lot of the imports that come through there is work that they do there and it is undermining their position in the Dock Work (Regulations) Ordinance. If it is for extraordinary circumstances like it used to be at the time of the Naval Dockyard when materials that normally came through the North Mole was transferred there and the dock workers themselves used to go there to unload it then there is no need to mention the Dockyard and 'save with the approval of the Collector' things can flow as is expected. But if we are particularly mentioning the Dockyard we are saying that any kind of material can go there and we are at the same time undermining the workload of the workers there which Government regulated under the Dock Work (Regulations) Ordinance several years ago.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

The circumstances are not extraordinary, Mr Chairman, I think the circumstances are anything but extraordinary except insofar as work in shiprepair is extraordinary so I am afraid the Hon Member is exaggerating the position. But as I have said if we can find a formula to provide for what would be an extraordinary situation in which goods other than those which are necessarily used in connection with shiprepair would need some special permission then, certainly, we would consider that.

HON J C PEREZ:

Mr Chairman, then what the Hon Member is saying is that everything coming in by sea for Gibrepair is expected to be unloaded in Gibrepair and then in order to protect the dock workers we would have to amend the Dock Work (Regulations) Ordinance so that they would be the ones responsible for unloading it there unless it was a situation where we were actually saying: 'We are going to take away that workload from the dock workers', which defeats the whole purpose of the Ordinance in the first place, of the other Ordinance not this one. The objection is not that the materials should be unloaded at Gibrepair itself but that it undermines the workload at present being carried out by the dock workers who are protected under the Dock Work (Regulations) Ordinance.

MR SPEAKER:

I think that both the Government and the Opposition have made their position clear insofar as this is concerned. It is a question of either finding an immediate compromise or taking a vote on the Clause as it stands.

HON J BOSSANO:

Can I just point out, Mr Chairman, the Hon Member has said that one could not read into this what we are reading. I would just like to demonstrate that this is not the case. The Financial and Development Secretary has said that clearly it was intended always that this should just be materials for GSL and that one could not read, in fact, what we are reading into it.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

No, I didn't, I think, if I may, Mr Chairman, just to correct the Hon Member, I didn't say you couldn't read into it, I said that its practical effect will not be the slightly alarming eventuality which Hon Members opposite are painting.

HON J BOSSANO:

I would just like to demonstrate that, in fact, what the Government is legislating is precisely what we are saying whatever their intentions because, first of all, the Financial Secretary needs to explain to us if this House passes this legislation and the legislation says: 'Save with the approval of the Collector, goods arriving from any place outside Gibraltar - (a) by sea, shall not be unloaded at any place other than the public quay at Waterport or the North Mole, or at the commercial yard' and I arrive

with a shipload of transistors in the commercial yard, then that is goods arriving from any place outside Gibraltar. He then has to have the legislative power to stop me. We then come to the second part which says that I need the approval of the Collector for dutiable goods. Suppose that instead of it being transistors I am bringing sacks of cement which are not dutiable goods?

HON CHIEF MINISTER:

I think the Hon Member has missed the point made by the Financial Secretary. If a formula can be found that would limit what is unloaded at the commercial yard to materials for the yard that would meet the point.

HON J BOSSANO:

But then, Mr Chairman, the point I am making is that if we go to the removal of dutiable goods in Clause 32, we are talking about dutiable goods imported into Gibraltar whether unloaded at Waterport or the North Mole or the commercial yard. If they are being removed from the commercial yard how can he tell us that the purpose of the legislation is that they should only be for the commercial yard? Why do we have provision for their removal? Why do we have provision in Clause 32 for the removal of dutiable goods unloaded in the commercial yard?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Because, Mr Chairman, the rest of the Imports and Exports Ordinance is largely concerned with the responsibility of the Collector of Customs to see that its general provisions, and these are the ones we are talking about, are carried out and he has powers of inspection to make sure that the necessary provisions in here are properly observed.

HON J BOSSANO:

But then if the Hon Member needs to introduce in Clauses 32 and 76 powers for the Collector of Customs to control and inspect the removal of dutiable goods it must be because it is possible to introduce them in the first place otherwise he doesn't need to control their removal. He tells us in one breath that they cannot be delivered there and that the section doesn't permit it and yet he has drafted another section to inspect and prevent and control the conditions under which they can be taken out of the commercial yard into the rest of Gibraltar and put into storage and put into transit sheds. The provisions of Clause 32 apply identical treatment to Waterport, North Mole or the commercial yard or

the airport or Four Corners and it is clear that anybody reading Clause 32 will come to the conclusion that there are in Gibraltar five points of entry, three points by sea because it says so there: 'Dutiable goods imported into Gibraltar, whether unloaded at Waterport or North Mole or the commercial yard or the airport or brought to Four Corners' so we have got five points of entry, one by land, one by air and three by sea. There is nothing here to say that of the three by sea, two are for normal traffic and one is for specialised traffic, nothing at all. He needs to do it in Clause 32 because, in fact, he has created the possibility in Clause 20. If that wasn't there in Clause 20 then he wouldn't need to do it in Clause 32 and then he wouldn't need to do it in Clause 76 and therefore this law is, in fact, treating three unloading points by sea to Gibraltar in an identical fashion. As regards the inspection, the storage, the removal, the movement in transit, the powers of the Collector to allow them to be discharged or not discharged whether they are dutiable or not dutiable, they are treated exactly the same, the three areas, and yet we have got another law that mentions two of them only. Well, I am afraid if it was not the intention it is the effect and what we are telling the Government is that if they pass the law as it stands the position is that they have created the legal possibility of unloading goods in GSL using workers who are not registered dock workers, that is a major policy decision because the Government has previously given clearcut commitments to dock workers that this would not happen. The Dock Work (Regulations) Ordinance was the result of the Government setting up a committee in which I served and which was chaired by Sir Howard Davis and the Government as a matter of policy adopted the recommendations of that committee and there is a commitment that if there is going to be any change in the definition or in the scope of dock work there will have to be consultation, that consultation has not taken place. If they have overlooked it, the point is there and it cannot be overlooked, it has now been brought out.

MR SPEAKER:

I think perhaps in the circumstances, as I said before, both sides of the House have made their position clear with respect to Clause 20. I would suggest that we take a vote on the Clauses that we have called, which are Clauses 16 to 19, and we defer Clause 20 to a later stage in order to be able to find a compromise.

HON J C PEREZ:

Mr Chairman, I suppose that when we come to the Clauses mentioned by my colleague, the Leader of the Opposition,

which are related to Clause 20, we will have to do the same because they are dependent on what the result on that one is.

MR SPEAKER:

What I understood the Leader of the Opposition to say was that if you amended Clause 20 the other Clauses would be in order, is that correct?

HON J C PEREZ:

But if they are not we would be voting against.

HON J E PILCHER:

We would need amendments for Clauses 32 and 76 as well.

MR SPEAKER:

We will also leave those Clauses in abeyance.

Clauses 16 to 19 were agreed to and stood part of the Bill.

Clause 20 was left in abeyance.

Clauses 21 to 31

HON J BOSSANO:

Could I ask on Clause 24 why is it that we need a declaration of dutiable goods on people leaving Gibraltar? Isn't it normal that people declare what they have when they come in?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

One of the reasons, Mr Chairman, is he might be taking out goods which have been subject to drawback. This is again only a provision but it doesn't mean to say that it is going to be followed by a sort of wholesale examination of persons or baggages leaving Gibraltar but I think it is wise to have such a provision in respect of anything which might be considered contraband or of which, for example, he has not paid the necessary drawback.

HON J BOSSANO:

But we are talking of somebody having to declare on his way out something that he has obtained outside Gibraltar independent of whether he paid duty in the place where he obtained it because it says: 'or, being dutiable goods he has obtained in Gibraltar without payment of duty', fair enough.

Are we saying then that anybody arriving in the airport, for example, which is now something like 25% of the people who do, are supposed to make two declarations, one when they get on the plane and come in and one ten yards down the road when they leave Gibraltar because they may have things that they bought in London on the way in. Is that what we are legislating?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I think it is a quasi legal phrase rather like the bit about hanging we were discussing in the last legislation.

HON CHIEF MINISTER:

I think they need to control it to find out whether duty has been paid or not.

HON J BOSSANO:

Mr Chairman, I am not being given an explanation that I can understand. It is not a question of whether they pay duty or not. We are saying that every person entering Gibraltar, which makes sense, or leaving Gibraltar shall declare everything contained in his baggage or carried with him which he has obtained outside Gibraltar. We are saying 25% of the people who arrive on the flight today from London will get off that flight and go 100 yards down the road and cross the frontier. This would mean that they declare everything that they have got on entering Gibraltar and then they declare everything they have got on leaving Gibraltar.

HON CHIEF MINISTER:

This is the same as it is now and I am reminded of a case I was concerned with many years ago of somebody who came from Tangier, brought his luggage and left it at the airport. He had a nice day in Gibraltar and on the way out his baggage was searched because whilst he was having a nice day in Gibraltar whoever sold him hash in Tangier told somebody who told somebody here and when he arrived at the airport and picked his luggage to go to England they examined his luggage and they found hash there and he was convicted and sent to prison so if he didn't have the power which he has now, anyhow they would not have been able to do it because they were going away.

HON J BOSSANO:

But that is covered by other sections. There are other

sections dealing with prohibited imports. We are talking about declaration of dutiable goods, hash is not a dutiable good, at least not yet.

HON CHIEF MINISTER:

I am not saying that but that gives the power to the Collector to examine the luggage. This is an enabling power.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

This is an enabling power which gives the legal right to ask questions.

HON CHIEF MINISTER:

And it exists now. The other thing, of course, are goods that are purchased in Gibraltar without the payment of duty.

HON J BOSSANO:

That is (b), Mr Chairman, I have accepted that (b) is logical but we are talking about (a) which is something he hasn't bought in Gibraltar, something he has obtained outside Gibraltar he is supposed to declare.

HON CHIEF MINISTER:

He may have brought it in without payment of duty and he should declare it.

HON J C PEREZ:

Mr Chairman, there is just one minor point which the Hon the Attorney-General might want to correct now and that is that there is a spelling mistake and 'everything' is spelt as 'enerything'.

HON J BOSSANO:

On sub-clause (5) of Clause 24, Mr Chairman, it appears in other Clauses though I think it is the first time it appears. Why is it that there is a ceiling? Why should there be a fine of three times the value of the goods that are not being declared if somebody is found guilty of an offence of £500 whichever is the greater? Is it to penalise the people who would try to smuggle in goods of lower value and give a way out so if you are going to smuggle, smuggle something worth £10,000 and the most that you can be fined is £500 but if you smuggle something that is worth £100 then you get fined three hundred pounds. Is there a reason for putting a ceiling?

HON ATTORNEY-GENERAL:

Three times the value can be greater than £500.

HON J BOSSANO:

So this becomes the minimum not the maximum.

HON ATTORNEY-GENERAL:

Yes, three times the value can be much greater than £500.

HON CHIEF MINISTER:

Anything over that should be taken to court.

Clauses 21 to 31 were agreed to and stood part of the Bill.

Clause 32 was left in abeyance.

Clauses 33 to 44

HON M A FEETHAM:

Clause 34(1) - All receptacles, of whatever size, may be removed and deposited in a Government store. Can I just ask how would this be done? We are talking about - according to the definition - we are talking about containers, etc and I don't know whether anybody who has paid a visit to the North Mole recently would know exactly why I am asking how this is going to be done if anything found on the quayside at North Mole is going to be locked up because what I want to know is is 'may be' does it mean 'must be' in law?

HON ATTORNEY-GENERAL:

No, it is 'may be'.

HON M A FEETHAM:

Why have it there at all then?

HON ATTORNEY-GENERAL:

They might have receptacles which are not large containers but a small receptacle.

HON M A FEETHAM:

No, we are talking about containers.

HON ATTORNEY-GENERAL:

Receptacles means bundle, packages, containers, box, cask or other receptacle.

HON M A FEETHAM:

I am talking about a container. Are we talking about a container or are we talking about a box?

HON ATTORNEY-GENERAL:

No, it includes a big container. The big containers we won't move but may be the small containers are the bundles, packages, boxes, casks or other receptacles we will move.

HON A J CANEPA:

This is where the audience ratings over radio will go up.

HON M A FEETHAM:

Mr Chairman, what is the reason for doing this? Is it because they are going to clear the North Mole? I don't quite follow.

ATTORNEY-GENERAL:

I suppose if something is unloaded and the people skip off and they leave the stuff on the quayside, they think they are going to be apprehended and they dump the stuff on the quayside we can take possession of it and put it in a Government store.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

The intention is that if goods are left around and they are not claimed then they are taken into custody, so to speak, that is all it is.

HON J BOSSANO:

We are looking at this in the context of the operation of the Port, again just like we looked at in the other Clause. The Imports and Exports Ordinance primarily is concerned about the control of dutiable goods and the collection of revenue.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

It is concerned about imports and exports, Mr Chairman.

HON J BOSSANO:

So where in imports and exports is it the job of the Collector of Customs or Customs Officers to clean up the Port?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I think it is the job of the Collector of Customs or any other authorised officer if he finds goods which are lying around there to take them into Government store that is the purpose.

HON J BOSSANO:

But the place is absolutely cluttered with goods or hasn't the Hon Member been down there, Mr Chairman? It says: 'All receptacles, of whatever size or description' - I know that the Hon Member would presumably prefer us to come here like a lot of robots and vote whatever he puts in the legislation without questioning it but if he is bringing the legislation to the House he has got an obligation to produce satisfactory answers and he is not doing it however exasperated he may get at the questioning. The law here says quite clearly that the power that we are giving here is for the removal of any receptacle of any size or of any description found by night upon the quay at Waterport or the North Mole. I invite the Hon Member to come with me now to Waterport and North Mole where we will find the place absolutely cluttered with receptacles of every possible size, shape and description. Why do they want them removed?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Which may be removed.

HON J BOSSANO:

Where to?

HON CHIEF MINISTER:

No, surely 'found by night' means found because they were not properly declared or seen during the day.

MR SPEAKER:

It is giving the right to remove something if it is considered to be necessary otherwise it will not be removed.

HON CHIEF MINISTER:

If we don't know who the owner is.

HON J L BALDACHINO:

On a point of clarification, Mr Chairman. Why is it, after having all the explanations on Clause 34(1), it mentions three points of entry without mentioning the commercial yard, why is it that if a receptacle is found, for example, at Four Corners which is another point of entry, the Collector of Customs hasn't got that power?

HON A J CANEPA:

Because in the case of the Port or what are Port areas, a boat might approach the wharf and from below could fling something over onto the wharf.

HON J L BALDACHINO:

If the Hon Member looks at Clause 34 it has also got the airport.

HON A J CANEPA:

It could be the airport itself, somebody could leave the aircraft at night proceed on to the air terminal and you leave something there behind, you have to give Customs power to remove that if necessary.

HON J L BALDACHINO:

I think the Hon Member hasn't understood what I am asking, I understand what you are saying. Why is it that the Collector of Customs hasn't got the power if this happens, for example, at Four Corners because it is not legislated in Clause 34(1)?

HON A J CANEPA:

That he doesn't have the power at Four Corners?

HON J L BALDACHINO:

No, it doesn't mention Four Corners there.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I think the answer is that the likelihood of anything being dumped at Four Corners is rather more remote.

HON J E PILCHER:

Our audience rating might have increased if the Hon Mr Canepa had made his intervention earlier because what has been said is perfectly reasonable.

HON M A FEETHAM:

I think it is the drafting more than anything else.

MR SPEAKER:

I am beginning to notice that Members are not standing when addressing the House. I think we have discussed this particular Clause long enough. If Members wish to take a vote by all means.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, this simply repeats what was in Section 18, I think, of the old Ordinance.

HON M A FEETHAM:

Old Section 18, yes, but we are having another opportunity to consolidate this and therefore we have never had a chance before. We have got a right to bring an amendment or discuss it or are we just going to accept it because it has always been there, why bother?

HON CHIEF MINISTER:

Old Clause 18 had the airport.

HON M A FEETHAM:

Four Corners, presumably, under old Section 18 wasn't open and it wasn't necessary and we are failing to do it now. I think it is the drafting, Mr Chairman, more than anything else.

Clause 33 was agreed to and stood part of the Bill.

Clause 34

On a vote being taken on Clause 34 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 G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammit
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members voted against:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

Clause 34 stood part of the Bill.

Clauses 35 to 44 were agreed to and stood part of the Bill.

Clauses 45 to 74

HON J BOSSANO:

Can I just ask in Clause 49(1), is the Governor the Financial and Development Secretary, Mr Chairman?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I propose to take over his powers and declare absolute rule.

HON M A FEETHAM:

Mr Chairman, under Clause 58(1) on page 112, I just want to ask what is envisaged in the statement which says: 'Provided that the Governor may direct that the provisions of this subsection shall not apply in respect of the sale of any particular goods'?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I think it means if it is imported by the Crown and then you find out it is not the Crown you clobber them but really my Hon and Learned Friend perhaps had better amplify on that.

HON J BOSSANO:

Execute them and bury them inside the walls of the prison.

HON CHIEF MINISTER:

Shall not apply.

HON M A FEETHAM:

Does this equally apply to anything which comes through and

is unloaded at the commercial yard which may be thought to be for a commercial operation but is in fact, not for a commercial operation and is used for something else?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

No, the commercial yard is not the Crown.

HON J BOSSANO:

On Clause 59(1) the valuation of goods for duty. I think an important issue here where many individuals have in the past complained, certainly to us and I am sure to Members of the Government, which I think now that we are looking at the Imports and Exports Ordinance we ought to be considering the possibility of correcting is where people are made to pay duty on the price that the goods fetch in Gibraltar and not on the price that the person has paid for the goods. There have been a number of instances, I think, where individuals have purchased for their own consumption goods across the border and then when they have got to the frontier they have been told that they have to pay duty at the price at which the article is being sold in Gibraltar and not at the price at which they have purchased it although they have produced the receipt showing what they have paid for it. And another area where there are many complaints is on the question of where goods arrive by post and the Government charges duty on the postage.

HON CHIEF MINISTER:

That is universal practice.

HON J BOSSANO:

Well, I don't know if it is universal practice or not but since we are looking at it here and we are legislating, we feel that it is wrong to make somebody pay duty on the postage stamp and the parcel that arrived by post anymore that one doesn't charge duty, for example, on the pay of the stevedores that unload the cargo when it is delivered, it is part of the carriage of the goods and certainly on the one that I am familiar with people feeling most aggrieved about is the question of the postage, people feel that sometimes the postage may be even more expensive than the actual contents.

MR SPEAKER:

I think that is comparable to the payment of duty on the freight.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, that is quite correct. It is normal to pay duty on the CIF value of goods. This is quite simply a GATT regulation or requirement which is in universal application throughout the world amongst those nations that observe the GATT, General Agreement on Tariffs and Trade.

HON J BOSSANO:

I know what the Hon Member is talking about but surely we are free to legislate in this House whichever way we choose to put duty whether we want to put duty or we can take the lot away if we want to independent of what GATT says on the subject.

MR SPEAKER:

Any other matters on Clauses 45 to 75?

HON J BOSSANO:

I don't think we have been given an answer on this question of the valuation of the goods where the person comes in and declares the goods and they are able to demonstrate by producing documentary evidence what they have paid for it and yet the Customs determines that the price that they have paid is too cheap compared to the price that is being charged in Gibraltar and consequently they are charged duty on the price that there is in Gibraltar, Mr Chairman. One assumes that the right of the Customs Officer to do that must arise from this Clause which talks about the valuation of goods, I don't know whether it does or it doesn't presumably this is where that power is being given. We don't agree with it.

HON CHIEF MINISTER:

It is a question of the price in the local market otherwise the local trade gets no protection whatsoever.

HON J BOSSANO:

I don't think that is true, Mr Chairman, the local trader surely is buying at a wholesale price and pays duty on the wholesale price. The individual consumer is buying at a retail price and pays duty on a retail price which is already higher than the duty the local trader is paying. If the local trader buys something at a wholesale price and then chooses to mark it up 200%, then we have to balance protection for the trader and protection for the consumer it would seem to me. Why should we protect people who overcharge when we don't control prices? The Government doesn't legislate to control the prices except for a small number of goods which

are considered to be basic essentials which in any case are not dutiable. In the case where we have got price control, in fact, you can bring the goods in and you don't get charged any duty at all. In the vast majority of cases where there isn't any price control the trader is free to charge whatever he likes and there have been many instances where people felt, in fact, that the Government was treating them unfairly because they had come in and declared what they had got, they have said they want to pay their duty and then they get told: 'Well, you cannot pay your duty on the equivalent of £1 because that costs £5 in Gibraltar, you have to pay duty on £5', well that is because somebody is making a profit of £4, that is why it costs £5.

MR SPEAKER:

Any other matters on Clauses 45 to 75?

HON J BOSSANO:

Am I correct in thinking that it is under this Clause that that power exists and am I correct in thinking, Mr Chairman, that the Government intends to carry on doing it in which case we will vote against?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I am assured, Mr Chairman, that the duty is in fact assessed on the wholesale price of the goods, as it would be in Gibraltar. I think, possibly, the Hon Member may have exaggerated the extent of the protection which is afforded to the local trader or, indeed, the extent to which the consumer would be taken for a ride.

HON J BOSSANO:

So the Hon Member is saying that, in fact, if people are being assessed on the retail price that is incorrect, it shouldn't be happening?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

The assessment of the duty, my understanding is in connection with this particular subsection by reference to 'the price which they would fetch at the time when they are entered for home use' that is intended to refer to the wholesale price of the goods in Gibraltar.

HON J BOSSANO:

Well, if it is intended to refer to the wholesale price which

I don't think the Clause says but it is on record.....

HON CHIEF MINISTER:

That is how it is done.

HON J BOSSANO:

No, this is what I am saying. If that is how it ought to be done then, presumably, what the Hon Financial and Development Secretary is saying is that people who are not being charged on the wholesale price can come back and complain, am I right in thinking that?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Obviously there is always provision for appeal in such circumstances.

HON J L BALDACHINO:

When the Hon Member says the wholesale price what does he mean, the price that the general merchant sells to the shop or the price at which the general merchant imports those goods, what does he mean by the wholesale price?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

It would be, obviously there are credations in the use of the word wholesale, you always have manufacturer/wholesaler/retailer but it is in general terms the price at which the wholesaler would sell to the retailer, that is to say, it includes nothing for the retailer's profit margin or mark-up.

HON J BOSSANO:

Could I just ask on Clause 61, goods exported for repair, Mr Chairman. Are we talking here about an article that has been repaired and then is brought back into Gibraltar having to pay duty on the work that has been done or on the material which is being imported? How does one assess duty on labour? If I have got something that breaks down and it is made to work again, how does one assess the duty on the repair if there isn't a material element in it?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

On the invoice, on the bill, you are charged a bill and you would pay duty on that.

HON CHIEF MINISTER:

If it is a piece of jewellery which was sent for repair and it is worth £3,000 and the repairs are worth £500 you pay on £500.

HON J BOSSANO:

I am sorry, Mr Chairman, we are going too fast because there are a lot of Clauses. I want to ask something on Clause 72. Can I ask why it is that duty in respect of wines and spirits for a Services Hospital - which is misspelt - is capable of being given a drawback and not in our Hospital? Why is it that our people cannot get drunk if they can?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I think this is one of those provisions, as I understand it, Mr Chairman, where the Governor can give directions in the circumstances where, I am not absolutely familiar with the circumstances, I must admit, it must go back certainly to when there are sick servicemen who would otherwise be entitled to duty free liquor. I think the circumstances are very remote.

HON J BOSSANO:

Yes, but we are going to legislate now and if we are going to vote to continue that provision in the law of Gibraltar it isn't enough to be told that it is just something that has simply been lifted out of the old legislation and renewed. We thought the whole purpose of the new Imports and Exports Ordinance, 1986, Mr Chairman, was to bring it up-to-date and if there is something that is totally out-to-date and doesn't mean anything anymore then we remove it. Why do we want to carry on saying things like this in our legislation for?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

If Hon Members haven't overheard what the Hon the Chief Minister has said.

HON J BOSSANO:

We have overheard it.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I was about to make a generous offer and to propose that we might, in fact, delete this particular Clause as it seems very seldom to be used.

Mr Speaker put the question which was resolved in the affirmative and Clause 72 was deleted.

Clauses 45 to 75 were agreed to and stood part of the Bill.

Clause 76 was left in abeyance.

Clauses 77 to 79 were agreed to and stood part of the Bill.

The House recessed at 7.00 pm.

WEDNESDAY THE 5TH NOVEMBER, 1986

The House resumed at 10.45 am.

Committee Stage of the Imports and Exports Bill, 1986, continued.

Clause 80 was agreed to and stood part of the Bill.

Clause 81

HON ATTORNEY-GENERAL:

Mr Chairman, I move to amend Clause 81 by omitting sub-clauses (a) and (b) and substituting therefor the following:- '(a) Where the drug is a Class A or Class B drug - (i) on summary conviction to a fine of £1000 and to imprisonment for 12 months; (ii) on conviction on indictment, to a fine of such amount as the court may determine and to imprisonment for 14 years; (b) Where the drug is a Class C drug - (i) on summary conviction to a fine of £1000 and to imprisonment for 6 months; (ii) on conviction on indictment, to a fine of such amount as the court may determine and to imprisonment for 5 years'. The reasons for this amendment, Mr Chairman, are the same as I gave when amending Clause 15.

Mr Speaker then put the question which was resolved in the affirmative and Clause 81, as amended, was agreed to and stood part of the Bill.

Clauses 82 to 86 were agreed to and stood part of the Bill.

Clauses 87 to 92

HON M A FEETHAM:

Mr Chairman, these are just replacement of old Clauses into the new Ordinance, yes?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Yes.

Clauses 87 to 92 were agreed to and stood part of the Bill.

Clauses 93 to 105 were agreed to and stood part of the Bill.

Clauses 106

HON ATTORNEY-GENERAL:

Mr Chairman, I move that Clause 106 be amended to delete sub-clause (iii) and substitute the following:- '(iii) if the offence concerns a Class A or Class B drug as defined in the Drugs (Misuse) Ordinance: (a) on summary conviction to a fine of £1000 and to imprisonment for 12 months; (b) on conviction on indictment, to a fine of such amount as the court may determine and to imprisonment for 14 years; (iv) if the offence concerns a Class C drug as defined in the Drugs (Misuse) Ordinance: (a) on summary conviction to a fine of £1000 and to imprisonment for 6 months; (b) on conviction on indictment, to a fine of such amount as the court may determine and to imprisonment for 5 years'. The reasons being exactly the same as with the other two Clauses.

Mr Speaker then put the question which was resolved in the affirmative and Clause 106, as amended, was agreed to and stood part of the Bill.

Clauses 107 to 128

HON M A FEETHAM:

Mr Chairman, I understand there is a slight amendment to be done there. 'Unlawful possession of dutiable goods' has to be pushed down.

HON ATTORNEY-GENERAL:

Yes, the marginal notes, that is again a printer's error. It will be adjusted, I hope, when the Bill is printed as an Ordinance.

Clauses 107 to 128 were agreed to and stood part of the Bill.

Clauses 129 to 133 were agreed to and stood part of the Bill.

Schedule 1

HON M A FEETHAM:

If it may assist the Chairman the query that I am going to raise is, in fact, under Chapter 98.

MR SPEAKER:

Miscellaneous Manufactured Articles, is that the one?

HON M A FEETHAM:

Yes, in page 297 so everything else unless there is any amendment from that side is alright.

MR SPEAKER:

Yes, then let us come up to Schedule 1, Chapter 18. We will take a vote up to Chapter 17.

Chapters 1 to 17 were agreed to and stood part of the Bill.

Chapter 18

HON ATTORNEY-GENERAL:

Chapter 18, Tariff heading 18.06 - Chocolates and other food preparations containing cocoa: a. - you will see the rate of duty, Mr Chairman, is £2.37. To delete '£2.37' and substitute '£1.50'.

Mr Speaker put the question which was resolved in the affirmative and Chapter 18, as amended, was agreed to and stood part of the Bill.

Chapters 19 to 21 were agreed to and stood part of the Bill

Chapter 22

HON ATTORNEY-GENERAL:

Tariff heading 22.09 in A and B, Mr Chairman, you will see the figures '1.50' per ltr. Wherever '1.50' appears could the pound sign be put in front of the '1.50', it is '£1.50'.

Mr Speaker put the question which was resolved in the affirmative and Chapter 22, as amended, was agreed to and stood part of the Bill.

Chapter 23 was agreed to and stood part of the Bill.

Chapter 24

ATTORNEY-GENERAL:

Mr Chairman, to amend Chapter 24, tariff heading 24.02. Again you see '6.50', to insert the pound sign in each case. In sub-paragraph B - Manufactured cigarettes per kilo with an additional duty per '100' cigarettes, it should be per '1000' cigarettes, Mr Chairman. The expression '2.25p' per kilo to insert the pound sign before the '2.25p'. And the expression '5.50p' to insert the pound sign and to delete the words 'per kilo' to read 'per mil', so it will be, '5.50p per mil'.

Mr Speaker put the question which was resolved in the affirmative and Chapter 24, as amended, was agreed to and stood part of the Bill.

Chapters 25 and 26 were agreed to and stood part of the Bill.

Chapter 27

HON ATTORNEY-GENERAL:

To amend, Mr Chairman, 27.10 - (b) Motor spirit, to omit the expression '0.83p' per litre and substitute therefor '£0.083' per litre. Under (c) Aviation fuel, again what should be inserted should be '£0.083p'.

Mr Speaker put the question which was resolved in the affirmative and Chapter 27, as amended, was agreed to and stood part of the Bill.

Chapters 28 to 32 were agreed to and stood part of the Bill.

Chapter 33

HON ATTORNEY-GENERAL:

Under Tariff heading 'FOR FOOD AND DRINK: Alcoholic' to insert the pound sign before '1.50' per litre.

Mr Speaker put the question which was resolved in the affirmative and Chapter 33, as amended, was agreed to and stood part of the Bill.

Chapter 34 was agreed to and stood part of the Bill.

Chapter 35

HON ATTORNEY-GENERAL:

Mr Chairman, Tariff heading 35.06 (b), to delete 'Tiles, adhesives' and to substitute therefor 'Tile adhesive'.

Mr Speaker put the question which was resolved in the affirmative and Chapter 35, as amended, was agreed to and stood part of the Bill.

Chapters 36 to 86 were agreed to and stood part of the Bill.

Chapter 87

HON ATTORNEY-GENERAL:

Chapter 87, Mr Chairman, to be amended in sub-paragraph (a) - 'components and fashioned parts of motor vehicles imported separately, including tyres and tubes but (excluding electric)'. It should be electric 'bulb', Mr Chairman, so could the word 'bulb' be inserted immediately after the word 'electric', and to insert a new sub-paragraph under item 87.06 as follows, after 'e' to insert 'f'. new and complete basic body chassis construction kits for the assembly of motor vehicles'. The number is '87.06 7327 - 1.No. - 12%'.

Mr Speaker put the question which was resolved in the affirmative and Chapter 87, as amended, was agreed to and stood part of the Bill.

Chapters 88 to 97 were agreed to and stood part of the Bill.

Chapter 98

HON M A FEETHAM:

Mr Chairman, page 297, Tariff heading 98.21, it says 'Goods imported exclusively for the purpose of establishing the commercialisation of the Dockyard'. I see no reason, Mr Chairman, for the inclusion of this here since the dockyard commercialisation has now been established and I would assume that the purpose of that was for the infrastructure build-up etc of the commercialisation. Is that the case?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Yes, the latter part of the Hon Member's statement is certainly true, Mr Chairman, but the first part I don't think is true. If the Hon Member will recall, we did pass legislation in the House a short while ago to provide for the duty

free importation of goods imported exclusively for the commercialisation of the dockyard. We are not doing anything new here. What I think is not true is that the process is complete, that is to say, we are still in the process of setting up the dockyard. If he will just reflect for a moment, we have been to the UK Government to request funds and while we haven't got as much as we wanted, we have been offered £2.4m for further capital expenditure. That £2.4m forms an extension of the existing grant of £28m which was given to us and hence the process of setting it up within the context of the original agreement is not yet complete but, obviously, this section is intended only for the purpose of setting up the dockyard, I agree with him to that extent but I don't think we can regard the process as yet complete.

HON M A FEETHAM:

Mr Chairman, the undertaking that I am getting is, in fact, that when it is complete as far as capital expenditure is concerned this will no longer apply? What I don't want is for this particular sub-section to be used, for example, in situations where you have a refitting job to do on a private ship and the company imports X tins of paint to do the job and it comes in.....

HON FINANCIAL AND DEVELOPMENT SECRETARY:

It is tied, in fact, to the ODA funds and the reason for that is that as I think I explained when we discussed this in the House a while ago, that the ODA will not cough up money, it doesn't make an exception with Gibraltar here it is just a principle which they have with overseas aid, they will not give Governments money if duty is going to be charged on it because that offends their general principle which Parliament guards rather jealously that they do not provide funds for development aid which are to be used for general expenditure. Needless to say there are certain Governments in the far corners of the world less scrupulous than ourselves, of course, who would quite like to do that and use it for projects other than intended.

Chapter 98 was agreed to and stood part of the Bill.

Chapter 99 was agreed to and stood part of the Bill.

Schedule 1, as amended, was agreed to and stood part of the Bill.

Schedule 2 was agreed to and stood part of the Bill.

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

MR SPEAKER:

We now have to deal with the Clauses that were left over from last night because there were matters to be considered. I understand that you also wish to raise amendments to Clauses 2 and 36, is that right? The ones we left over from last night were Clauses 20, 32 and 76 but I understand that as a result of what you are doing you wish to amend Clauses 2 and 36, is that right?

HON ATTORNEY-GENERAL:

Yes, consequentially.

MR SPEAKER:

So the Clauses we are going to deal with now are Clauses 2, 20, 32, 36 and 76.

Clause 20

HON ATTORNEY-GENERAL:

Clause 20(1)(a) on page 99, to delete the words 'or at the Dockyard' and substitute the comma after the word 'Mole' with a semicolon.

Mr Speaker put the question which was resolved in the affirmative and Clause 20, as amended, was agreed to and stood part of the Bill.

Clause 32

HON ATTORNEY-GENERAL:

Clause 32, sub-clause (1), Mr Chairman, to delete the words 'or the commercial yard' in the second and third lines thereof.

Mr Speaker put the question which was resolved in the affirmative and Clause 32, as amended, was agreed to and stood part of the Bill.

Clause 36

HON ATTORNEY-GENERAL:

Clause 36(2), Mr Chairman, to delete the words 'the commercial yard' in the penultimate line of sub-clause (2).

Mr Speaker put the question which was resolved in the affirmative and Clause 36, as amended, was agreed to and stood part of the Bill.

Clause 76

HON ATTORNEY-GENERAL:

Clause 76, Mr Chairman, to delete the words 'the Commercial Yard' in the second line of Clause 76, and substitute the words 'no person shall deliver or remove any goods from Waterport, the North Mole, the airport or Four Corners'.

Mr Speaker put the question which was resolved in the affirmative and Clause 76, as amended, was agreed to and stood part of the Bill.

MR SPEAKER:

Now we can go back to Clause 2.

Clause 2

HON ATTORNEY-GENERAL:

As a result of the consequence of those amendments to those Clauses, Mr Chairman, to delete the definition 'Commercial Yard' in Clause 2(1) on page 88.

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

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

THE TOWN PLANNING (AMENDMENT) BILL, 1986

Clause 1

On a vote being taken on Clause 1 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 G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammit
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members voted against:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

Clause 1 stood part of the Bill.

Clause 2

HON M A FEETHAM:

If I can call my colleague.

MR SPEAKER:

Well, your colleague should be here if he wishes to participate. Do you want a vote on Clause 2, that is what I am asking?

On a vote being taken on Clause 2 the following Hon Members voted in favour:

The Hon A J Canepa
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members voted against:

The Hon J L Baldachino
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

The following Hon Members were absent from the Chamber:

The Hon J Bossano
The Hon Major F J Dellipiani
The Hon J E Pilcher
The Hon H J Zammit

Clause 2 stood part of the Bill.

HON J E PILCHER:

I am sorry, Mr Chairman, I was in the process of moving an amendment to Clause 2 in the Ante Room.

MR SPEAKER:

Fair enough, provided you are in the House you are entitled to move it. You can ask for a division if you wish.

HON J E PILCHER:

I have an amendment to make to the Town Planning Bill.

MR SPEAKER:

I would suggest you propose it.

HON A J CANEPA:

Have we not taken a vote, Mr Chairman?

MR SPEAKER:

No, with respect, let me make completely and utterly clear what the position is. As we have done on other occasions when we are in Committee, as we did with the Imports and Exports Bill just now as a matter of fact, even though we may have gone through the particular Clause if Members wish to move something we have always allowed them to do so. The answer is very simple, they can ask for a division.

HON A J CANEPA:

Mr Chairman, the five Members of the Opposition who were present in the House when the matter came up were not asking for a division.

MR SPEAKER:

A division can be asked at any time.

HON A J CANEPA:

After a vote has been taken, Mr Chairman?

MR SPEAKER:

After indication has been given.

HON A J CANEPA:

I have been in the House for fourteen years, Mr Chairman, and I do not recall any such occasion.

MR SPEAKER:

I can give you chapter and verse.

HON A J CANEPA:

After a vote has been taken?

MR SPEAKER:

With respect, any Member can ask for a division.

HON CHIEF MINISTER:

That is what we do and what was done in this case.

MR SPEAKER:

But they are still in a position to ask for a division and in fairness, I have always allowed in Committee even after an indication of the vote has been given, to go back and to look into the matter in Committee. I am not going to depart from that precedence.

HON CHIEF MINISTER:

We can put it at the end of the list and get on with the rest of the Bills.

MR SPEAKER:

If you would rather do that.

HON J E PILCHER:

Mr Chairman, I am quite lax, if I can move the amendment whether it is now or later on I am quite happy.

MR SPEAKER:

By all means.

HON J E PILCHER:

I was in the process of drafting the amendment.

HON A J CANEPA:

But we have been in the House, Mr Chairman, for three days now. We should not be in the process of drafting an amendment at this juncture. Anyhow, Mr Chairman, I suggest that we get on with the business.

MR SPEAKER:

Most certainly, we will.

HON A J CANEPA:

Either the Town Planning Ordinance or whatever it is.

MR SPEAKER:

With respect, I have taken a decision and that is the end of the matter. Mr Clerk, we will call the next Bill and this Bill will be left in abeyance until a later time when you will be entitled to make your amendment.

THE CRIMINAL PROCEDURE (AMENDMENT) BILL, 1986

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

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

THE MARRIAGE (AMENDMENT) BILL, 1986

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

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

THE PENALTY RATES REMISSION BILL, 1986

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

Clause 4

HON ATTORNEY-GENERAL:

I move, Mr Chairman, to amend Clause 4 by deleting the words 'in his discretion, from time to time, by notice published in the Gazette' and substituting therefor the words 'with the prior approval of the House of Assembly' and consequently Clause 4 should read: 'The Financial and Development Secretary may, with the prior approval of the House of Assembly, extend the period of remission prescribed in section 2'.

Mr Speaker put the question which was resolved in the affirmative and Clause 4, as amended, was agreed to and stood part of the Bill.

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

THE SUPPLEMENTARY APPROPRIATION (1986/87) (NO.2) BILL, 1986

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

Schedule

Schedule of Supplementary Estimates Consolidated Fund No.2 of 1986/87.

Head 4 (1) - Education was agreed to.

Head 10 - House of Assembly was agreed to.

Head 12 - Income Tax was agreed to.

Head 13 - Judicial, Supreme Court was agreed to.

Head 18 - Port was agreed to.

Head 24 - Treasury

HON ATTORNEY-GENERAL:

Mr Chairman, I move that the figure '24' before the word 'Treasury' be deleted and the figure '25' be substituted therefor.

Mr Speaker put the question which was resolved in the affirmative and the amendment was accordingly passed.

HON J E PILCHER:

Mr Chairman, the Opposition will be voting against this expenditure under Head 25 - Treasury. The reasons are clear, we have, in fact, over the past three years in Opposition made it quite clear that we object to hiring consultancies out to experts from the UK. Apart from that, Mr Chairman, I have to make the point that we could not vote £100,000, well £90,000 in this case, of public money for a report which the Hon and Learned the Chief Minister said yesterday in answer to questions that he would neither be making public or giving a copy to the Opposition until he had considered the report. Obviously, Mr Chairman, this is a situation which we cannot accept. If the report has been commissioned and been paid

for by public money then the public have a right to see it and if at least the public do not have the right to see it until it has been considered, certainly the Opposition which is privy to the decision to vote this money in the House should have a right to see it at the same time as the Government and obviously make its own conclusions. We will be voting against this expenditure, Mr Chairman.

HON CHIEF MINISTER:

I can understand the Hon Member voting against it on the principle that they are against consultancies. With regard to the other one, I think I have to make a general remark. The Opposition do not appear yet to have learned that it is not the same because monies are voted here the Government has got the responsibility, I said that I would look at it, there may be matters which are of a sensitive nature which are not in the public interest to reveal which may be available to Members or not. I cannot prejudge the whole situation. Normally, we try and make as much of it available but one thing, if I may say so, has nothing to do with the other otherwise, for example, the Government couldn't vote funds for the Special Branch of the Police because we don't know what the Special Branch is doing and the Opposition say: 'We vote and we want to know'. That principle, I think, is not correct though I know what is in the mind of the Hon Member and I undertook to look at it and, if possible, or rather there would have to be reasons for not showing it to them rather than reasons for showing it to them but that is a different concept altogether to the principle of whether you have consultants or not.

HON J E PILCHER:

I do not accept the analogy between the consultancy of the GSL and the Special Branch of the Police, that analogy is not acceptable, obviously. I don't accept the principle either. If there is a consultancy and the consultancy comes up with a report, then the Government have a right to look at that report and take whatever action they may think fit as a result of that report, that is where their governmental prerogatives and their powers as a Government comes into effect but to actually consider it before they think that parts of it should be seen by us or should not be seen by us is totally unacceptable on a point of principle on this side of the House, Mr Chairman.

On a vote being taken on Head 25 - Treasury, Item 82 (New) Gibraltar Shiprepair Ltd - Consultancy, 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 G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammit
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members voted against:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

Schedule of Supplementary Estimates Consolidated Fund No.2 of 1986/87 was passed.

Schedule of Supplementary Estimates Improvement and Development Fund No.2 of 1986/87 was passed.

The Schedule 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 TOWN PLANNING (AMENDMENT) BILL, 1986 (Continued)

MR SPEAKER:

We come back now to the Town Planning Ordinance.

Clause 2

HON J E PILCHER:

Mr Chairman, if I may move the amendment now to Clause 2. Following the debate yesterday on the general principles where the Government made known its intentions under the Town Planning Ordinance, I think what certainly has surfaced is the fact that perhaps there is scope for manoeuvre within this legislation if it is that the Government are proposing what they said yesterday they would be proposing which is just an interim temporary measure pending the City Plan and

therefore, Mr Chairman, we would like to move an amendment to make the Bill palatable from this side of the House so that we could provide that interim and temporary measure that the Government is looking for and at the same time provide the necessary safeguards that we proposed from this side of the House yesterday. My amendment, therefore, is as follows, Mr Chairman: To amend Section 18A(1) by the insertion of the words 'Subject to Section 18B below' after the word 'may' in the second line. The first part of Section 18A(1) would therefore read: 'Notwithstanding anything contained in Part III, the Commission may, subject to Section 18B below, on the application', etc. Also, Mr Chairman, by inserting immediately after Section 18A the following Section: '18B(1) The Commission shall, before exercising its powers under Section 18A(1) above: (a) publish a notice in the Gibraltar Gazette giving the location and general description of the proposed development; (b) allow for a period not being less than 28 days from the date of publication of the notice, for representations to be made to the Commission; (c) consider any representation received from any person within the period specified under sub-section (b) above; (2) The Commission shall, upon exercising its powers under Section 18A(1) above, publish such decision and reasons in the Gibraltar Gazette. (3) Any decision of the Commission under Section 18A(1) above, shall not take effect until the expiration of 10 days from the date of publication in the Gibraltar Gazette under Section 18B(2) above'. That is the amendment, Mr Chairman.

MR SPEAKER:

Do you wish to speak in favour of the amendment?

HON J E PILCHER:

Well, I have basically said in principle what is the idea behind it. Yesterday we had the Government wanting to produce an interim solution and that interim solution was seen by this side of the House as giving the Government powers to actually do whatever they like even if it was in conflict with the City Plan. This amendment, Mr Chairman, what it does is it puts a further proposal on the Government in order for them to have to Gazette their intentions and give a period of 28 days in which any person could make their own representations and, obviously, there would be a period of 28 days for the public to put an input into this decision and there would then be a consideration of these representations by the Government before a decision was taken. I think it doesn't stop the Government doing what they want to do inasmuch as they would have the power under Section 18A(1) but it would give the public the right to comment, in the absence of a City Plan, to comment on things that they are proposing to do and

obviously to Gazette this before and Gazette it afterwards and therefore, I think, go a long way to do what the Hon Mr Canepa said yesterday they were going to do which is create more public awareness and bring into the Town Plan more public participation, Mr Chairman.

Mr Speaker proposed the question in the terms of the Hon J E Pilcher's amendment.

HON A J CANEPA:

Mr Chairman, we are going to create more public awareness as a result of legislation brought to this House by the Government carefully drafted by the Chambers of the Attorney-General and not by Members of the Opposition or by outsiders. That is how we are going to get an exercise in public participation on the basis of what the DPC recommends to the Government after due consideration, that is how we shall proceed and we are not going to proceed in this manner. I am very happy to see in what a short period of time the Opposition are able to get a crash course in town planning matters and become such experts. But, of course, what this is trying to do is to tie our hands down in a manner which is not acceptable and this is running contrary to the powers that we are trying to get. Already in the Town Planning Ordinance, Mr Chairman, under Section 14 of the Ordinance, you have Section 14(1) - 'At least once in every five years after the date on which a planning scheme for any area is approved by the Commission, or within such extended period as the Commission may from time to time allow, the Director of Public Works shall carry out a fresh survey and submit to the Commission a report together with proposals for any alterations or additions to the scheme that appear to him to be required' - I should explain, of course, that the Director of Public Works means the Chief Planning Officer - '(2) Notwithstanding the provisions of sub-section (1), the Director or Public Works may, at any time, submit to the Commission proposals for such alterations or additions to any approved planning scheme as appear to him to be expedient'. The law is silent as to the exact procedures that have to be followed by the Chief Planning Officer if he exercises the powers that are under Section 14(2) by way of the extent of public participation. Whereas we know that when the planning scheme, the town plan, is drawn up it has to be exhibited, representations can be made and they have to be considered and so on, it is not clear in the law what would happen or what has to happen if the Director of Public Works exercised these powers though the legal opinion is that we ought to follow the same procedure, but that is a legal opinion and if an executive decision were to be taken not to do that presumably the matter would go to court and the court would have to give a ruling

and it could well be that the ruling of the court would be that if any alterations or additions are going to be made to the approved planning scheme, the same procedures should be followed as are followed when the draft planning scheme is submitted. But what the amendment of the Hon Mr Pilcher, of course, is trying to do goes much further than this. It is tying our hands down in a more explicit fashion as to exactly the steps that we have to follow and we are not prepared, simply not prepared today to agree with these steps. We might be prepared to agree in a general exercise of public participation involving building applications that they be exhibited and that representations be made to a procedure something along these lines but the Government is not going to agree to this sort of amendment today out of the blue and therefore we will vote against it.

HON J BOSSANO:

Mr Chairman, I think there is an important point as regards it being 'out of the blue' and I refer to the position that I made clear at an earlier stage in these proceedings and at previous meetings of the House which the Government has said they understand fully and in the last meeting of the House they agreed, for example, to leave the Imports and Exports Ordinance for the Committee Stage of this House. Had they dragooned it the last time they would not have been able to remove the Commercial Dockyard from the law as they have done today because obviously we put arguments yesterday which they had not thought of, that is the purpose of the House of Assembly. We don't want to produce an amendment to this overnight. We much prefer to produce an amendment between now and the next meeting and give the Government the time to give it the necessary consideration and if they don't agree they come back and they vote against it, that is why they have got a majority but if they insist on treating this House as if it was a rubber stamp, when we meet in July and then we meet in November and in November we are presented with a whole range of legislation which we are supposed to pass in twenty-four hours. That is not what we are here for. We would much prefer that the Government leaves this for the Committee Stage and the other thing for the Committee Stage. We are prepared to take all stages in one meeting of the House if it is important and urgent because there are things that need to be done urgently and an argument is put up, but it should be the exception rather than the rule. It has been made before, it has been accepted before and then they just pay lip service to it and what do we find? Every single new Bill is down for Committee Stage and Third Reading in this meeting, it is not acceptable.

HON M A FEETHAM:

Mr Chairman, I really need to reply to the Hon Minister for Economic Development on one point of fundamental principle as far as this side of the House is concerned. He has taken what I consider to be a very reactionary view for a person that considers himself to be a Social Democrat. On one hand he has argued in favour of public participation and consultation and on the other hand is denying the right of the Opposition to seek consultation, to discuss matters with people who want to participate in this process outside the House by agreeing with us a certain line which we would agree with them should be taken in this House and he says that this is totally wrong. That I consider to be completely reactionary and neither is it the prerogative of the Government to seek consultation with people outside, it is also our prerogative. Are you not doing the same thing now that you have got yourself in a very tight corner in the financial centre, setting up a forum to discuss financial centre matters with people in the private sector? Why cannot the GSLP who are committed as a matter of policy in its manifesto to participate with the private sector fully in matters where we can have joint agreement of doing so as my Hon Colleague has done and sought the views of people who are interested and have made the point very strongly on this matter and come up with an amendment which he is perfectly entitled to do without that sort of reactionary view taken by the Minister opposite.

HON A J CANEPA:

The Hon Members of the Opposition are free to do whatever they want to. They can consult whoever they want to and whenever they want to. What they cannot expect is to come here to the House and necessarily get the Government Members to agree with them, that is all.

HON J E PILCHER:

Mr Chairman, before I actually answer various of the points made by the Hon Mr Canepa, I would like to emphasise the point made by the Leader of the Opposition because I, for one, feel very, very strongly about this and it is undemocratic, Mr Chairman, to bring Bills to the House for First, Second, Committee Stage and Third Reading. It is undemocratic because it doesn't allow the Opposition to perform its proper role in the democratic process nor does it allow the public to perform its proper role in the democratic process and it is not enough for the Hon Mr Canepa to get up and say that he is not prepared to answer such an amendment thrown at him at a second's notice. Well, he should move a motion to leave the Committee Stage for the next House and he will have a month

to study the amendment. It is not true that I am trying to be an expert in town planning, this is not my expertise in town planning and, of course, I have consulted with experts or people who consider themselves experts on conservation matters, that is the role of the Opposition. What this amendment is trying to do is trying to show up whether what the Hon Mr Canepa said yesterday is true, that it is only a temporary measure. If it is an interim temporary measure how many times does the Hon Mr Canepa expect to have to do this in the next year? This Bill is supposed to terminate on the 31st day of December, 1987. If it is only done as an interim measure how many times does he expect to have to bring this Bill into being, once, twice? Is it that much administrative work to do this once or twice and inform the public of what it was doing? If the Government vote against this, Mr Chairman, they are proving to us and to the public that what they want to do is have full overall powers and be answerable to no one.

HON A J CANEPA:

Be answerable ultimately to the electorate, certainly, ultimately to the electorate but what we are not going to have is a minority running the show. There is a majority that has got very strong views which are not always made manifest, in orchestrated campaigns of letter-writing in the newspapers, there are minorities that have access to the media with great ease and in a manner which is totally disproportionate to the support that they actually command. There was a certain general meeting held recently that I made reference to yesterday which the Hon Mr Bossano attended. How many people went along to that meeting on a subject of such controversy which has had such an airing? The Government is here because it has the support of the majority. When it no longer has the support of the majority it will fail by the wayside and it is entitled in the exercise of the powers that it has been given to do what it considers to be necessary and to do what it considers to be right. This Bill has not been brought to the House as a result of an overnight decision. It is the result of a great deal of discussion and thought in many meetings in Council of Ministers before we asked it to be drafted, we have had most of the summer to think about it, and the Bill was published and circulated. The Bill was published on the 24 October, Hon Members opposite are paid, in my view, a handsome allowance to deal with the business of the House.

HON J E PILCHER:

Not as much as you.

HON A J CANEPA:

Not as much as Ministers because the Minister is working full-time.

HON J E PILCHER:

No, as you, not as Ministers.

HON A J CANEPA:

Not as much as I, of course, there is nobody there opposite that does in politics anywhere near the amount of work that I do on a constant daily basis, in the political arena. The Hon Members of the Opposition have a function to perform, in other Parliaments there are guillotines, we don't have a guillotine here and I myself don't very often have legislation going through all stages but the view of the Government is that this legislation is necessary and that it is urgent. The DPC is not able to consider proposals that it has had before it for some time on the future of the development of Rosia Bay and it is about time that we were able to sit down and consider those proposals and give the people concerned an answer and give the Government advice about that tender. And that is not the only project, there are others and we are not going to tie our hands down over the next few months in this manner. I am not prepared to have a minority in Gibraltar do what the majority is entitled to do. Democracy demands that in the final analysis the majority will have its way, not the minority, be they the Opposition or be they any pressure group, that is the simple answer.

HON J BOSSANO:

No, it is not as simple as that, Mr Chairman. The Government went to an election campaign saying that if they got in they would commercialise the Dockyard. The Government also went to an election campaign and didn't mention anything about advancing EEC rights to the Spaniards, they didn't have a mandate to do that and they used their majority here in spite of the fact that it was not a minority of people opposing it, there were 5,000 people in the streets.

HON CHIEF MINISTER:

I think, Mr Chairman, on an amendment we are having a general debate on politics.

MR SPEAKER:

Let it be said, with respect, that if we are having a debate it is because matters have been raised which have to be answered.

HON CHIEF MINISTER:

Well, because matters of principle have been raised that have to be answered.

MR SPEAKER:

Precisely and therefore they have to be answered.

HON A J CANEPA:

Mr Chairman, in matters of such principle about the yard whether it was in the manifesto or not, I might also ask Mr Bossano whether in 1980 in his manifesto he informed the public that he was going to try and get an amendment to the Divorce laws, he didn't but at the first meeting of the House after the general election he brought a motion, it is exactly the same.

HON J BOSSANO:

Not as a matter of Government policy, Mr Chairman, which is what the Hon Member is talking about. It was a free vote where Members on that side of the House supported what was being done although it was not in the AACR manifesto either and they voted in favour.

MR SPEAKER:

Let us come down to the question before the House.

HON J BOSSANO:

What we cannot have is a situation where the Minister for Economic Development who clearly has got, as he has admitted previously in this House, a dictatorial streak in him, sees that dictatorial streak.....

HON A J CANEPA:

That I have admitted to that, when?

HON J BOSSANO:

I will tell the Hon Member when. In the last meeting of the House when we said on this side what our position would be as regards the continuation of the management contract of Messrs Appledore, the Hon Member said that it was a good thing that we had Mr Anderssen and not Mr Abbott who like him would have reacted violently to a statement like that, that is what he said, clearly demonstrating that Mr Abbott and himself are recognised by him to be in the same mould.

HON A J CANEPA:

And that is a dictatorial streak because that is how you interpret it. Well, I interpret in exactly the same way the attitude that you have when you get annoyed when you are criticised, exactly the same.

MR SPEAKER:

Order, let us come down to the matter under discussion.

HON J BOSSANO:

I think, Mr Chairman, we can only come down to the town planning on the basis that the Government is telling us that they have given a great deal of thought to this, every time they speak on the subject they clearly are demonstrating that they are acting outside the existing law and what they are doing is legitimising their position by bringing this to the House and that it is an important issue which has caused a lot of heart searching within the Government ranks otherwise it would be a one day affair, it wouldn't require all the thinking that has gone into it according to the Minister. The Opposition is entitled to expect that the Government should give us as much opportunity and they have given themselves in thinking about whether this is the right way to proceed or not and they are not doing that because they are bringing every single Bill, not just this one, although they indicated in July that it would not be what would continue to happen, last July the Hon and Learned the Chief Minister said he accepted the point and that it wasn't the Government's intention to bring everything through in one House, they have done exactly the same again. So, therefore, it is the Government's fault that we find ourselves in a situation where we are having a major debate because we have got no choice. If we don't raise it now the thing will be law and that is it. If the Government wants to have the democratic right which it has to exercise that majority which it won in the last election, it has also got to recognise that a democracy only functions by the majority listening to the minority and at the end of the day if the minority cannot convince them the majority decides but what is wrong with the Government's attitude is that they don't want to give us the opportunity or anybody else to challenge what they are doing or do they disagree with that?

HON A J CANEPA:

What are you doing, if not challenging?

HON J BOSSANO:

Mr Chairman, we are doing it not with their approval, they don't like it. What they think we should do is, they come here with all the Bills and we say amen to everything and it goes on the statute book and then they discover, like they discovered that they should have done something about the fire escapes in the Laguna Estate is not there or that they were putting something in the Dockyard which would have created a major conflict if they had gone ahead with the Dockyard thing. Sometimes we may be taking a policy stand which is unacceptable to the Government and sometimes what we are doing is, in fact, helping to produce better legislation in this House by doing our work. The Hon Mr Canepa may feel we are getting too much or too little, we think he has got an artificial job personal to holder that shouldn't exist that is why we voted against it. If he works very hard what we said at the time was, we are prepared to support all full-time Ministers getting paid more because they work more hours, fine.

HON CHIEF MINISTER:

You didn't, you opposed it.

MR SPEAKER:

Let us not go beyond the orbit of the subject matter.

HON J BOSSANO:

But the Hon Member has raised whether we are doing enough work for the money we are getting paid. Well, he doesn't want us to do more he wants us to do less. It is much easier not to have read any of the legislation which appears to be the normal practice on the other side because most of the time the answers to the questions that we have put have been given to us by the Hon and Learned the Attorney-General and the Hon Financial Secretary and the rest of the Ministers are there to make sure that their votes get the thing through if we don't convince them. If we convince them and we see a doubt in their face then they go back and they then look at it and they say: 'Yes, there is a valid point there' and we are glad that it should be like that. The House of Assembly should not just be a talking shop and it should not just be a place where we rubber stamp everything the administration cooks up. We are trying to give the people of Gibraltar something in exchange for the money that they are paying us by looking at legislation, some of it very complicated for us because none of us have had legal training, and asking to

be given satisfactory explanations, this is why we want the Committee Stage to be taken later, not because we want to introduce a delaying factor, it doesn't make any difference really whether the Town Planning Bill is passed today or passed next month unless the Hon Member says that all the economic development is going to take place between November and December which will certainly be extraordinary given the normal pace of decision-taking in the Government. And the same is true of the others. It gives us and them and other people an opportunity to look at what is being done and to raise their objections and at the end of the day if we cannot persuade them or if we are not persuaded by others the Bill will still be passed because they still have the majority. But what we are not prepared to do is simply be expected by the Government to come here, the Hon Member yesterday was saying how much better the House of Assembly performs because we try and keep personalities and personal invective out of it and we do, we don't want to talk about the Hon Member's salary, we want to talk about Town Planning and we are saying to him: 'You say that this goes much further than anything that you intended to do and that it is going to hold up development', fine, well then let us leave the Bill for the next House and if you cannot accept this see if there is something that you can accept which will give people who are informed of the decision of the Commission to depart from the City Plan an opportunity to put an argument against it before that decision is turned into reality. That is all we are seeking. We are seeking that the Government having said: 'We are changing the law so that we can act' or else come here and do away with the City Plan altogether, why bother? Why have a City Plan which gives the Government absolute discretion to depart from it whenever they want without anybody having the right to object or to put a contrary view? Why have a City Plan? If this is not acceptable as it stands let the Government leave the Committee Stage for the next meeting, no major hindrance to the development is going to happen between now and December and then let them give us a reasoned reply either why they cannot accept it as it stands or let them come up with an alternative because what we are asking for essentially is that a departure from the City Plan should be public and that members of the public should have the right to go back to the Commission and say: 'I don't think you should be departing from the City Plan' and at the end of the day if their objections are not listened to then they can still rule but they will have ruled at least after listening to those who are being ruled and listening to the views that they have about how they are being ruled.

MR SPEAKER:

Are there any other contributors to the amendment?

HON J E PILCHER:

Mr Chairman, we really cannot take it any further than we have already taken it but there are two basic questions that I asked the Hon Mr Canepa which I will just repeat in case he didn't hear them or that he just didn't want to answer them. This amendment does not take away the right that they have under Section 18A(1) to do what they like, with the only difference that they have to do what they like after having heard the people outside who have an interest in town planning or conservationists or because it is a neighbour of the development. Is he against that system?

HON A J CANEPA:

I am not against that system. What I find extraordinary, Mr Chairman, is that so many of these people who can come along and talk to the Opposition never approach the Government. Am I such a dictator as Mr Bossano says that no one can talk to me? People cannot talk to me, they cannot discuss something with me, they never approach me, they never suggest that they want to come and discuss this sort of amendment? No, give it to the Opposition and see whether the Opposition can convince the Government why such an oblique fashion? I am amazed that people think that they are going to be able to make progress and convince the Government about certain matters without ever talking to the Government because they don't talk to anybody in the Government about it.

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

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

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 G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammit
The Hon E Thistlethwaite
The Hon B Traynor

The amendment was accordingly defeated.

Clause 2 stood part of the Bill.

The Long Title

On a vote being taken on The Long Title 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 G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammit
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members voted against:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

The Long Title stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to report that the Prison Bill, 1986, with amendments; the Imports and Exports Bill, 1986, with amendments, the Town Planning (Amendment) Bill, 1986, with amendments; the Criminal Procedure (Amendment) Bill, 1986; the Marriage (Amendment) Bill, 1986; the Penalty Rates Remission Bill, 1986, with amendments; and the Supplementary Appropriation (1986/87) (No.2) Bill, 1986, with amendments, 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 and on a vote being taken on the Prison Bill, 1986; the Imports and Exports Bill, 1986; the Criminal Procedure (Amendment) Bill, 1986; the Marriage (Amendment) Bill, 1986; the Penalty Rates Remission Bill, 1986, and the Supplementary Appropriation (1986/87) (No.2) Bill, 1986,

the question was resolved in the affirmative.

On a vote being taken on the Town Planning (Amendment) Bill, 1986, 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 G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammit
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members voted against:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

The Bills were read a third time and passed.

MR SPEAKER:

The Hon the Minister for Public Works did say that he wanted to make a statement in connection with an answer he gave to a particular question.

HON MAJOR F J DELLIPIANI:

Mr Speaker, with reference to Question No. 224 from the Hon J L Baldachino, with the supplementary questions and answers, after I went home that evening I realised that I might have misled the House in one of my replies with regard to when the Engineer House project would commence and I think the impression I must have given was that the project itself, the actual building of the flats, would start this financial year when what I really meant was that the site investigations will commence this year and I would not like the House to get the impression that I have said that the flats would be commenced this year. Thank you, Mr Speaker.

PRIVATE MEMBERS' MOTIONS

HON M A FEETHAM:

Sir, I beg to move: "This House deplores that Government has failed to date to meet its commitment to introduce an interim payment for those Government employees who have or are being retired with at least ten years service without a pension and therefore demands that the Government remedies the situation of all these employees who are suffering genuine hardship by granting them immediately a lump sum payment". Mr Speaker, in moving this motion following the sort of exchanges that have taken place under the Town Planning amendment, I could if I really wanted to, go to town on Government on this motion. But that is not the role that this side of the House has attempted to play in opposing Government on matters and so therefore all I want from the Government, very simple, I am not going to make a long-winded speech or anything, all I want is a commitment from Government because everything that needed to be said was said in July when as a result of a consensus and the change in my motion, Government gave a commitment to this House and one of the commitments was that an interim measure would be introduced which Government has failed to do. What I want, basically, is two things from Government: (1) I want a definite date when the legislation will be brought to this House so that the pensions are paid to the people who are entitled to them and the commitment is there; and (2) in the meantime that Government commits itself to give a lump sum payment to these employees as a means of remedying a situation which is not of their making and at the end of it when the matter is finally agreed to, a process of rebate or accounting for could be done and I am sure this would be very helpful to these employees. I am not going to say anything more because everything that needed to be said was said at the July meeting of the House when I moved the original motion.

Mr Speaker proposed the question in the terms of the motion as moved by the Hon M A Feetham.

HON A J CANEPA:

Mr Speaker, I am very grateful to the Hon Mr Feetham for the line that he is taking on this motion. We won't be able to vote in favour of the motion because it 'deplores that Government' etc but I think that I can give him the commitments that he wants. The legislation will be brought to this House at the next meeting in December. We are pending the approval of the Secretary of State, I will exercise my dictatorial streak and hammer away at the Foreign Office and tell them that the Secretary of State must approve the Bill so that we can introduce it at the next meeting of the House. Now, seriously, Mr Speaker, there is no reason why the Secretary of State should not approve that the Bill be introduced. It is ready, it has

been submitted to London over two weeks ago, on Monday I was asking the Acting Establishment Officer to follow up and ask London to give early acquiescence to the Bill so that it can be brought at the next meeting of the House and I will continue to give my personal attention to the matter and try to ensure that we do get an answer from London in time to get the Bill published and introduced in the House. I am sure that Hon Members if the Foreign Office were to be somewhat late in replying, I am sure that they would agree to the suspension of Standing Orders on this occasion to introduce the Bill. Having said that, therefore, I don't think that the question of the lump sum should arise. What is more, to give such a lump sum payment you need to have legal authority, there is no authority at the moment to give a lump sum payment to any of the people concerned because they only establish entitlement to a pension when the twenty years are reduced to ten years as being the qualifying period and a claim for a pension has to be examined in the proper way. So, really, you are in the same position, and you would have to get legislative powers to give a lump sum payment and, as I say, I am determined that the Bill should come to the House next month. When the matter was debated earlier in the year, I had set myself personally the target date in my own mind that before the end of 1986 we had to have the legislation on the statute books so that arrangements could be made to pay these people the pensions that they are entitled to and the retrospection that they are entitled to: I have a note in my diary and I will continue to pursue the matter over the next few weeks on a weekly basis, I can give Hon Members that undertaking, that I will be bothering the Establishment Division frequently and, if necessary, I shall speak to the Deputy Governor as well to try and get an answer from the Foreign Office to what is a formality in this case because they have already indicated that provided that we are prepared to foot the bill, they agree to any amendments to the Pensions legislation and therefore this formality should be seen to quite expeditiously. I can assure Hon Members that I very much look forward to being able to deal with this matter in December and get the pensions paid as soon as possible.

MR SPEAKER:

Any other contributors?

HON J BOSSANO:

Mr Speaker, we are not very clear about what is the exact position because as we understood it when we left it in July the Government had accepted a commitment to provide an interim solution because this has been going on since 1983. The claim in respect of the industrial workforce to reduce the minimum service from twenty to ten years was made in September, 1983, and in 1984 the Government said that they wanted to introduce compulsory retirement at sixty-five which the unions accepted because it was at the time when we had a fairly high level of unemployment

and it didn't make sense to have school leavers not being able, to get employment and people who were seventy-year olds still working and the Government said that that proposal to make people retire compulsorily at sixty-five was linked to a guarantee, which was given in writing to each individual worker, that they would be getting a pension if they had between ten and twenty years service back-dated from the date that they had retired. When that was done in January and in February, 1984, it was not unreasonable, people got paid a gratuity, not unreasonable for those workers to assume and for the union to assume that we were talking about a situation where three months, four months, six months later people had the gratuity to tide them over between their retirement and when they would get their pension back-dated. Given the complications that arose because the Government then said: Well, although we are talking about industrial workers because non-industrials already get a pension after ten years' service and non-industrials in any case retire at sixty compulsorily and it is only on very exceptional cases that they are allowed to remain in service after sixty, given that the Government's response was to say: "Well, we cannot just do something for the industrials, we have to do it for everybody". The union throughout has been pressing on the case of the industrials: "It is not these people's fault, if you want to change it for everybody these people still have a problem and the problem becomes more acute with every passing week". I am sure that Government Ministers must be subjected to, if not to the same degree of lobbying because obviously in a way it is much easier if you are a retired Government industrial worker who has been in the union all his life to go to the union every day to find out if there is any news on the pension but I am sure that they must have been approached as well by individuals on this matter. We thought we had solved the problem by the Government accepting in July that if the legislation is more complicated than a wider thing let us deal on an ad hoc basis with making some kind of payment, let's face it, we eliminated the elderly persons pension from the statute book and we are still paying people an elderly persons pension without the authority of any law because we vote the money in the budget. What is there to stop the Government, if they are satisfied that now they have got the legislation ready and that the legislation is going to be acceptable to everybody and so on, fine, they have been at it for a very long time, we don't know what the legislation is going to do. Is the Government talking about simply putting ten where there is now twenty on the existing Pensions Ordinance because clearly to satisfy the workers all that it requires is a minute amending piece of legislation, all that it requires is a piece of legislation that says where the figure "twenty" appears in the Pensions Ordinance substitute "ten" and everything else stays the same or are we talking about a new Pensions Ordinance coming to the House next month?

HON A J CANEPA:

If the Hon Member will give way. We have already obtained the approval of the Secretary of State, approval in principle to the introduction of the Unified Pension Scheme. That approval we have. Incorporated in that, as I think he knows, was the provision of lowering a minimum qualifying age for industrials from twenty to ten years. So what we have now said to the Secretary of State is: "We have already agreed to the Unified Pension Scheme, we now want as an interim measure to advance and deal with the question of reducing the minimum qualifying period from twenty to ten and we want to proceed with that separately" and that is what we are awaiting for their approval to and then we bring a motion to this House to get a resolution. To get a resolution only because it has to be given retrospective effect otherwise we could proceed by regulations. What can be done, I think, in order to expedite matters is that already in anticipation of approval from London and in anticipation in the knowledge that the resolution will go through this House, what I think could be done is that the Establishment Division could be asked and the Treasury could be asked to start investigating the claims from these fifty or sixty people so that after the legislation is passed the investigation process doesn't start then because if it commences then, a number of months are going to elapse and I think we can gain time now in the knowledge that that is the intention of the Government, these can be investigated. Of course, there is, in my view, no legal authority to pay and probably the Principal Auditor would say that if we paid before the legislation was enacted, the Financial and Development Secretary could be surcharged because it has been done without legal authority. But I think that that can be done. I think we know, by and large, who these people are, there are fifty or sixty of them but, of course, a study has to be made in respect of their service, the records have to be examined and what I think they ought to be doing is getting on with that job and gain time. That I think the Government can give a commitment to.

HON J BOSSANO:

I am grateful to the Hon Member for that clarification. I think if it is a question of an interim solution reducing the age then clearly that meets fully the point that we have been asking the Government to meet and we are very happy to hear that. I certainly agree with him that we don't want to have a situation where it takes another six months after the law is changed before the payments are ready. I can tell him that there is as a general rule a great deal of dissatisfaction in Government service in this respect because in the UK Departments where the pension has got to be calculated in Britain, the normal practice is that since they know when people are going to reach the age, six months before they reach the age they send them an advance notice saying: "We are very grateful for your service, we are just reminding you that you are due

for retirement and we are now working on your pension" and people are prepared for the advent of their retirement and when the time comes they finish on a Friday and the following week they have got their money. Clearly the system works well, it works smoothly and there are no complaints. One could understand in the Government of Gibraltar if it was perhaps two or three weeks but sometimes we have got people who leave the service and three months later they still haven't received

HON A J CANEPA:

If the Hon Member will give way. Apparently what has happened with the industrials is that - I don't know why - but there are many departments that have got deficient records. For some reason or other many departments never kept proper records of the employment of industrials, I cannot understand why. In the City Council that didn't happen, we always find that we are able to pay the pensions of former City Council workers much more expeditiously than industrials who are employed in other departments. Public Works is not too bad, they have got pretty good records, but it is the departments that employ a relatively small number of industrials where one is shocked to hear that records don't exist beyond a certain date, it is astonishing but it is a fact of life.

HON J BOSSANO:

Mr Speaker, I think on that basis we are satisfied with the answer that we have had from the Government.

MR SPEAKER:

Does the Hon Member wish to reply?

HON M A FEETHAM:

No, not really, the thing has been made quite clear, why extend any more the discussion.

HON CHIEF MINISTER:

I am afraid that if you put the question we shall have to vote against it because we are deplored, unless they withdraw it we have to vote against it.

MR SPEAKER:

Does the Hon Member wish to take a vote on it?

HON M A FEETHAM:

Mr Speaker, in view of the assurances we are prepared to withdraw the motion.

MR SPEAKER:

Does the Hon Member have the leave of the House to withdraw the motion?

The Hon M A Feetham obtained the leave of the House to withdraw his motion and the motion was accordingly withdrawn.

MR SPEAKER:

The Hon and Learned the Chief Minister gave me notice yesterday that he wished to make a statement. I will now call on the Hon and Learned the Chief Minister.

HON CHIEF MINISTER:

Since I understand we are going to adjourn until after lunch to start the last motion, I thought I would save some time in making a short statement which is, I think, of reasonable public interest.

In answer to Question No. 63 of 1986, asked by the Hon Leader of the Opposition on 24 March this year, I confirmed that a new post of Deputy to the Administrative Secretary had been created. I said at the time that we had been on the point of issuing a press release on this matter but had held it back because the Hon Member's question took precedence.

In answer I explained the reasons for the creation of the new post. I said, inter alia, that the new post would provide scope for training a successor to the present holder of the post of Administrative Secretary.

In August, the Administrative Secretary wrote to me and to the Deputy Governor stating that, for personal reasons, he had decided to retire. His retirement will take effect at the end of this month. For the reasons that follow, it will be seen that this is not the appropriate time to render tribute to Mr Pitaluga's excellent public service.

Mr Montado, the Deputy Administrative Secretary, will by then have had some eight months' experience of the work of the Administrative Secretary's office. He has, if I may say so, taken to this like a fish to water and I am confident that the training of a successor to the Administrative Secretary to which I referred in my answer to Question No. 63 has been adequate. Mr Montado, as foreshadowed in my answer, will accordingly be appointed Administrative Secretary by the Governor on 1 December, 1986, (curiously enough, exactly eighteen years to the day on which Mr Pitaluga took over from Mr John Clinton in 1968).

Mr Montado's present post of Deputy Administrative Secretary will be advertised in this week's Bulletin of Circulars.

There is one particular area in which I have asked Mr Pitaluga to continue to work, on a part-time basis, for the Gibraltar Government. This is the area of external affairs. Mr Pitaluga and I have worked closely together in this area since we first went to the United Nations in 1963. During this period of twenty-three years we

have together accumulated the experience and the lore of the Spanish question. This cannot suddenly be absorbed by a newcomer to the post and we are therefore working to a plan whereby Mr Montado will be brought closely into this area of external affairs so that he will assume full responsibility for it in due course. Already, he is working on previous papers and background and I have decided that he, as well as Mr Pitaluga, will accompany me at meetings with the Secretary of State, the next Ministerial meeting with the Spanish Foreign Minister and our visit to the European Parliament in February.

It must not be thought, against the background which I have explained, that the retention of Mr Pitaluga as a part-time adviser will in any way dilute the post of Administrative Secretary. Quite the contrary. Apart from becoming involved in external affairs issues, as I have described, Mr Montado, who has done a first-class job as a Director of GSL, will continue to carry out this demanding function for at least the next six months, a function which is not a part of the present duties of the Administrative Secretary.

HON J BOSSANO:

Mr Speaker, I don't think there is much in the way of clarification that I can ask the Hon and Learned the Chief Minister but I would like to give a response of how we are receiving the news.

MR SPEAKER:

It has always been normal for exclusively the Leader of the Opposition to be able to do that but without debate.

HON J BOSSANO:

I think when the Hon and Learned Member mentioned the appointment of Mr Montado to Administrative Secretary the response from our side was an indication that we think it is a wise choice from our personal knowledge and our contact with him when he has been acting on behalf of the Government. We tend to share the view of the Government that Mr Montado will prove to be quite up to the job of handling that position. I am afraid we cannot go along with the part-time re-employment of Mr Pitaluga by the Government. If it is a question of giving the Chief Minister political advice on policy on external affairs which is excluded from our province by the existing Constitution and will continue to be excluded from our province if they really mean to go for free association and if they ever succeed in getting it. Clearly, we are talking about paying out of public funds for a post which is not a civil service post, which will be occupied on a part-time basis by a retired civil servant when the Chief Minister, I think, in the last debate on the motion on retirements and on the pensions which we brought to the House was saying how wrong it was for people to retire at fifty-five.

HON CHIEF MINISTER:

I don't agree with it.

HON J BOSSANO:

I think if the Chief Minister is creating the precedent that if you retire at fifty-five you get your pension and you get re-employed on a part-time basis you are giving people an even bigger incentive to retire at fifty-five. We do not support it and I think we need to make it clear that when the Government comes to the House for funds to pay for this part-time post we will be voting against it and we think this is a major departure of policy and I don't think there is a precedent for this and it is a precedent that is being created. The fact that we are talking about advice, we recognise that the Hon and Learned the Chief Minister has worked very closely with Mr Pitaluga but, after all, the whole ethos of the civil service is that the civil service serves whoever is in Government and I think for Mr Pitaluga who is now going to be a private citizen after the end of this month to be the adviser to the Chief Minister is something that should be financed out of AACR party funds not out of the public funds of the people of Gibraltar, quite frankly, and we don't agree with this and I think it is better that we make it absolutely clear on this the first occasion that the House has been given an opportunity to look at it.

HON CHIEF MINISTER:

I am very disappointed that the Hon Member hasn't even thought of what kind of arrangements are intended for him to have judged whether the appointment was right or wrong. I will tell him that it is not going to be on a what I would call a full part-time basis, it will be on a basis of hours required up to a maximum of ten or fifteen hours a week, if at all, as and when required and, in fact, the terms of remuneration haven't even been discussed. But let me tell the Hon Member that this is no precedent at all. When Mr Howard Davis - as he then was - was made Financial Secretary the then Financial Secretary, Mr Charles Gomez, was made Finance Officer precisely to put the input into Mr Davis' job as Financial Secretary in proper perspective for a while and the additional problem is that Mr Montado, first of all, has got to be acquainted with the details of the matters connected with foreign affairs and, secondly, that he has not been able either to do that or will be able to do it as much as I would like him to in the next few months though he will be brought in and, as I said in my statement, he will be accompanying us to get the experience because he is doing the job of Director of GSL which has nothing to do with the job of Administrative Secretary and let me say that the Government is most grateful to him for the way in which he has defended the Government of Gibraltar in the Board of GSL and in everything connected with

GSL. I would perhaps ask the Hon Member to withhold his judgement until the time comes. He is not a political adviser to me, he is going to be an adviser to the Chief Minister and this is not unheard of either in Whitehall or in many other places. But, anyhow, when I make the arrangements and I have to ask for that which is a secondary point as far as I am concerned, the Hon Leader of the Opposition can have his say but I would have thought that the off the cuff reply was less than just to somebody who has given such good service to Gibraltar. But in any case, I am sure that he will say that he doesn't mean the person, it is the principle, well, the principle has been there, the precedent has been there and I think that it is in the interest of Gibraltar that certainly, for a while and I don't think it will be for very long, for a while he will continue to advise me.

MR SPEAKER:

I think we will leave it at that.

HON J BOSSANO:

Mr Speaker, the Hon Member has made a statement and I haven't asked any questions on that statement and I have given our position. The Hon and Learned Chief Minister, as far as I am concerned, has just made another statement.

MR SPEAKER:

No, he has given you an explanation.

HON J BOSSANO:

I haven't asked for an explanation, Mr Speaker. When I stood up I said that as far as I am concerned there is nothing as regards clarification that I need to ask in this statement, can I make a response to the statement and you said: "Yes, the Leader of the Opposition is allowed to make a response". I have made my response.

MR SPEAKER:

But we must not debate.

HON J BOSSANO:

Well, I think then you ought to have stopped the Hon and Learned Member from saying the additional things he has said otherwise I have to have the right to answer what he has said.

MR SPEAKER:

No, the mover has always got the right to the final word.

HON J BOSSANO:

But he is not moving anything.

MR SPEAKER:

I know, I am talking about principles, I am not talking about what you are doing now. Anyway, what do you have to say?

HON J BOSSANO:

What I think I need to say is that we are not responding to the amount of money that Mr Pitaluga is going to be paid for doing this part-time work, this is why the level of remuneration is not a consideration. The example that the Hon Member has given which was before my time in this House, as I understood it, was where Mr Gomez was reinstated in the civil service as a full-time servant, paid by the civil service. This is not an appointment by the Public Service Commission, this is an appointment by the Chief Minister. Although the Government and the Chief Minister has announced that the successor to Mr Pitaluga is going to be Mr Montado, presumably this is a normal civil service appointment governed by the Public Service Commission and the Governor and all the rest of it, the Montado appointment presumably, like Mr Pitaluga's appointment was originally and like Mr Gomez's appointment in relation to Sir Howard Davis was also a civil service appointment.

HON CHIEF MINISTER:

This is a civil service appointment.

HON J BOSSANO:

Then if it is a civil service appointment then I don't see how it is a matter of Mr Pitaluga being employed as the adviser of the Chief Minister, surely then Mr Pitaluga will continue to be a civil servant.

HON CHIEF MINISTER:

Yes.

HON J BOSSANO:

Yes, and therefore Mr Pitaluga will be a retired civil servant re-engaged and being paid which presumably will be something that the new pension legislation will permit, that people collect a pension and get a second salary because I have been told, Mr Speaker, by the Government already that there will be no further appointments of retired civil servants back into the service in a wider context and what we cannot have is the Government making a set of rules for one individual which don't apply to anybody else. Certainly, we shall have to take a very

close look at the situation but when the time comes if it isn't going to be a question of a specific amount of money being paid which the House will have to vote then, presumably, there are in the current Estimates of Expenditure under personal emoluments no provisions to pay Mr Pitaluga and we have just been told that we cannot pay the fifty-five pensioners who have been waiting for their money

HON CHIEF MINISTER:

Of course and when it arises I will come to the House and ask for it and then you can oppose it.

HON J BOSSANO:

Then we will have to see how and which way it is going to be done.

HON CHIEF MINISTER:

That is right.

The House recessed at 12.45 pm.

The House resumed at 3.25 pm.

PRIVATE MEMBERS' MOTIONS (Continued)

HON J BOSSANO:

Mr Speaker, I beg to move that:-

"This House -

- (1) notes that Her Majesty's Government has unilaterally decided to remove the ceremonial guard from the frontier with Spain in the knowledge that such a move would not be well received in Gibraltar
- (2) further notes that the removal of the frontier gates with Spain has been under consideration and that a decision on this issue has been left on one side for the time being
- (3) expresses its concern that the action of Her Majesty's Government might be interpreted as a weakening of the commitment to stand by the people of Gibraltar in their resolve not to pass under the sovereignty of another state
- (4) requests Her Majesty's Government to note that the views of the Elected Members of the House of Assembly and of the people of Gibraltar continue to be that no change should take place in Gibraltar or arrangements discussed with the Government of Spain which could be interpreted

as assisting in any shape or form the process of "osmosis" or facilitating the eventual weakening of the ties between Gibraltar and the United Kingdom as a prelude to making Gibraltar dependent upon the Kingdom of Spain, and to act in consonance with these views".

Mr Speaker, clearly the motion should have been heard in this House at the time that it happened and clearly the Government did not wish to accede to the request of the Opposition to convene a meeting of the House to discuss this matter precisely because they wanted to do what they have done, to camouflage the issue, to defuse it and to let the motion be brought to the House now when the public interest is not centred on the removal of the guard and the implications of the removal of the guard and the implications of the whole scenario of Anglo/Spanish relations in the context of Gibraltar's future. There can be no other explanation because when the Opposition put this proposal to the Government the Hon and Learned Chief Minister's response was that to call a meeting of the House of Assembly especially for this issue in the climate of the public discontent would generate anti-British feeling and it was nonsense then, it is nonsense now and he knew it was nonsense when he was saying it, Mr Speaker. What did he do instead? He called a meeting of the representative bodies and presented a memorandum which captured much of what there is in the motion and we were grateful that the Government had gone so far in reflecting what we had wanted included just like we welcome when the Government accepts amendments or ideas from this side of the House in any debate. That memorandum prepared by the Government was taken away by our party and by the other representatives there and the Gibraltar Trades Council came back with proposed amendments and we came back with proposed amendments and we found that the amendments that the Opposition had put were almost in their totality acceptable to the Government and were incorporated. We found that some of our amendments were not acceptable to the Trades Council and we found that some of the amendments proposed by the Trades Council were not acceptable to either the Government or ourselves. So we can say that the joint memorandum, in fact, reflected in the majority of its contents the view of the Government and the Opposition and this is what we had intended should happen with the motion in the House. We then had a reply from Her Majesty's Government, that reply was received by the Government and we were informed that the Government was in possession of the reply and that a meeting was being convened when the Hon and Learned the Chief Minister was in the United Kingdom by the Hon Mr Canepa acting in the place of the Chief Minister and we were told that that meeting was due to take place the following day to consider the reply received from UK. First of all, we didn't think that the Government had any greater right to that reply than any other signatory to the memorandum since, in fact, the memorandum was as much ours as it was theirs. We asked to be given the reply there and

then so that we could study it and come back the following day to a meeting with some sort of response as to what we thought of it. We were refused that, we were told by the Hon Mr Canepa that we could not have the reply until we arrived at that meeting and we didn't think he had the right or his Government had the right to study the reply to a joint memorandum and come back to the meeting with their own ideas on the subject.

HON A J CANEPA:

If the Hon Member will give way. I said that the reply had been given to me by the Governor and that it was the Governor who would be releasing it, that I had no right to release it because the Governor was releasing it to me and was asking me to make arrangements so that he, the Governor, could have it released to the media.

HON J BOSSANO:

I wasn't talking about the media, Mr Speaker, I wasn't talking about releasing it to the media, what I am saying is that if the Governor gave him the reply to our memorandum presumably he gave him the reply to our memorandum so that we could all have the reply not just him.

HON A J CANEPA:

No.

HON J BOSSANO:

I see, so the Hon Member is saying that the Governor was telling him that the rest of us had to find out when it was made public and not before?

HON A J CANEPA:

No, that the rest of you would find out when arrangements had been made for that to happen.

HON J BOSSANO:

If it is a question of the Governor interfering in local affairs then we will take the matter up with the Governor, Mr Speaker. As far as I am concerned I am very clear on what happened. I rang up the Hon Member, he told me he had the memorandum with him, I said: "Can you let me have a copy so that I can look at it before tomorrow's meeting?" and he said: "No" and I don't think he had the right to say no, and therefore we decided that we would send somebody to that meeting to collect the memorandum and bring it away and come back giving our considered reply to the memorandum when we had studied it. In fact, the Government chose, having presented the memorandum to people who had not seen it before, to issue a press release immediately afterwards saying that they welcomed the reply or that the reply was satisfactory. Of course,

it means that they effectively made a nonsense of the memorandum as a joint effort because what did they do? They actually got a situation where the Opposition was not able or willing to commit itself without having given it some thought, no on the spot decision and being presented with something and saying on the spot: "It is satisfactory" or "It is not satisfactory". The Trades Council logically took the same line that they would have to go away and study it and consult other people and effectively it has been welcomed by the Government alone because I don't think the other representative bodies, quite frankly, did anything other than follow the lead provided by the Government. I don't believe the European Movement, for example, which is a body set up by Government and Opposition and independents, can be in a position to welcome something or not welcome it if the constituent parts of the European Movement take different positions. If the Government is satisfied and the GSLP is not satisfied how can the European Movement be satisfied, surely only half the European Movement is satisfied, the half that is the Government's.

HON A J CANEPA:

The independent part of it.

HON J BOSSANG:

Well, that is not the end of the story either, the European Movement may still have to come out on that one and say on what basis the independents decided to support the Government view and not the Opposition view when the European Movement has always tried to take an impartial position on issues where there are party political differences. The whole idea of the European Movement is that when it is a matter of political controversy, the independents stay independent, they don't agree with either the Government or the Opposition. Certainly, I don't think the Housewives or the Youth Association were in a position, quite frankly, having been presented with the reply from Sir Geoffrey Howe, to assess its political significance if we needed more time. They must have said to themselves: "If the Government is satisfied it must be okay", and I think one can put the responsibility on them so the responsibility lies fairly and squarely with the Government. I think it is a pity because that document contained a great deal that is important to Gibraltar and is important to the Gibraltarians and it was important that it should be supported by all Members of the House as it was when it was sent to UK. That document, Mr Speaker, did not question the position of Her Majesty's Government in honouring the preamble to the Constitution or in having to respect our right to self determination. That document made clear that the House of Assembly is opposed to the process of osmosis. That document made clear that we wished Her Majesty's Government to act in consonance and on the basis of the advice they were given by the representatives of the people of Gibraltar. It was specifically asked that if a decision was taken at any stage

which could have in the judgement of the Government of Gibraltar negative implications or be possible of interpretation in that way then if the advice that they got was against it the action should not be proceeded with, it is specific and clearcut. We asked specifically Her Majesty's Government, having previously shelved a decision on the frontier gates, to unshelve that decision, to take a decision, to reject the removal of the gates, to communicate the rejection to the Spanish Government and to inform us that that had happened. The answer to all that is no. How can you be satisfied if you get told 'no' to everything that you have asked for? I cannot understand it unless, in fact, it was just, and it is an unpalatable thing to have to face, if all that this joint effort reflected was a desire on the part of the Government, on the part of the AACR as a political organisation, to get over the problem by appearing to do something, then it is a very bad thing for Gibraltar and it is a very sad thing for us here in this House if that is all it was. If we had taken a joint stand, a clearcut and a tough stand then why are we not still there today? What is the position of the Government today? If they vote in favour of this motion they are reiterating to a very large extent what we put in the memorandum which has been rejected by the British Government which satisfies them and if they don't vote in favour of the motion then they are going back on what they signed in the memorandum. Where do the Government of Gibraltar stand on this issue? Do they stand where the British Government stands or do they stand where we and the people of Gibraltar and the memorandum stands? Because clearly there are two distinct positions, they cannot run with the hare and hunt with the hounds like they have been trying to do for so long. The position of the British Government is clearcut and it is understandable. The British Government says: "I am responsible for you and I will listen to what you have to say as I have listened in the past and having listened I will decide what is good for you and either act on the basis of your advice or overrule you like I overruled you on keeping the frontier gates closed after midnight and like I have overruled you on the guard and like I will overrule you tomorrow on the airport if I need to". That is what the British Government is telling us. It may be that is why the party in Government feels that there is a need now to make an election issue of free association, I don't know. I don't know what kind of difficulties they may be facing in their relationship with the British Government that they feel that the time has come to decolonise Gibraltar. If all that is going to happen is that it is going to take us another twenty-two years like it has taken since the Hon Member took it up in the United Nations in 1964 then, of course, we will all die of old age before we see free association taking place. But if it is a reflection of the Government wanting home rule for Gibraltar, if that is what they are talking about, then let us start by putting our own house in order, Mr Speaker, let us start by doing what we can do before we are asking to be able to do more.

What the memorandum sought and what the motion seeks is in the last few words of the motion. We are asking Her Majesty's Government to act in consonance with our views, that is the key. It is not enough for the British Government to say: "We will continue to take notice of the views of the Government of Gibraltar" which means "We will continue to ignore the views of the Government of Gibraltar" because otherwise what are we protesting about? So we don't want them just to continue taking the same amount of notice that they have taken until now, we want them to take more notice and it is not satisfactory to be told that they are going to continue the same because if it is satisfactory we should have been satisfied before, there should have been no need for a memorandum and there is no need for this motion. The position of the British Government is no change, 'we have taken note of what you have said'. Clearly they picked out of the memorandum what suited them and they ignored what didn't suit them. So they said: "Yes, we agree with you entirely we have got to do something about military aircraft", forget all the rest, that is the only bit they picked up. Quite frankly, at the end of the day the military aircraft is a problem for them not a problem for us. The aircraft are going to carry on using the Gibraltar airfield independent of the degree of use they can make of Spanish air space and we are concerned to ensure that no unnecessary hazards are put in the way of either military or civilian aircraft flying into Gibraltar and therefore we support them but at the end of the day if it means that they have to spend more money on fuel that won't make the use of the Gibraltar airfield, it isn't that finely balanced that it is going to make a difference. If the RAF needs Gibraltar they will keep on using it and if they stop needing it they will stop using it independent of anything the Spanish Government may do as regards the use of Spanish air space. But it is significant that of all the specific things we mentioned in the memorandum the only one they showed any degree of enthusiasm for - and the other one was the cordial relations with Spain - that is to say, they picked three words totally out of context because what we were highlighting was that cordial relations with Spain does not imply osmosis and they said: "I am very glad you are in favour of cordial relations with Spain", forget osmosis, that doesn't exist, we haven't mentioned that. It is not the reply that we want and it is not the reply that Gibraltar needs. It may be the reply that one has come to expect when the Sir Humphreys' in the Foreign Office get together and start drafting the reply and make sure that it is couched in the kind of language that impresses the uninitiated who came away with the conclusion that something of substance had been said and then when you actually get down to deciphering it you remove the whereabouts and the wherefores and the fullstops and the commas and the maybes and the perhapses and you are left with nothing and it is all a magical illusion. I cannot believe that if it is an illusion that is transparent to us it is an illusion that deceives the Hon and Learned the Chief Minister

who has been around for so long and claims such experience in these matters, experience which we will not challenge, he has undoubtedly been dealing with the Foreign Office much longer than we have and at closer quarters and therefore he knows that what I am saying is absolutely true, that the answer that we have had is an answer that leaves out anything that is important, commits Her Majesty's Government to absolutely nothing and just sounds good and effectively what we have had is a pat on the head from the benign colonial master who has said to us: "You have had your little fling, you have had your tantrum and you have kicked and screamed and okay now, fine, I have listened to you and now that you have let off steam now you be a good boy and get back to your place in the classroom and don't make any more noise because you really are distracting me from my important work with Gorbachov or whatever, you sit with your little nonsense in Gibraltar". And, of course, we or at least half of us have dutifully said: "Thank you very much" and the other half have said: "I am not standing for this, this is not a satisfactory reply and we want a reply to what we asked. We asked you to come out saying 'the gates will not be removed' having said the decision is on ice". What did they come back and say, that they had taken the position of putting it on ice in accordance with the advice of the Chief Minister, yes, that was the advice he gave them initially. He has given them new advice because the memorandum was signed by him. What is the British Government telling the Chief Minister and me and the people of Gibraltar? That they liked the first advice so they took that one, they don't like the second one so they ignore the second one. And we have told them quite categorically and quite clearly that we want, I mean, the value, of course, of bringing it to the House and the value of speaking on the subject and the value of getting it reported is that even if the British Government doesn't communicate to the Spanish Government our feelings on the matter the Spanish Government will have an opportunity of finding out for themselves by the reports that get printed or get published or get put on television on what has taken place in the House and therefore the British Government who has an obligation in this subject to accurately reflect to Spain what we are saying and clearly doesn't want to do it because we have asked them to do it and they haven't answered, we have been specific in asking for that as well. We have said to the British Government: "This is how we feel. We want from you, first, that you accept the views we are expressing to you. Second, that in future you will act in accordance with those views and not ignoring them or be contrary to them and, thirdly, that you will let the Spanish Government know that that is what is happening and you will let the Spanish Government know that the fact that we want to live in harmony with our next door neighbours doesn't mean that we are going to help open the door for our next door neighbours to come in and take away our furniture, it doesn't mean that, and one thing does not lead to another inevitably. And

if the first, the harmonious and the friendly relations is intended to be a method of achieving the second then since we are against the second it will interfere with the first". That is the message that we have sent back, it is not that we want to have bad relations, it is that if having good relations means that they skin you, well, then you have bad relations so that they don't skin you, that is what it means. And that message needs to be put across because all the time I think we have been careful not to give the impression that it is a question of being hostile towards Spain or hostile towards the Spanish people or hostile to the people who live next door and many of whom are now earning their living in Gibraltar because we treat them as third world citizens and we have got a bias against them, it isn't that. It is that we have to make sure and clear that just like we were concerned that the removal of the guard was not misinterpreted and we were careful to say that we were not interpreting it like that, what we were saying was that it was capable of interpretation that way, was not misinterpreted as a signal to Spain that Britain was pulling out of Gibraltar and making it easier for Gibraltar to be taken over, that we didn't want that kind of wrong interpretation to be put on it, equally we didn't want the commitment to good neighbourly relations to be misinterpreted as meaning that there was a commitment to assist in osmosis and assist in the take-over of Gibraltar. It was a matter of satisfaction to us that the Government should be willing to put its commitment down in that paper as they have done on other occasions in other motions on this or related subjects like the airfield on the question of osmosis, having said a number of times here that they are opposed to the process of osmosis, we are opposed to the process of osmosis and therefore what we have tried to do with the motion and what we have tried to do with the memorandum and what we have tried to do on a number of occasions is that independent of the very wide range of issues where we have got totally different views from the Government and a whole range of economic and social issues, on certain fundamental issues we can still agree. The Government may say they support the Brussels Agreement and supporting the Brussels Agreement and opposing osmosis is not incompatible. We think it is incompatible but the fact that we think it is incompatible is neither here nor there. We are opposed to the Brussels Agreement and we are opposed to osmosis. We would prefer that they should be opposed to both but if they are opposed to one and not to the other then, fine, we will go together on the thing where we are together in opposing osmosis even if we are not together in opposing the Brussels Agreement. And it is to try and ensure that we move forward in unity in the areas where unity is possible that the idea of recalling the House of Assembly and the idea of presenting the motion was brought and, quite frankly, we are doing it now because we said we would do it and because we have an obligation to put that on record here in the House of Assembly which is the officially recognised forum representing the people of Gibraltar. The representative

bodies are self-appointed representative bodies, nobody else elected them as representative bodies. The Gibraltar Trades Council or the Chamber of Commerce represent workers and traders for other purposes. It is a useful and a valid thing to sound out the opinion of different sectors of the community on policies, we recommend that approach to the Government but at the end of the day when it comes to giving political leadership the people who have got a responsibility to give leadership in the political arena is not the Chamber or the Trades Council or the Housewives or the European Movement or the Youth Association, it is the AACR and the GSLP because the people have chosen that it should be. If the people had chosen to be represented politically by somebody else we wouldn't be sitting in this House, somebody else would be doing it. We have been given the job of giving political leadership, it is in Gibraltar's interest and to the extent that it is possible for us to give the same kind of leadership on fundamental issues about Gibraltar's future and about the relationship between Gibraltar and Spain or the relationship between Gibraltar and the United Kingdom to the extent that it is possible to move together in any one of those areas, we believe that we should do it and we believe that we should try and do it with the Government if the Government is prepared to meet us halfway on any of these points. Where it isn't then we each have our responsibility to give the kind of direction that we feel is best for Gibraltar. They may have to give one leadership and we have to give another but we believe that the response to the reply of the Secretary of State to the joint memorandum has, in fact, undone to some extent the good work that was done in the memorandum and it is highly regrettable. We cannot understand how the Government can be satisfied with that reply. If they are satisfied with the reply they should never have sent a memorandum in the first place.

Mr Speaker proposed the question in the terms of the motion as moved by the Hon J Bossano.

HON CHIEF MINISTER:

Mr Speaker, let me say that we are delighted that this motion should be aired now in accordance with the Standing Rules of the House and in accordance with the right Hon Members opposite have to bring motions. In our judgement, at the time when it was our decision whether to recall the House during the recess, we did not think that that would be the best time for the motion to be debated. That is a matter of judgement, the Hon Leader of the Opposition can say that I am talking nonsense, that I know I am talking nonsense, I could say that for three-quarters of what he has said today. All he has done is his usual rhetorical going round the same thing and telling us what he has told us so many times which really misses the whole point, if I may say so, of the crux of the matter not only of this motion but generally of our relationship with the United Kingdom. And it ill behoves him

to have treated the representative bodies in such a cavalier fashion as he has treated them now. The Womens' Association - what do they care? The Youth Association - self-appointed; The European Movement - half of them are elected by us and they should have asked us for our views; Chamber of Commerce - self-appointed, except perhaps for the President, the President of the Chamber of Commerce is appointed by members, he was returned unopposed. To deal with that in such a way now, because they agreed with the response of the Secretary of State, does not really show that he had any faith or any regard for their opinion when he sat round the table with them. Members will remember that certainly the Womens' Association made a contribution in the course of the debate of the preparation of the memorandum.

HON J BOSSANO:

Their contribution was that we should have the guard back, wasn't it?

HON CHIEF MINISTER:

Whatever it was they made a contribution. If the Hon Member wants to join the Conservationists to get their votes and he now wants to be hostile to the Womens' Association, remember that tomorrow we may be seeing him representing the Womens' Association for something they want because they think there may be something in it for them. We can all play at the same game. But the question that arises now, of course, is mostly dated and the difficulty that the Leader of the Opposition has had with the motion is that part of it, as I will show, part of it is already past, whatever he may say. And where I think his thinking is wrong is that he feels that apart from the regard and the relationship that one has to have with London, that we should hold the reins of everything that is related to our affairs and unfortunately though he does not dare to proclaim himself an independist and claim for independence, I just saw him on television dismissing free association, I suppose because it doesn't suit him to say that that may be a good way of dealing with the matter, and now he expects that without independence, without free association London should do whatever we want them to do. London - I am not speaking for them, they can speak for themselves - but the Hon Leader of the Opposition completely ignored or wished to ignore the exact nature of the relationship between Britain and Gibraltar, both constitutional and factual, completely ignored it. And with that ignorance, with that wrong conception of the relationship, of course he can go on speaking about motions and ideas that could be valid or could not be in the United Kingdom. At the time, and I am quite satisfied that it was the right decision at the time because the House was in recess and because I felt that there was a need to avoid the creation of what would then have been the creation of

anti-British feeling in Gibraltar which I think the Hon Member agreed with me was desirable not to create, my judgement was that that would have done it, it just may not have been, we can differ on that, but I had to take a decision whether to call a meeting or not and I took a decision that I thought was the right decision and it was for that very reason which the Hon Member agreed but may not have agreed that it would have done it at that time. Of course, weight is given in London to motions which are passed in this House. Equally, I think, and in fact more, to some extent, certainly a memorandum subscribed by all the Members of the House and subscribed by the representative bodies as I will show requires the attention not just of the Foreign Office but of the Secretary of State himself. The reply to the memorandum to which I will come, point by point, is not the reply of the Foreign Office, it is a reply of the Secretary of State signed by him as a letter but signed by him as Secretary of State so he bears full responsibility. It is no use talking and then Members grinning, we listen to Members opposite with respect. You can start laughing outside if you want and if you want to have a proper debate you should listen to me with the same seriousness that I have listened to you and so should Mr Perez. If you want to laugh you are welcome to laugh but perhaps we will leave you here to laugh on your own. I think we merit a little more respect than that, Mr Leader of the Opposition. Anyhow, the point is that the concept of our relationship with the United Kingdom is completely misunderstood by the Hon Member and he feels that Britain should be signing on the dotted line of everything we want. Unfortunately, I don't say that with any happiness but, unfortunately that is not the reality of the situation. The reality of the situation is to the extent to which we have been able to carry Britain with us throughout the years in standing by the rights of the people of Gibraltar, that is the reality of the situation. The real issue at stake on this question, as fully recognised by the representative bodies, was not the removal of the guard which has created all this fuss, was not a military one, nor did the removal of the guard make any difference whatever to Britain's actual and legal sovereignty over Gibraltar. The real issue was purely a symbolic one which people took badly and which I am on record as having taken badly from the very beginning and which I disclosed at the time when I didn't want any misunderstanding about the matter and I disclosed the correspondence which had taken place. But it was for this reason alone that we regretted the British Government's decision. As far as we are concerned we consider that the matter has been done and finished, that business, there may be other things in the motion that are important but that particular issue has been finished because the Government together with the other representative bodies except the Gibraltar Trades Council, felt that the reply was satisfactory. But let us look at the main points of the Secretary of State's reply and let us remember that that reply took

the form not of an official memorandum or despatch but of a personal letter, as I said, from him. And let me also say that I am glad that the Hon Member gave credit that the memorandum tried to cover the points made in the motion. It would have been a nonsense to have called a meeting of representative bodies to represent what was in the motion or to represent something else that was in the motion. It was a substitute for the motion and in order that it should be a proper substitute for the motion we put in what was in the motion and, indeed, added more in the course of the debate. And when I said that the memorandum was signed by the Secretary of State I want to emphasise the difference that there is sometimes in official notifications from the Foreign Office as against political notifications or answers and though there is the normal phrase "Ministers feel that" it means, really, that the Minister has seen the papers. Anyhow, that is what the practice is that Ministers have seen the papers but it is a very different thing when the Secretary of State himself makes himself responsible for a reply. That, if anything, whatever the reply says is, if I may say so, a regard for the extent to which the questions of Gibraltar are dealt with at the very top. I remember in the difficult days of the restrictions, I never dealt with the Secretary of State, I dealt with either Mr Judd, with Judith Hart, with Hattersley, they were all Ministers of State they were not Secretaries of State. The first Secretary of State - I met them and I knew them - but the first Secretary of State that really started to get interested in Gibraltar was David Owen as Foreign Secretary, not anybody else. The rest were known and at high level meetings they came in but it was always left to a Minister, very much like many things are now left to Baroness Young who is responsible for Europe under the level of the Secretary of State. First of all, the reply tells us that the decision to remove the guard has no implications for Her Majesty's Government's commitment to the people of Gibraltar which as he says: "Ministers of successive British Governments" - not just the Conservative Government - "including the Prime Minister, have repeated on innumerable occasions". Well, I think, to be quite frank, that a close examination of the reply and the mention of the Prime Minister is very important because the Prime Minister has been in the forefront of defending clearly the position of the people of Gibraltar in Parliament on many occasions. She has often made it clear in the most direct and forthright manner that Britain will stand by the people of Gibraltar. Then, secondly, the Foreign Secretary states: "Her Majesty's Government have repeatedly made clear that the question of sovereignty will only be considered within the context of Her Majesty's commitment which extends to the whole of the territory of Gibraltar". I think that, again, may have been said before but in this context it is of particular importance because we were talking about the ceremonial guard next to the frontier. Therefore, I consider that those words are of particular significance. And this is also of particular significance in the light of the current or stagnant,

whatever one wants to call it, talks on the airport. It is very important, that phrase is particularly important when we know the difficulties we are having, certainly if you read the Spanish press, with the possible implications of any agreement in respect of the airport about which we have passed a resolution in the House which binds us in respect of the position of the elected Members of the House. This is a fresh and, if I may say so, refreshing statement of Britain's assertion of sovereignty over the isthmus which we hear continuously from the Spanish media that they question the sovereignty, this is appropriate and I think quite well timed. Then I would like to draw attention to the frontier gates, the reference made to the frontier gates. The memorandum addressed to the Secretary of State asked that the proposed removal of the gates be discarded. His reply on this is: "Our decision not to adopt the suggestion that the frontier gates may be removed was reached after consultation with you and took full account of local opinion. There are no plans to take up this proposal in the foreseeable future". Well, two points to note about this, the first one is that the proposal about the gates were dropped after the original consultations with me back in March or whenever it was and took full account of local opinion then. There has been, I think, and the Hon Member never ceases to mention the fact that there have been two occasions on which the advice given by me to the British Government has not been accepted. The one about the 24 hours to which I will come in a minute and on the question of the guard. If you take into account that I have been advising the British Government since 1954, that is, thirty-two years, and you say that my advice has not been taken on two occasions, I do not think that that is a bad record. My advice has been accepted on innumerable occasions throughout this period on a vast number and range of issues. I think it is remarkable that in thirty-two years there have only been these two cases, of course, taking into account the difference of approach in many matters and the reservations made at the time of the Lisbon Agreement and of the Brussels Agreement on sovereignty. That were reservations of my own, in one case jointly with the then Leader of the Opposition and, secondly, on my own. That does not mean that there have not been differences of approach with the British Government over the years, there are many differences of approach but in the case of the question of the two Agreements that I mentioned my reservations were made public, they were not just reservations made to the Foreign Office or to the Foreign Secretary. And we must, I think, keep a sense of proportion and if we have had this tiff with the British Government it does not, in my view, affect the substance of our relationship. On the two issues to which I have referred we continue to believe, as I have said, that the ceremonial guard should not have been removed but on the issue of the 24 hours which, in fact, was prompted by an earlier motion in this House which came from the then Opposition, led me to the other one, with hindsight now and having regard to the way things have gone since the opening

of the frontier, if we are to be totally honest, we ought to say that it is convenient for Gibraltar that that frontier should be open 24 hours. I know the principle was wrong in not having accepted it at the time, they had their reservations but, with hindsight, that frontier closed in circumstances that caused even the death of a well-known friend of all of us in order to get the frontier opened, Tony Cavilla, you will recall, died in an accident a few yards away from the frontier in order to be in time because the frontier closed at one o'clock. So that one, perhaps, deserves separate treatment. The second point I wish to make on the question of the proposal on the removal of the frontier gates relates to the sentence "There are no plans to take up this particular proposal in the foreseeable future". I hope I will be forgiven if after many years of dealing with this matter, that diplomatic language cannot go much further to say that it won't happen so long as you don't want them to happen. It cannot go much further than that. That is what that phrase means, in my judgement, having regard to the way in which these matters are dealt with at diplomatic level. We felt that the reply was a satisfactory one. Insofar as the Trades Council was concerned, their press release on the question really made two main points. The second paragraph of the release states that: "Although some assurances have been given, on some of the issues it is essential that Gibraltar seeks further assurances from the British Government to protect and maintain Gibraltar's British status for both its people and its territory". That may be very important but certainly that is not one of the things that worries the Leader of the Opposition in this case. The Leader of the Opposition says: "We have had that before, we have had it in the memorandum, there is nothing new in it". The British Government's commitment to the people has been stated many times in Parliament and elsewhere and I think it was done fairly recently in the House of Lords, a few days ago in the House of Lords. The second point in the Trades Council press release is contained in the last two paragraphs which state: "Furthermore the assurances given by Sir Geoffrey Howe that the views of the Gibraltar Government will continue to be regarded as important by British Ministers and Officials is of little consequence. The real issue at stake is that the wishes of the people of Gibraltar are paramount and not that their views be merely regarded as important". I think they have, with respect, missed the point. If what they want to mean in stating that is that they should do whatever we tell them then, of course, they have got a wrong concept of the situation. It is clear, therefore, from the stand taken by the present British Government and by their predecessors that the wishes of the people as to their future are paramount. It is also clear from what I have said that advice given from Gibraltar has not been accepted on only very rare occasions, the most recent example of the acceptance of my advice is contained in the Secretary of State's reply on the memorandum, that is, that it had been decided not to adopt the suggestion that the

frontier gates be removed. It is quite clear from the meeting of the representative bodies at which the draft memorandum was discussed that they all felt very strongly about the removal of the frontier guard. Yet all these bodies, with the exception of the Trades Council and the GSTP which unfortunately wasn't present, found the Secretary of State's reply to be a satisfactory response to our representations. When I returned from my last visit to Britain I was informed of statements made by the Hon Leader of the Opposition in a GBC interview. I have read a transcript of that interview and apart from the destructive and vague comments on the Secretary of State's reply, it was a tirade against me personally which, having regard to the manner in which he said we ought to go together on these matters, sounded to me rather a little electioneering since that has already been mentioned and let me tell you that the elections are pretty far away still. The point is how should relations between two friendly countries be conducted? The remarks of the Hon Leader of the Opposition in that interview were, if I may say so, an attempt precisely to avoid what I had felt might have been created if the House of Assembly had been recalled in the summer, create animosity between Gibraltarians and Britain. It may not have been his intention, certainly the words are very clearly liable to that interpretation. I had the opportunity of meeting Mr Albert McQuarrie when I was in London last month and he told me that he too was satisfied with the Secretary of State's reply to the letter sent to him by Mr McQuarrie which was made public here and which was in pretty stiff terms. Mr McQuarrie said that I could quote him to this effect and he added that he was particularly glad to note that the Union Jack at the frontier now flies twenty-four hours a day and that if it is floodlit at night thus making the Britishness of Gibraltar absolutely clear to all visitors arriving at the frontier at all hours. We all know Mr McQuarrie doesn't mince his words and he is a staunch supporter of Gibraltar against the interests even of his own party at times because he doesn't have any reluctance to make his position very clear whether the Foreign Office like it or not. So for those reasons there are two aspects of the motion that we cannot agree with now. We have no quarrel with the first part of the motion because that has already been expressed - "This House - notes that Her Majesty's Government has unilaterally decided to remove the ceremonial guard from the frontier with Spain in the knowledge" etc. That is a fact and we accept that as a fact and even though this motion was dated the 14th August, I think that that has not altered in any substantial way. I do not think having regard to the reply that we can live with the second paragraph of the motion because we accept the reply given by the Secretary of State as being one that will stand the test of time. I propose to move that paragraph 2 of the motion be amended to read: "welcomes the decision of the British Government, reached after consultation with the Chief Minister and having taken full account of local opinion, not to adopt the suggestion that the

frontier gates be removed, and the statement that there are no plans to take up this particular proposal in the foreseeable future". The third paragraph, again we could not live with that and I propose that the motion be amended by substituting it and saying: "regrets the decision to remove the ceremonial guard at the frontier but welcomes the assurances contained in the Secretary of State's reply to the memorandum addressed to him by the two political parties represented in the House of Assembly and by the main representative bodies in Gibraltar". We have no quarrel with paragraph (4), we do not propose to alter that, that is an on-going thought that is evident in all our manifestations and even though it was drafted in August it is still valid and it will continue to be valid and for that reason we will support that part of the motion. Mr Speaker, I have tried to summarise the views of the Government. The matter is too serious to attempt to make any political capital out of it and therefore I think the House deserves a full explanation and a full answer to the remarks of the Leader of the Opposition.

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

HON M A FEETHAM:

Mr Speaker, I am going to speak on the original motion.

MR SPEAKER:

You can speak on both, in other words, what I am saying is that if you are going to speak generally you are not going to have two bites at the cherry.

HON M A FEETHAM:

I accept that. Having listened to the Hon and Learned the Chief Minister's response to our motion, it can be considered to be a staunch defence of the view of the Government on the reply given by Sir Geoffrey which he is quite entitled to do. I, of course, fundamentally disagree with him and I shall give my reasons why I fundamentally disagree with him, because the issue of the memorandum itself was based in our thinking in its broadest possible terms on an attempt to approach the problem with unity from both sides of the House on a policy that could give us an opportunity and hope that what was happening around us and I am not limiting myself to taking a parochial view of the situation on Gibraltar's future but what was happening around us in every respect in terms of Gibraltar's relationship with Britain and in terms of the European Community situation that we were trying to do in that memorandum (a) make it clear that we were standing up against any rearguard out-flanking, if I may describe it in that manner, on the part of the Spanish Government, of infiltrating Gibraltar. We were also putting up a staunch defence of a very fundamental position for the people of Gibraltar which time and time again I have

to repeat despite the fact that we have a limited constitutional relationship in certain matters with the British Government and that is that I could never accept, neither would my colleagues ever accept that the people of Gibraltar have no right to self determination and Sir Geoffrey Howe has made it quite clear that the people of Gibraltar have no right to self determination. What Sir Geoffrey Howe has now reiterated is that he will stand by the preamble to the Constitution. In an interview on television, of which there is a record, a categorical question was asked to him and he maintained that reply on three occasions since then despite the fact that a memorandum has gone and come and we have had a reply and he still sticks to the same situation. Yes, on three different occasions, at least I have seen it reported on three different occasions, if I am not wrong I could be corrected, and there is no way that the people of Gibraltar will ever accept that the British Government should not give the people of Gibraltar the right to self determination in the same manner it has given everybody else and everywhere else where they have had a colony, no way will they accept that. Therefore in this memorandum where we made it quite clear that there was a commitment there which we did not dispute that the British Government were disputing anyway or that we felt that there was going to be a weakening of the preamble but what we were saying there as well was that we wanted them to respect our right to self determination and Sir Geoffrey Howe has made no reference to that at all. Neither should it catch us by surprise that there should be a reaffirmation that the British Government stand by sovereignty over the isthmus, we have never doubted that, that is something that we have never ever thought that they would step down from, we have never even questioned that. I don't think that is a satisfactory reply in that respect. But leaving that to one side, Mr Speaker, what was the response therefore by the Chief Minister to primarily the attitude towards this question about continuing good relations with Spain? His attitude was yes, there had to be good relations with Spain and that we are still - this is what the Chief Minister said if I may quote - we are talking about late September, he said that if there was any doubt - when he was in UK - he wouldn't have been there if there was any doubt that the situation was of a serious nature because he thought the climate then had been more friendly than when the discussions on the pensions. At that point in time, in mid-September, the Chief Minister was already accepting what was being basically put over by Sir Geoffrey Howe in his memorandum, at that point in time in his own mind.

HON CHIEF MINISTER:

At what point in time?

HON M A FEETHAM:

I am talking about late in September, I am not quite sure of the date because I am talking from memory, I haven't got such a good memory as he has. In UK he said that if he had any doubt he would not have been in London on the 4th October to speak to Sir Geoffrey Howe and the situation had been more friendly than with the Spanish pensions discussions of November, 1985, you said that. The Chief Minister continues to take a line which I respect. As I said from the very beginning, he is defending his point of view. I am talking from a far more fundamental point of view than the Chief Minister dares to go beyond and that is the difference between us. On the question of self determination we will never ever accept that we haven't got any right and it is about time that both sides of the House took that issue upon themselves and made it quite clear that there should be a categorical statement from the British Government that the people of Gibraltar have got the right to self determination, never mind the question of the preamble to the Constitution.

HON CHIEF MINISTER:

To what? .

HON M A FEETHAM:

Of the right to self determination.

HON CHIEF MINISTER:

Self determination to what?

HON M A FEETHAM:

The right that if ever we wish to exercise the right to self determination we should have that option. That is what we are saying should be clearly accepted by the British Government and that is why we are having so much difficulty and so much frustration felt in this House of Assembly which could do much, much better work in the area of foreign affairs if there was more determination to go along that path on the part of the AACR. But let me continue talking about the path that we are leading ourselves into because I am not trying to take a parochial view, the path that we are leading ourselves down. In our relationship with Britain clearly the Chief Minister doesn't want to take that stand, he doesn't believe it is necessary but the British Government on the other hand has accepted to discuss the question of sovereignty with the Spanish Government. What are we talking about when we are talking about sovereignty? We are talking about the possibility even though they are respecting the rights of the people of Gibraltar as set out in the preamble to the Constitution, they are still talking about overcoming all differences which includes sovereignty.

Where does that lead us when we talk about sovereignty, Mr Speaker, the two sides talking about sovereignty in its wider context? Where will that lead us in the wider context when the AACR starts talking about free association without explaining clearly where sovereignty would lie in that sort of situation and where the option to the right of self determination would be when they talk about comparability with the Cook Islands, for example, where, I understand, the Cook Islands have a unilateral option to independence if they wish to exercise it, so I understand and I stand to be corrected, but I think it goes as far as that. Earlier on this year and subject to an appointed date, we passed in this House what was termed to be the European Communities (Amendment) Bill where sovereignty is being passed more and more onto Europe and where there are very different points of view in the European Community as to whether this is a good thing or a bad thing but we have passed that and the appointed date will be presumably now that they have passed it in Britain yesterday we will soon get an appointed date in Gibraltar where we will all be part of what will lead us to one sovereign state of Europe. That is why I look upon these things further than the question of the relationship between Gibraltar and Britain and the British stand because I like to think that we can look at this in a wider context, how it affects us and why we have got to make a stand in this point in time. One of the staunchest opponents of the Bill was, as you well know, Lord Denning. Lord Denning, after accepting defeat said: "Gone are the days of national sovereignty to be replaced by European unity. Let us forget the issues that divide us, let us give the Single European Act our wholehearted support".

HON CHIEF MINISTER:

After having fought every heavily against it.

HON M A FEETHAM:

I accept that, he made a very strong staunch defence. But we, the GSLP in Gibraltar, did not accept it and you will recall that I made our little stand on that and we will not accept it or concede that that is in our best interests because we haven't got over our own problem of the decolonisation of Gibraltar. So not only do we have to contend now with the issue of sovereignty in our relationship with Britain and Britain's desire to discuss it with Spain and it may take ages, and I recall the Chief Minister saying "it may well have to be decided by future generations" or "it will be decided by future generations" or words to that effect and there are a lot of people, not only in Gibraltar, there are a lot of people elsewhere who believe that that is the path to take. This is where we part ways because I do not believe that knowing such a fundamental issue that faces us and such a grave issue that faces us as the rights of Gibraltarians where we haven't even got sovereignty vested in ourselves, that it can pass now not only from

Britain to Spain should Britain strike a deal but it will go on to Europe and we would still be a colony and be integrated through a different political course of action and Spain could take us over without even putting up a fight, it is a point of view which I want to put on record today and that is we will not go along with that and I think what we need to do is to look at our relationship as it stands today, look at our relationship as it stands with the European Community, try to find a common course of action on the question of the rights of the people of Gibraltar to self determination which is of vital importance and not abdicate it to future generations because history is made today by the people who are facing the problems today, not by those who are coming later otherwise the map of the world today would not be what it is. I was one of those Members on this side of the House who defended with a great deal of determination the question of this joint memorandum when we first discussed it. This was a blue print for a possibility of one difficult area that we are facing as a people, there was a possibility that if we stood our ground that if we were forceful enough, that if we could find a solution by working together that we could begin perhaps to resolve our foreign affairs issue despite the fact that we are constitutionally unable to speak or do certain things, if that side of the House and this side of the House were to get together positively on the issue of the rights of the people to self determination, I am sure that the British Government who are our best friends, and let us not forget that because I am not forgetting that, there will be nobody in Gibraltar whilst there is anybody on this side of the House and that side of the House that would ever try to undermine that relationship because we are around and you are around and I agree with something that was said by the Hon Minister for Economic Development yesterday in his own Party Conference, I don't want to repeat it, as regards certain people that want an accommodation. We will fight it and I thought, quite frankly, that this gave us an opportunity and I see no need today for the line that the Chief Minister has taken. I find it, quite frankly, disappointing and I was really surprised at the beginning, having taken the line that he took initially when he didn't want to come to the House, because nothing that has been said today couldn't have been said at the time, quite frankly, practically nothing, I am surprised that he didn't actually ask for the Public Gallery to be cleared so that he would still not give pleasure to those who would rejoice at our differences with the Foreign Office and other people in Gibraltar, Mr Speaker.

HON A J CANEPA:

Mr Speaker, I think that in the first place I should clarify publicly how it was that the reply to the memorandum was conveyed. First of all, of course, the memorandum was sent to the Secretary of State through the Chief Minister, the Chief Minister acted as the spokesman in conveying the memorandum to the Secretary of State through

His Excellency the Governor, that is the normal procedure, and because that is how the memorandum was sent, the reply came in a similar fashion from the Governor to the Chief Minister - it so happened at the time that I was Acting for Sir Joshua because he was away - and the Governor asked me to consider how the memorandum could most conveniently, what arrangements should be made for the memorandum to be made public to be released to the media. My main concern was to try to ensure that the representative bodies did not learn about the memorandum through television, through radio or through the press, I thought that would have been wrong. But there was an element of urgency in having the memorandum made public, it had arrived on a Thursday, it could hardly be held over until after the week-end and therefore what I advised the Governor was that the memorandum should be made public, should be released to the media concurrently with its release to the representative bodies and that I would convene a meeting for that purpose. The earliest that that could be done to give people reasonable notice in order to be able to make arrangements to attend the meeting was the following afternoon which was a Friday. The Hon Mr Bossano asked me for a copy of the memorandum. It was not in my power, I had no authority to give him a copy of the memorandum because I was not making arrangements to release it to make it public, it was the Governor who was doing that and I had no authority to release that memorandum to the representative bodies in anticipation of it being made public. That was simply the position. Of course, with hindsight I regret that that was the issue which apparently was the main cause why the GSLP did not attend that meeting and with hindsight, I think, having regard to the extent that we had been able to go it together in drafting what was an eminently acceptable, well-drafted, well-reasoned memorandum which contained many important points, I think, with hindsight, yes, it was a pity that they weren't there to consider the reply and with the benefit of experience, had I been faced with a similar situation I would have gone back to the Governor and said either "Hold the reply until I am authorised to release it to the representative bodies" or "authorise me to release it at least to the GSLP who are perhaps more entitled than the other representative bodies to get the reply and I shall make arrangements for the other representative bodies to receive it the following day but give the GSLP an opportunity to come to the meeting prepared". There was no attempt to bulldoze the memorandum at the meeting and that was not the intention because it is far better to get a joint consensus of the memorandum or on the reaction to the reply than to have the situation that we have now. In going for this procedure of calling in the representative bodies and not arranging for a meeting of the House, the Government did not want to defuse the issue, did not want to camouflage the issue, the only concern was that the House should not become the focal point for an anti-British demonstration as would have been the case back in July. In the fourteen years that I have been a Member of this House an emergency meeting of the House has never been

called during the summer recess. We met on one occasion on 27th July but that was because an earlier meeting was adjourned because we knew that there would be something on the Dockyard package at the time. But there hasn't been an emergency meeting of the House and an emergency meeting of the House should be for something very, very serious. I am not saying that the question of the frontier guard was not serious, it is a serious issue but there could be matters of foreign affairs that could be much more serious than that and it is a question of relativity and I think we also have to be careful in the manner in which we approach things that we do not unnecessarily alarm people or lead them to believe that there is something more underhand or more suspicious happening than is actually the case. If a meeting of the House had been held would any greater interest have been evoked in a positive fashion than was actually the case in the procedure that was adopted? I say that because we had many committees involved in considering and discussing the matter, the Trades Council, the Chamber, Housewives' Association, they are all made up of individuals who participated through their committees in these deliberations and reported back to the representative bodies so it was a joint positive effort and we averted the creation of unnecessary animosity and I would like to pose the question whether would the reply have been any more satisfactory to our representations if the matter had been debated here at an emergency meeting? I doubt very much whether that would have been the case even if the motion now before the House, without any amendments, had been passed and conveyed to the Secretary of State even with copies of the Hansard. The Chief Minister made some reference about the fact that the reply comes from the Secretary of State himself and not from Ministers. I was remarking to him a few weeks ago when I was reading a book, it is part of a series of three books that have been written, one called "No Minister", "But, Chancellor" and this third one "With respect, Ambassador" and it is an in-depth study together with a series of interviews which are reproduced in this book about how the Foreign Office works and about how the Foreign Office conducts its affairs. Apparently, when it is said that Ministers in the Foreign Office consider this or consider that or are aggrieved about this or about that, what is really meant, what really happens is that there is a meeting of officials which is presided over by a Minister and, obviously, a Minister presiding a meeting of officials is very likely to be a Minister of State or one of the junior Ministers. I would imagine that in the case of Gibraltar other than in this very serious matter where we have got a reply from the Secretary of State, when we get a reply which the Government sometimes does, "Ministers consider that this and that", it is very likely to be a meeting of officials presided over by Baroness Young who has direct responsibility for Gibraltar or if it is a matter of development aid, presumably, it would have been presided over at the time by Timothy Raison. But that is just as a matter of interest so that Hon Members know what the view is. But there are a number of points,

of course, of considerable significance in the reply. I remember reading in a biography of Lord Carrington how on a number of issues, the Falklands, the question of the re-negotiations on the budget and, indeed, on many matters to do with the EEC, No.10, the Prime Minister and No.10, are by no means ad idem with officials in the Foreign Office. And in this biography of Carrington it is even said that there have been attempts by officials on occasions to torpedo, to work directly against the policy of the British Government on these issues as enunciated by the Prime Minister herself. But notice that in the case of Gibraltar a communication from the Secretary of State includes a mention of the Prime Minister herself and we all know how forthright her views are, how clearcut they are about Gibraltar. In fact, on the issue of self determination the Prime Minister herself has said, yes to independence, if Spain agreed. What I am saying is that the analysis that we should make of this reply to our memorandum should on balance be a positive one because it has got a number of features about it that are very positive and for the political Head of the Foreign Office, the Secretary of State, to be working as closely with the Prime Minister to have the same attitude fundamentally as the Prime Minister insofar as Gibraltar is concerned, I think is a matter that we should not consider lightly, it is in my view highly significant. At the second meeting of the representative bodies, I get the impression that the Leader of the Opposition was being somewhat disparaging about the members of the European Movement that attended, possibly then he qualified it slightly when he said: "Well, the European Movement cannot take a joint view because we are members of the European Movement, the GSLP, and we do not agree", but obviously the GSLP members of the European Movement were not part of the European Movement, they were not representing the European Movement there initially, the European Movement were being represented by independent persons and I can tell the Hon Leader of the Opposition that, in fact, one of the two members of the European Movement argued vigorously on the question of the interpretation, the interpretation that the Chief Minister today has rightly, in my view, put on the words 'foreseeable future', I think in diplomatic language, in parliamentary language, those of us who are involved in the business of politics we know that when you say that you do not think that something will be done in the foreseeable future you just don't contemplate that it is going to be done, it is not on, but she argued very vigorously about that and she took some convincing. The representative of the Chamber of Commerce, whose name I will not mention in the House, thought that it was perfectly acceptable, "there is nothing to argue about, what is all the fuss? We are getting a far better reply, a far more satisfactory reply than what we could ever dream of, what is all the fuss?" And I am not going to repeat here in the House what I said in another place last night about something else that he said about the people of Gibraltar on the question of the frontier guard. But as I say, that is how the matter went. The Government met half an hour

before, we considered the reply, in that half hour we took a view, I think it is the function of the Government to give leadership. We may not agree with the Opposition but the Government has a function to give leadership and we sincerely thought that it was a good reply and that it had many positive features to it, many positive aspects and that we should communicate those. The Hon Mr Feetham has made great play this afternoon on a very serious matter and that is the remarks of the Secretary of State about the question of self determination. When he was asked over television, I think, by Mr Clive Golt, Mr Clive Golt asked the Secretary of State: "Does that mean that the Gibraltarians have no right to self determination?" And the Secretary of State replied: "That is ruled out by the basis of the Treaty of Utrecht and, in a sense, since it is that Treaty which is the foundation of British sovereignty which is so important to the people of Gibraltar, you cannot take one half of the Treaty without taking the other half and the other half is that if Britain's sovereignty ever came to an end then it would revert to Spain". We have taken the view in the Government and the Chief Minister I am confident has communicated that view through the appropriate channels, that the Secretary of State made a fundamental error in those remarks about self determination. First of all, we do not accept that the people of Gibraltar have no right to self determination and the struggle since 1963 there, in the Piazza, was all about self determination so, first of all, we don't accept it even if he hadn't made a fundamental error. But he did make a fundamental error, I have no doubt. What I, am sure the Secretary of State had in mind was independence, that is probably what was at the back of his mind because Clive Golt then went on to say: "So the Gibraltarians have not got the right to self determination?" And he said: "Independence is not an option". Right, independence is not an option in his view though his boss, and she is the boss, the Prime Minister said: "Why not if Spain agreed?" Though I am sure that if you asked Sir Geoffrey: "Can they have independence if Spain agrees?" He will probably say: "Yes, of course, because the obstacle is the Treaty of Utrecht, the option clause which gives Spain first refusal". But I have got another argument as to why I think he was wrong and that is that really when the Referendum was held in 1967 what Britain was doing was giving the Gibraltarians the right to self determination in a limited sense because the option was either to remain under British sovereignty or to pass over to Spain but that was an exercise of self determination within those parameters. Having said and it being clear that we in this House do not agree with the Secretary of State that the people of Gibraltar have no right to self determination, the point that then arises is whether issue should be taken on the matter. I think, if the Hon Members of the Opposition have been agonising as they clearly have been about this matter since June, 1985, they ought to have come forward, they ought to have approached the Government, don't wait for the Government to come to you.

If you have views as I think Mr Feetham, qualms about it and if he is asserting today, affirming that jointly we should ask the British Government for a clear declaration on the matter that ought to have been done previously.

HON M A FEETHAM:

If the Hon Member will give way. We have asked for it in the memorandum. They have given no reply to it at all.

HON A J CANEPA:

The reply doesn't say 'self determination is out' because this is a careful and considered reply and it is clear from what I have read of the interview that what was in the Secretary of State's mind was independence and obviously in skirting around the issue I think what we have to take particular note of is the fact that the Secretary of State has not repeated his previous assertion. About the Chief Minister defending his point of view as vigorously as he has done and as he continues to do, well, why not? I think his point of view and his approach over the interests and the wishes of the Gibraltarians and in defence of their rights over the years prove to have been the correct approach. He has succeeded on the vast majority of matters in getting the British Government to work with us, by and large. What rebuffs have we had? The 24 hour issue over the frontier where we were set up by Mr Peter Isola and allowed ourselves to be bamboozled against our better judgement. On this issue of the frontier guard yet related to this we have managed to take them along with us on the question of the gates and the reservation that was entered into by the Chief Minister on the question of the discussion on sovereignty over the Brussels Agreement. But I think that looking back over such a long period the position of the Gibraltarians today in spite of everything that has happened in the last twenty-two or twenty-three years, their resolve, their identity as a people is no weaker, if anything it is stronger because it is on a better informed basis, perhaps in the early 1960's our reaction was an emotional one but today it isn't just that, it is not a question of emotion, it is a question of the Gibraltarians adopting the approach and the attitude that they adopt on the basis of information, on the basis of awareness, on the basis of maturity and that is what I think is the greatest achievement of the Chief Minister and of those of us who have supported him over the years in framing, in fashioning and nurturing the sense of identity of the people of Gibraltar, their awareness of what is important and their willingness to protest and resist about anything that goes against their interest. If we have made the fuss that we have made about the removal of the frontier guard what would not the people of Gibraltar be prepared to do if something serious was really at stake? And that is the thought that I would like to leave with Hon Members.

The House recessed at 5.10 pm.

The House resumed at 5.50 pm.

HON J E PILCHER:

Mr Speaker, I will be basing my intervention on the amendment and reserving my right to speak on the overall motion at a later stage. I would like to tackle the amendments very quickly, Mr Speaker, because I think that irrespective of what I am going to propose at the end of my very short intervention, we nevertheless have to answer both these amendments so that it lies in record what we feel about the two amendments in question. The first amendment is an amendment which removes our paragraph (2) and puts a new paragraph (2) which welcomes the decision of the British Government reached after consultation with the Chief Minister and having taken full account of local opinion, not to adopt the suggestion that the frontier gates be removed and the statement that there are no plans to take up this particular proposal in the foreseeable future. There are two points to be made on that, Mr Speaker. The first point is that this position was the exact position which was arrived at shortly after the announcement and which following a television interview given by the Hon and Learned the Chief Minister, he said that this particular proposal was on ice and that meant - I might misquote him - but he said: "It is like a mammoth on ice in the North Pole". This was, of course, before the memorandum so having said that it was on ice, having accepted that the thing was on ice and in the North Pole he then went with the memorandum which asks even further clarification. If what the Chief Minister is telling us is that 'in the foreseeable future' goes even further than the North Pole then, Mr Speaker, this is something that we cannot accept. I personally do not like the term 'in the foreseeable future'. I was a trade union convener in 1980 when the Chief Executive Royal Dockyards came to Gibraltar and said to us: "The Dockyards will continue to be open for the foreseeable future". In 1981 he came back to Gibraltar particularly to announce the closure. When I questioned him on this he said to me: "That is political talk" and I have to tell the Hon. Mr Canepa who has been a politician many, many more years than I have been that 'in the foreseeable future' can mean various things. If you don't want to do something but you know you have to do it you just say 'in the foreseeable future' because that leaves the door open for you to do it whenever you feel that you have to and 'in the foreseeable future' is a time factor which is not actually conditioned to anything, it is only conditioned to your own interpretation of that. That deals with the first amendment. The second amendment is our expression of concern that Her Majesty's Government might be interpreted as a weakening. That is changed to a section which regrets the decision of the removal of the ceremonial guard but then welcomes the assurances contained in the Secretary

of State's reply to the memorandum addressed to him but, of course, it is welcoming the assurances and it is welcoming the whole letter. The Hon Leader of the Opposition has made quite clear that the reply to the memorandum does not go far enough in actually determining the points that the memorandum asked for and therefore although we also welcome certain assurances and let it not be doubted at all that we welcome the assurance of the preamble to the Constitution, we welcome the assurance given by the Prime Minister herself, we welcome the fact that it is now clear that the territory of Gibraltar is accepted by them, it has never been doubted by us, but all these things we welcome but nevertheless we cannot welcome the whole of the reply because of the points raised by the Leader of the Opposition. But notwithstanding all that, Mr Speaker, we have, I think, on both sides of the House firmly placed on record our opinions about our initial paragraphs (2) and (3) and I have certainly placed on record our reaction to the amendments (2) and (3). What I would like to ask, Mr Speaker, is for the Hon and Learned the Chief Minister to withdraw the amendments on paragraphs (2) and (3) and we on this side of the House will withdraw our initial paragraphs (2) and (3). That will leave us open to actually discuss the main part of the motion, which I think we have already got a consensus on, and it is really paragraphs (1) and (4) of the motion that is the meat of the motion. Noting the removal of the frontier guard is still there and the other one is expressing our concern which we have already expressed on both sides and I think it is on record that we, certainly on this side, express our concern about the weakening of the Gibraltar position. Mr Speaker, with that I will end my contribution.

MR SPEAKER:

Perhaps then the Hon and Learned the Chief Minister will reply.

HON CHIEF MINISTER:

In the first place on the point made on the first amendment, the words 'on ice' was my wording, the words 'foreseeable future' is the Secretary of State's wording and I attach more importance to what he says about Gibraltar than what I say because he has got the last word on the matter for as long as he is Secretary of State, so that is why I attach more importance. I did say 'the matter should be put on ice', that was my advice and following on the representations in the memorandum, they said the wording that we have mentioned. I want to make quite clear that there is a difference in that, the first wording was mine and the second wording is the Secretary of State's. With regard to the other one, of course, everything is not negative and since the sentiments in the first and fourth paragraphs are common and we try to look for common ground in this House, I am quite happy but I am not quite sure whether what the Hon Mr Pilcher suggests is that

we do away with that and we go on happily on the other or we take a vote on the two points on which we are all agreed, are we going to carry on arguing about something we agree?

MR SPEAKER:

The position, from what I have heard, would be that if you agree to withdraw your amendments we will then have the motion as moved by the Hon the Leader of the Opposition and then an amendment will be moved by someone in the Opposition deleting paragraphs (2) and (3) of the original motion and then we will have paragraphs (1) and (4).

HON CHIEF MINISTER:

And that is going to be the end because one of the virtues about this is finishing quickly for the benefit of everybody.

MR SPEAKER:

May I take it then that the Hon and Learned the Chief Minister is withdrawing his amendments?

HON CHIEF MINISTER:

Yes, I do.

MR SPEAKER:

May I take it that he has the leave of the House to withdraw his amendments?

The Hon the Chief Minister obtained the leave of the House to withdraw his amendments.

MR SPEAKER:

Therefore we now stand as we stood when the Hon the Leader of the Opposition moved his original motion and I take it that there will be a Member of the Opposition moving an amendment.

HON J C PEREZ:

Mr Speaker, I would like to move an amendment to the motion by deleting paragraphs (2) and (3) and renumbering paragraph (4) as paragraph (2). There are a couple of things which I think need.....

HON CHIEF MINISTER:

If the Hon Member will give way. I wanted to make a statement at the same time in answer to something that Mr Feetham said purely for the purpose of accuracy. Mr Feetham said that this document contained all the issues on which we were ad idem and it was a pity we couldn't have pursued it together and he said that we were asking in the document

for the right of self determination. The petition doesn't say that, the petition takes it for granted that we have it, in fact, paragraph (4) says "We do not question the fundamental position of Her Majesty's Government that it will maintain its commitment to honour the wishes of the people of Gibraltar as set out in the preamble", so, in fact, it is there and there has been no rebuttal. I wanted to make that clear because otherwise it would give the wrong impression. That is all and I hope that there will be no need to, apart from whatever remarks the Hon Mover of the last amendment can make, we can, in fact, call it a day.

HON J C PEREZ:

Mr Speaker, in moving the amendment let me say that at least there is a point in the new paragraph (2) which outside of the House was not satisfactorily replied by the Secretary of State and therefore it is a welcome sign that although the Members opposite have welcomed the reply of the Secretary of State that they should still be reaffirming the position adopted in the memorandum which we were unhappy about the omission on some of the aspects contained in the new clause (2). I think there are a couple of points that I need to clarify on the contribution by the Hon Mr Canepa over the calling of the emergency meeting of the House. It has been said this afternoon that the Government thought that it could create anti-British feeling and that that is why they opted for it. Let me say that one of the considerations taken in the party calling for the meeting of the House was that the Hon and Learned the Chief Minister at the time of the Brussels Agreement when there were demonstrations and when there was very high feeling, told us that the proper place to bring these things was at the meetings of the House of Assembly and that was taken into consideration when deciding to call an emergency meeting of the House. Taking into account that at the time of the Brussels Agreement the issue was, in my understanding, much more serious and could have led to much more anti-British feeling than what the guard issue might have led to, I would have thought that the stand taken by the Chief Minister in not calling a meeting of the House is unjustified with respect to the comments he had made previously over the Brussels Agreement. I had other things to say but since we have already reached agreement, only to remind Hon Members opposite because the Hon and Learned the Chief Minister said that the Leader of the Opposition wants to hold the reins of everything in respect of the future of Gibraltar or our relationship with Britain and I would remind him that for the first time, I think, in this House there was consensus on very important matters. We were all united on what we were asking for, it is not that we wanted something and they wanted something different and where we have differed is in the reply that has come back in very great essence because of the omissions in the reply rather than because of what the reply contained. One can agree with the reply

but it doesn't go far enough and that is why I am happy that the original paragraph (4) which is now paragraph (2) is contained there because there are things in that paragraph which, in my view, have been ignored by the Secretary of State and a reaffirmation by all the Members of the House who signed the memorandum originally is very important in that it is down on Hansard and it happens after the reply of the Secretary of State that we are saying "We are reminding you that what we said in the memorandum still stands and it is the House of Assembly and the elected representatives of the people of Gibraltar that are saying it". Thank you, Mr Speaker.

Mr Speaker then put the question in the terms of the Hon J C Perez's amendment which was resolved in the affirmative and the amendment was accordingly passed.

MR SPEAKER:

Does any other Member wish to say anything on the motion? Does the Hon Leader of the Opposition wish to reply?

HON J BOSSANO:

Let me say that I welcome the fact that we are able to carry the motion unanimously because, for the reasons I said before, the satisfaction that we felt at the joint memorandum was, we thought, a step forward and then we took a step back in the reaction to the letter of the Secretary of State. I know that the Hon and Learned the Chief Minister has said that it is a question of judgement to what extent that reply is satisfactory or not and I am grateful to the Minister for Economic Development who has said today that perhaps with the benefit of hindsight it might have been better if we had had an opportunity to look at it. Clearly, from our point of view we didn't expect the decision to be taken when people were handed the thing, this is why we just sent somebody to pick it up, perhaps otherwise we would have made the point there and then that we needed time to study it and that it was unfair to take a decision at that stage. I think I need also to put the record straight on the question of the representative bodies. The representative bodies have a useful function, Mr Speaker, if we want to sound opinion on issues and this is what I said before and I am repeating the same thing I said before because the Chief Minister and, to some extent, the Minister for Economic Development were creating the impression here which I have not created, that I am saying 'scrap the representative bodies'. But the people in the representative bodies are not politicians and I have no doubt that if we had gone with the reply of Sir Geoffrey Howe and got the representative bodies on their own and put the reply in front of them and they hadn't taken it back to look at it coldly and discuss it with anybody and we had said: "We feel very strongly that this is what we need to do and we feel very strongly that we should come out saying this is not satisfactory" and the Government

had not been there to put a contrary view, the odds are that the people there would have been convinced by our arguments, it is natural that they should be because they are representative bodies representing areas of the community just like it was quite obvious to us as it was to the Government in the first meeting that the Chamber of Commerce was lukewarm, shall we say, about the original memorandum and that consequently they would have been overjoyed at the reply whatever the reply. It was obvious to all of us who were there in the first meeting and we were not surprised by what the Minister has said about how satisfactory they found it. I think in a way it is symptomatic of our original position, that they found it so satisfactory perhaps is why we don't find it satisfactory. I take it if the Government was able to decide in half an hour that it was a satisfactory reply, fair enough. We certainly took more than half an hour to come to that decision ourselves. Perhaps if we had had the thing a couple of hours before the meeting we might have been able to give an initial reaction but, let's face it, the reality of it is that if our reactions have been as they have been on the Government and on our side, I don't think really we would have come to a different conclusion and even if we had spent more time it is obvious that we might still have parted ways. But the fact that we have gone the way we have on the motion notwithstanding our differences, I take it as an encouraging sign that there is the same desire on the part of the Government as there is on the part of the Opposition to try and see what are the possibilities of working together where we can work together on fundamental issues.

HON CHIEF MINISTER:

Before the Hon Member sits down I would like to clear a point. I wasn't here but the Ministers did not decide that it was a satisfactory reply in half an hour. They had had a meeting, the Ministers had met before they met the representative bodies.

HON J BOSSANO:

Well, half an hour was what the Minister for Economic Development said, I don't know whether it was taken literally but that is the impression we got, anyway. But I can tell the House that we certainly spent two or three hours in a committee meeting deciding whether the reply was enough or not enough and we came to the conclusion that it wasn't, that on the whole it was negative. The point that I am making is that notwithstanding that difference and notwithstanding the differences we may have on other matters as we have seen in a number of Bills and so forth in the House, we take that the position of the Government in withdrawing their amendment and we will withdraw the paragraphs is that there is still the will on that side of the House as there is on this side of the House to continue to see where we can work together on fundamental Gibraltar issues

whenever it is possible and I want to put on record that that is still our position. I think also one thing that we have not made reference to in the reply which I think again is necessary to put down for the record is, I gave a number of examples in opening on my motion of how Her Majesty's Government or the Secretary of State conveniently picked up things that were in the memorandum or even things that were not in the memorandum to say that they agreed with it and they conveniently omitted the things that were there which we wanted them to agree to. One of those was the reply that the specific question of the removal of the Spanish guard was, in the view of Sir Geoffrey Howe, one for the Spanish Government and that Her Majesty's Government had urged them to follow their lead and would continue to do so. We hadn't asked him to urge the Spanish Government to do anything, in fact, we had said in the memorandum the very opposite. We had said in the memorandum "the view of the people of Gibraltar would still be the same even if the Spanish guard had been removed" so we were saying to Sir Geoffrey Howe "this is the memorandum we are sending you and had the Spanish guard been removed we would still be sending you the memorandum". And he says to us "Well, the specific question of the removal of the Spanish guard is one for the Spanish Government". We haven't put a specific question about the Spanish guard. I don't know whether with all his years of experience the Chief Minister is able to read the opposite of what it looks like to me in this one as he does in the rest of the letter but to me it is quite clear that this is just a way of the British Government restating their position and this is why we find it unsatisfactory but we are happy that at the end of the day at least, if we are not able to agree with Sir Geoffrey Howe, we are able to agree on this one with the Government and that the motion will be carried unanimously.

Mr Speaker then put the question in the terms of the Hon J Bossano's motion, as amended, which was resolved in the affirmative and the motion, as amended, was accordingly passed.

The Hon the Attorney-General and the Hon the Financial and Development Secretary were absent from the Chamber.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I would like to move that the House meet on the 2nd December with the sole intention, if it is ready, to deal with the Committee Stage and amendments that will be brought to the Traffic Ordinance. If the draft is not ready then some of us will have to come here and adjourn and, in any case, unless something untoward happened the next full meeting of the House will be on the 16th December. But we will come on the 2nd December and if the amendments are ready we will proceed with those and with nothing else. I so move.

Mr Speaker put the question which was resolved in the affirmative and the House adjourned to Tuesday 2nd December, 1986, at 10.30 am.

The adjournment of the House to Tuesday the 2nd December, 1986, at 10.30 am was taken at 7.00 pm on Wednesday the 5th November, 1986.

TUESDAY, THE 2ND DECEMBER, 1986

The House resumed at 10.30 am.

PRESENT:

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

GOVERNMENT:

The Hon Sir Joshua Hassan KCMG, CBE, LVO, QC, JP - Chief Minister
The Hon A J Canepa - Minister for Economic Development and Trade
The Hon G Mascarenhas - Minister for Education, Sport and Postal Services

OPPOSITION:

The Hon J Bossano - Leader of the Opposition
The Hon J C Perez

ABSENT:

The Hon M K Featherstone OBE - Minister for Health and Housing
The Hon H J Zammitt - Minister for Tourism
The Hon Major F J Dellipiani ED - Minister for Public Works
The Hon Dr R G Valarino - Minister for Labour and Social Security
The Hon J B Perez - Minister for Municipal Services
The Hon E Thistlethwaite QC - Attorney-General
The Hon B Traynor - Financial and Development Secretary
The Hon J E Pilcher
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon J L Baldachino
The Hon R Mor

IN ATTENDANCE:

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

MR SPEAKER:

Gentlemen, we will resume the adjourned meeting.

HON CHIEF MINISTER:

Mr Speaker, you will recall that at the last meeting I indicated that there might be a possibility that the amendments to the Traffic (Amendment) Bill which has had First and Second Readings already, incorporating certain arrangements that have been arrived at between the Government and the Taxi Association, might be ready and we might have met today to deal with that only because there is a desire on all parts that that matter should be expedited. As it happens we have received a draft Bill which has not yet been considered but another factor has prevented us from proceeding and that is the question of judicial proceedings that have been instituted in the first place, one judicial review was heard and disposed of and then there is another one pending. As I indicated then the idea is that the adjourned proper meeting the last meeting of the year would be on the 16th December and I will so move but I would like to indicate that I understand that the 16th December is the same day that the court has fixed for the hearing of the judicial review so it might well be necessary to proceed and finish the Traffic Ordinance which provides for the working of the examination centre which is essential and leave the rest of the proposed amendments which, in any case, would have to be circulated and looked at by Hon Members and not just bring them here as amendments, with time. Having regard to those circumstances and anticipating one of the two things that could happen, either that we will be ready or that we wouldn't be ready, it has happened that we are not ready and there are reasons for not being ready and therefore I move that the House 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 10.40 am on Tuesday the 2nd December, 1986.

