

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

15TH NOVEMBER, 1988

Report of the Proceedings of the House of Assembly

The Third Meeting of the First Session of the Sixth House of Assembly held in the House of Assembly Chamber on Tuesday 15th November, 1988 at 10.30 am.

PRESENT:

Mr Speaker. (In the Chair)
(The Hon Sir Alfred J Vasquez CBE, QC, MA)

GOVERNMENT:

The Hon J Bossano - Chief Minister
The Hon J E Pilcher - Minister for GSL and Tourism
The Hon J L Baldachino - Minister for Housing
The Hon M A Feetham - Minister for Trade and Industry
The Hon J C Perez - Minister for Government Services
The Hon Miss M I Montegriffo - Minister for Medical Services and Sport
The Hon R Mor - Minister for Labour and Social Security
The Hon J L Moss - Minister for Education, Culture and Youth Affairs
The Hon E Thistlethwaite QC - Attorney General
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

The Hon A J Canepa - Leader of the Opposition
The Hon P C Montegriffo
The Hon M K Featherstone OBE
The Hon Dr R G Valarino
The Hon G Mascarenhas
The Hon Lt-Col E M Britto OBE, ED
The Hon K B Anthony

IN ATTENDANCE:

C M Coom Esq - Clerk of the House of Assembly

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 29th April, 1988, having been previously circulated were taken as read and confirmed.

DOCUMENTS LAID

The Hon the Minister for GSL and Tourism laid on the table the following documents:

- (1) The Hotel Occupancy Survey 1987
- (2) The Air Traffic Survey 1987

Ordered to lie.

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

The Gibraltar Register of Building Societies
Annual Report 1987

Ordered to lie.

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

- (1) The Employment Survey Report October 1987
- (2) The Accounts of the John Mackintosh Homes for the year ended 31 December, 1986
- (3) Industrial Training Ordinance - Levy Order 1988

Ordered to lie.

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

The Accounts for the John Mackintosh Hall for the year ended 31 March, 1988

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.4 of 1987/88).
- (2) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.5 of 1987/88).
- (3) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.6 of 1987/88).
- (4) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.7 of 1987/88).
- (5) Statement of Improvement and Development Fund Re-Allocations approved by the Financial and Development Secretary (No.4 of 1987/88).
- (6) Statement of Improvement and Development Fund Re-Allocations approved by the Financial and Development Secretary (No.5 of 1987/88).
- (7) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.1 of 1988/89).

- (8) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.2 of 1988/89).
- (9) Statement of Improvement and Development Fund Re-Allocations approved by the Financial and Development Secretary (No.1 of 1988/89).
- (10) Statement of Supplementary Estimates (No.2 of 1988/89).
- (11) Statement of Supplementary Estimates of 1984/85 (Excess Expenditure).
- (12) Statement of Supplementary Estimates of 1985/86 (Excess Expenditure).
- (13) The report of the Gibraltar Museum Committee and the Accounts of the Gibraltar Museum for the year ended 31 March, 1988.

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 1.15 pm
 The House resumed at 3.25 pm
 The House recessed at 6.35 pm

WEDNESDAY THE 16TH NOVEMBER

The House resumed at 10.45 am.

Answers to Questions continued.

ORDER OF THE DAY

MOTIONS

HON R MOR:

Mr Speaker, I beg to move that:

"Be it resolved that this House do approve the making by the Governor of the following order-

Title and Commencement: 1. (1) This order may be cited as the Social Security (Non-Contributory Benefits and Unemployment Insurance) (Amendment of Benefits) Order, 1988

(2) This order shall come into operation on the 27th day of December 1988.

Amendment of Schedule 3.

2. Schedule 3 to the Social Security (Non-Contributory Benefits and Unemployment Insurance) Ordinance is amended by omitting everything after the heading "Schedule 3", and substituting the following:-

"UNEMPLOYMENT BENEFIT

PART 1

Section 8

(1)	(2)	Weekly Rates Payable	
		(3)	(4)
Beneficiaries	Weekly basic rate.	Increase for wife or dependant (where applicable)	Increase for children per child (where applicable)
(a) Persons over 18.	£12.60	£6.30	£2.52
(b) Young persons (i.e. over 15 but under 18)			
(i) during any period during which the person is entitled to an increase of benefit in respect of a child or adult dependant.	£12.60	£6.30	£2.52
(ii) during any other period.	£ 6.30		

"PART I (A)

(1)	(2)	Weekly Rates Payable	
		(3)	(4)
Beneficiaries	Weekly basic rate.	Increase for wife or dependant (where applicable).	Increase for children per child (where applicable).
(a) Persons over 18.	£37.20	£18.30	£7.20
(b) Young persons (i.e. over 15 but under 18)			
(i) during any period which the person is entitled to an increase of benefit in respect of a child or adult dependant.	£37.20	£18.30	£7.20
(ii) during any other period.	£18.30		

Dated this day of 1988.

By Command,

Deputy Governor.

Mr Speaker, in accordance with the law I am required to review the rates of benefits and contributions annually in respect of Employment Injuries Insurance Ordinance. As you can see in this case the Motion is only concerned with an increase in benefits. As regards to contributions, the Government has taken the view that there is no need to increase contributions this year. Although we have actually recommend in the past that the rates of contributions should be increased by at least the same percentage as rates of benefits, the situation today is, that the contribution rate in respect of an adult is in fact 87.5% higher in 1988 than in 1982, whereas benefit rates only increased by 46%. It has also been taken into consideration that today's contributions are some 28.5% higher than the minimum the Actuaries have recommended for 1988. Should we have increased contributions in line with benefits, it would have meant an increase of 1½ pence shared equally between employer and employee, ie something like 3 farthings each, and although we will have our own coins next January, we are not proposing to introduce farthings. So, Mr Speaker, in view of the fact that contributions are well over the rate recommended by the Actuaries for this year and considering that benefits are being increased by 5%, we have decided not to touch contributions this year. The increase of benefits has been based on the increase in the cost of living in Gibraltar. Although Mr Speaker, the cost of living has only increased by 3.6% for the year ended last October, we have decided to round up the increase in benefits to 5%. As regards to the Employment Injuries Fund, Mr Speaker, this has been considered to be in a healthy state by the Actuaries. As at the 31st March, 1986, the Fund represented about 13½ years of expenditure, at 1986 rates of benefits, and this was considered to be a sufficient reserve and no need is seen to build the Fund up to a higher level relative to expenditure. It is considered that provided the contribution income balances expenditure on benefits and administration, this should be sufficient to maintain the level of the Fund and should only be reviewed should there be sharp increases in claims or a substantial drop in employment figures. Mr Speaker, I commend the Motion to the House.

Mr Speaker then proposed the Motion as moved by the Hon R Mor.

HON DR R G VALARINO:

Mr Speaker, these are the yearly increases under the Injuries Insurance Ordinance and a similar sort of increase under the unemployment rates, all increases are in the ratio of about 5% throughout the whole range of benefits. I am glad to say that there is no increase in contributions and this side of the House will be approving the measures.

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

HON R MOR:

Mr Speaker, I beg to move that:

"Be it resolved that this House do approve the making by the Governor of the following order -

Title and commencement.

1. (1) This order may be cited as the Social Security (Employment Injuries Insurance) (Amendment of Benefits) Order, 1988.

(2) This order shall come into operation on 1st day of January, 1989.

Application.

2. (1) The rates of benefits provided for by the amendments effected by this order (other than the benefits specified in sub-paragraph (2)) shall apply only in respect of accidents that occur on or after the 1st day of January 1989.

(2) The following rates of benefit under the Social Security (Employment Injuries Insurance) Ordinance (hereinafter called the Ordinance) shall be payable irrespective of the date of the accident:

(a) the rates of disablement pension under section 15;

(b) the rates of dependants allowances under section 18 for beneficiaries entitled to disablement pension;

(c) the rates of death pension and dependants allowances under section 19; and

(d) an increase in disablement benefit resulting from the review of an assessment under section 37 (2).

Amendment of Section 16.

3. Section 16(2) of the Ordinance is amended by omitting the expressions "£18.20" and "£36.40" and substituting the expressions "£19.10" and "£38.20" respectively.

Amendment of Section 19.

4. Section 19 of the Ordinance is amended -

(a) in sub-section (1), by omitting the expression "£24.50", and substituting the expression "£25.70";

(b) in sub-section (2) (a) by omitting the expressions "£26.60" and "£12,230" and substituting the expressions "£27.90" and "£12,840" respectively;

(c) in sub-section (2)(b), by omitting the expression "£12,230" and substituting the expression "£12,840".

Amendment of Section 20.

5. Section 20 of the Ordinance is amended by omitting the expression "£12.20" and substituting the expression "£12.80".

Amendment of Section 21.

6. Section 21 of the Ordinance is amended -

(a) in sub-section (4)(a), by omitting the expressions "£12.50" and "£18.60" and substituting the expressions "£13.10" and "£19.50" respectively;

(b) in sub-section (4)(b), by omitting the expression "£1370" and substituting the expression "£1440".

Amendment of Section 22.

7. Section 22(1) of the Ordinance is amended by omitting the expression "£1370", and substituting the expression "£1440".

Amendment of Schedule 2.

8. Schedule 2 to the Ordinance is amended by omitting Parts I and II, and substituting the following Parts:-

"PART I
INJURY BENEFIT

Section 14

Rates of Injury Benefit		
Class of Insured Persons	Per week	Per day
Persons who have attained the age of 18 years.	£45.50	£6.50
Persons who have attained the age of 15 but are under 18.	£34.30	£4.90

PART II
DEPENDANTS ALLOWANCE

Section 18

Class of Dependant	Per week	Per day
Dependent adult	£11.06	£1.58
Allowance for first dependent child	£ 6.09	£0.87
Allowance for second dependent child	£ 3.85	£0.55

"DISABLEMENT GRATUITY

Section 15(6)

(1) Degree of disablement per centum.	(2) Amount of gratuity.	(3) Degree of disablement per centum.	(4) Amount of gratuity.
	£		£
1	260	18	2440
2	380	19	2560
3	500	20	2690
4	630	21	2800
5	760	22	2940
6	870	23	3080
7	1000	24	3200
8	1120	25	3330
9	1250	26	3440
10	1370	27	3570
11	1500	28	3700
12	1640	29	3820
13	1770	30	3940
14	1910	31	4060
15	2050	32	4190
16	2170	33	4320
17	2300	34	4440

Amendment of
schedule 4.

10. Schedule 4 to the Ordinance is amended by omitting everything after the heading "Schedule 4", and substituting the following :-

"RATES OF DISABLEMENT PENSION.

Section 15(7)(a)

WEEKLY RATES		
1. Degree of disablement per centum.	2. Persons who have attained the age of 18.	3. Persons who have attained the age of 15 but are under 18.
	£	£
100	45.50	34.30
95	43.40	32.70
90	41.20	30.90
85	38.90	29.20
80	36.50	27.50
75	34.20	25.70
70	32.00	24.00
65	29.80	22.40
60	27.40	20.70
55	25.20	19.00
50	22.90	17.30
45	20.70	15.50
40	18.30	13.90
35	16.10	12.00

Amendment of
schedule 5.

11. Schedule 5 to the Ordinance is amended by omitting everything after the heading "Schedule 5", and substituting the following :-

"DISABLEMENT GRATUITY

Section 15(7)(b)

Degree of disablement per centum.	Amount of gratuity.	Degree of disablement per centum.	Amount of gratuity.
1.	2.	3.	4.
	£		£
35	4610	68	8850
36	4720	69	8990
37	4850	70	9120
38	4990	71	9260
39	5120	72	9380
40	5250	73	9500
41	5380	74	9630
42	5500	75	9750
43	5630	76	9890
44	5760	77	10020
45	5900	78	10140
46	6040	79	10270
47	6150	80	10410
48	6280	81	10540
49	6400	82	10670
50	6540	83	10790
51	6660	84	10920
52	6790	85	11060
53	6930	86	11170
54	7060	87	11290
55	7180	88	11420
56	7320	89	11550
57	7430	90	11680
58	7570	91	11810
59	7710	92	11940
60	7830	93	12060
61	7960	94	12190
62	8070	95	12330
63	8200	96	12460
64	8340	97	12580
65	8470	98	12720
66	8610	99	12840
67	8730	100	12840

Dated this day of 1988.

By Command,

Deputy Governor

BILLS
FIRST AND SECOND READINGS

Mr Speaker, again, I am required to review the Unemployment Benefits. As has been said previously, the cost of living has increased again, increased by 3.6%, and we are proposing to increase Unemployment Benefit by 5%. We have already an indication Mr Speaker, that the Opposition will support the Motion so I will commend the Motion to the House.

Mr Speaker then proposed the Motion as moved by the Hon R Mor.

There being no other contributors, Mr Speaker put the question which was resolved in the affirmative and the Motion was accordingly passed.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, with your permission I propose to withdraw the first of the Motions in relation to Company Fees Amendment Order 1988, and re-introduce it again, with your permission, at a later stage.

MR SPEAKER:

No problem whatsoever.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I beg to move that:

"Be it resolved that this House do approve the giving by His Excellency the Governor of the following notice:

Title and commencement	1(1). This notice may be cited as the Licensing and Fees (Amendment of Schedule) Notice, 1988 and shall come into operation on 1st April 1989.
Amendment to Schedule 2	2. Paragraph 1(1) of Item 10 of Schedule 2 to the Licensing and Fees Ordinance is amended by omitting the expression "£2.00" and substituting therefor the expression "£5.00".

Mr Speaker proposed the Motion as moved by the Hon the Financial and Development Secretary.

HON P C MONTEGRIFFO:

Well Sir, the Opposition have no difficulty with this Motion and we will vote in favour.

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

THE COMPANIES AMENDMENT ORDINANCE, 1988

HON M A FEETHAM:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Companies 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 M A FEETHAM:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the principle object of this Bill is to obtain wider powers for the investigation and inspection of Companies by competent inspectors. Occasions arise which make it desirable for an investigation to be made into various or any particular aspect of a company's affairs with the view to the prevention or prosecution of fraud. However such investigations are not possible under the existing provisions of the Companies Ordinance. At present investigations can only be carried out on the application of the Company itself or of a specified number of its members, supported by evidence showing aims at remedying this situation and will permit the appointment of inspectors also, if it appears that the affairs of a company are being or have been conducted:

- a. with intent to defraud its creditors or the creditors of any person; or
- b. for a problem or unlawful purpose; or
- c. in a manner unfairly prejudicial to some parts of its members. This will cover any action or proposed act or mission; or
- d. in a manner which is considered detrimental to Gibraltar's reputation in relation to financial matters or contrary to the public interest.

It will likewise be possible to investigate a company if there is evidence of malpractice or other misconduct or if it appears that the company was formed for any fraudulent or unlawful purpose. The wider powers of investigation which the Bill is designed to provide will enable a company to be investigated to determine the identity of the persons who are or have been financially interested in a company's success or failure or who are able to control or materially influence the company's policy. The appointment of inspectors will be compulsory where the court by order declares that the company's affairs should be investigated. If there are good reasons to do so, it will be possible under the new provisions to direct a company to produce such books or papers as may be specified and to authorise

a public officer to require their production forthwith. Copies of extracts could be taken from the books and papers and any past or present officer of the company could be required to provide an explanation of them. Moreover application could be made to the Justices of the Peace for a warrant to search premises if there were reasonable grounds for suspecting that there are books and papers on those premises which may not have been produced as requested. The Bill will reinforce the existing powers of inspectors under the Ordinance by eg empowering an inspector to examine a director's bank account, if he has reason to believe that such accounts have been used in connection with certain transactions involving the company which have not been recorded in the annual accounts or otherwise disclosed to its shareholders. The Bill makes provision for the security of information obtaining from an investigation, except in certain specified cases, no information or document obtained during the course of an investigation related to a body shall be without the previous consent in writing of that body be published or disclosed. If as a result of the inspectors report, it appears in the public interest that the company should be wound up, the Governor could present a petition for winding up on the grounds of just unequitable. Furthermore, if the report indicates a civil proceedings ought, in the public interest to be brought by any company, the Governor could bring proceedings on the company's behalf and in the company's name. The expenses of an investigation would be charged to the Consolidated Fund, in the first instance, but could be recovered as follows:

1. From a person who is convicted on a prosecution instituted as a result of the investigation or is ordered by the courts to pay the whole or any part of the cost of civil proceedings brought on the company's behalf to the extent ordered by the court;
2. From a body corporate in whose name civil proceedings are brought by the Attorney General to the extent of the amount of value of any sums or property recovered by as a result of those proceedings;
3. From a body corporate dealt with by the inspectors report except where the inspectors were appointed by the Governor's own motion fully or partly as the Governor may direct; and
4. From the applicants for the investigation including a company which has applied for an investigation of its affairs to the extent that the Governor may direct.

Mr Speaker, I should add that the Bill follows United Kingdom practice and places the Companies Ordinance in line with comparable provisions in the United Kingdom Companies Act of 1985. Mr Speaker, I now turn to the Bill

itself. Clause 2 provides for a new Schedule to the Ordinance which empowers the Governor to appoint inspectors, defines the circumstances in which that power can be exercised and deals with inspectors powers in the course of an investigation. The Schedule also treats obstruction of inspectors as contempt of court. Makes provisions as to the report by inspectors and for such report to be admissible in evidence. The Attorney General is given powers to institute civil proceedings in a name of a body corporate in the public interest. The Schedule also deals with other ancillary matters to the investigation of companies. Clause 3 empowers the Attorney General to institute criminal proceedings in respect of offences disclosed by the inspectors report. Clause 4 amends the Companies Taxation and Concessions Ordinance to enable information available on Tax Exempt Companies to be disclosed to inspectors without offending the secrecy provisions, for the purpose of an investigation under the Bill. Mr Speaker, I commend the Bill to the House and I beg to move.

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 P C MONTEGRIFFO:

Mr Speaker, the Opposition welcomes in general terms the Bill as part and parcel of the strengthening of Gibraltar's protection, in strengthening Gibraltar's legislation and in ensuring its reputation as a Finance Centre. There are two matters which I would like to raise at this stage of a general nature. The Honourable Minister has kindly pointed out and has pointed out in the Explanatory Memorandum as well that the legislation is based on the 1985 Companies Acts in the UK. Our concern is whether that legislation is really a little too restrictive for the purposes of Gibraltar's Finance Centre operations. This often tends to be the case with other legislation which emulates from the UK and I would have been much happier with the Minister having said what the position was in say Jersey or the Isle of Man in respect of similar provisions. I have been trying to get details of such provisions myself, Sir, and I must confess it is not easy for me to get the up to date position, but I would not like to see the Bill going through all its stages in this House, becoming law without first having investigated what other jurisdictions, like the Isle of Man and Jersey, have in their Statute Books as opposed to the UK model. Secondly, Sir, the Governor is the entity empowered in various sections to undertake these investigations and to conduct a number of the proceedings that the sections provide for. I would be grateful for the Attorney General's guidance on the inclusion of the Governor in such a role.

Basically Sir, because if we understand the position correctly, come January next year, we will have some form of Financial Services Commission established headed presumably by a Financial Services Commissioner. This Commissioner will have general competence over the supervision and regulation of financial services and I wonder whether there is an element of inconsistency in the Governor being the entity or the party that is charged with the responsibility under this Ordinance of implementing the powers to take the decisions that the sections provide. I am not sure on what advice the Governor would work but it seems to me odd that you have the Governor's involvement in this type of area which is highly technical and highly sophisticated, when you are going to have a totally separate Financial Services Commission headed by Financial Services Commissioner who is going to be the man with his finger on the pulse of companies that go wrong and who might get into trouble and which the law might have to be used to investigate. Those are my two points which, Sir, at this stage although I have other minor matters which I will raise during Committee Stage but those are two matters which I would like perhaps to deal with and clarify before the Bill goes through.

HON M A FEETHAM:

Mr Speaker, I can say that as far as the Government is concerned, we follow United Kingdom legislation as a general rule, but I have already said in the House on a number of occasions that it does not necessarily follow that everything, including EEC Directives which apply to Gibraltar, are followed to the letter. We usually make allowances to include something which is more or less tailor made for the requirements of Gibraltar.

HON A J CANEPA:

Mr Speaker, whilst we have not voted against I might explain that unless the Honourable Minister is able to deal with the point that my Honourable colleague has raised, in Committee in some more detail, we may not be able to vote in favour at the Third Reading. We may have to abstain. We are in favour but I would like to explain that we are in favour, in principle, of the Bill. We welcome it wholeheartedly, but I do feel that our colleague has made some valid points which the Minister has dealt with in a cavalier fashion and I think he ought to perhaps ask for the Hansard, look at the points raised by my colleague, and see whether at Committee Stage he can give us a rather more satisfactory explanation. Otherwise as I have said, we might abstain in Committee. If the Hon Minister does not mind, fine.

HON M A FEETHAM:

Mr Speaker, as I understood it the Honourable Member made two points. One was that the legislation would appear to be too restrictive and whether we had looked at the

legislation in force in the Isle of Man or the Channel Islands. Secondly he addressed the Attorney General on the question of whether what was being done was in any way in conflict in so far as His Excellency's powers were concerned in the legislation in relation to what was intended to be done with the Financial Services Legislation in the future.

MR SPEAKER:

We must not open up the debate now. I think the Opposition has given notice of the fact that they voted in favour on the general principles of the Bill and that they would reserve their rights in the Committee Stage and act according to what they considered to be right.

HON M A FEETHAM:

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.

This was agreed to.

THE MERCHANT SHIPPING (AMENDMENT)(NO.2) ORDINANCE 1988

HON M A FEETHAM:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Merchant Shipping 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 M A FEETHAM:

Sir, I have the honour to move that the Bill be read a second time. Mr Speaker, this amendment has come about due to changes made to the Registry Rules under Part 1 of the 1894 Merchant Shipping Act. The changes are all contained in the Merchant Shipping Bill recently enacted by the United Kingdom Government, which Bill incorporates a number of innovations already undertaken by Gibraltar, as passed by this House on the 11 February 1987. However further legislation is necessary as eligibility as to entitlement to ownership has been changed. The main change being that body corporates can only be registered as owners of a British ship registered at this port if there are incorporated and having their principle place of business in Gibraltar, in the United Kingdom, the Isle of Man, any of the Channel Islands or any colony. Previously we had accepted companies incorporated in any of Her Majesty's dominions. This new amendment does not in any way hinder our register, as in the past the majority of owners have

been companies incorporated in Gibraltar or the United Kingdom. By this new Bill our registry procedures are identical, insofar as ownership is concerned, to that of the United Kingdom. However, we ourselves, Mr Speaker, are even more stringent than the United Kingdom as by our excluded registration order we limit, in our own interest, the type of vessels we can register. The enactment of the two Bills brought before this House and the thirty odd secondary Regulations which will be published shortly will Mr Speaker, ensure that ships on our registry will be governed responsibly and show internationally the responsible attitude by this Government as to what is registered.

MR SPEAKER:

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

HON A J CANEPA:

The last point made by the Honourable Mr Feetham, I would just add that the two Bills now on the Agenda Paper and the Regulations which are to follow together with the two Bills that I brought to the House in the recent past, put our Registry on the footing that he has explained. The previous Government worked on this subject for five years and the application of the SOLAS Convention to Gibraltar is the result of five years work and he ought to give the previous administration some credit for that. So it is not just these two Bills and the Regulations. It is those two Bills and the Regulations together with the legislation that we brought to the House last year and the year before which complete the picture. We have no difficulty in supporting this Bill, we generally welcome it. There are three points that I want to make, perhaps only one of which, may be slightly controversial. I would like the Minister when replying to tell us whether there has been any consultation within Gibraltar with interested parties on this legislation. For instance, has there been any consultation with the Gibraltar Shipping Association or is just the result of discussions between perhaps the Minister and Officials of the Gibraltar Government and United Kingdom Officials of the Ministry of Transport. Secondly could we please have clarification of Section 204C Sub-paragraph 7 (bottom of page 226 of the Bill) "Nothing in this Section applies to a ship to which Section 80 of the Merchant Shipping Act 1906 applies". Could we please have clarification of that? If not now perhaps at Committee Stage. The only other point with which we are not happy and which we may not support in Committee and could be the result of copying the recent United Kingdom legislation and applying it to Gibraltar, is that we on the Opposition cannot at this stage, at any rate, see why citizens of the Republic of Ireland should be given special and privileged treatment. One is of course fully aware of the fact that a great deal of United Kingdom legislation

does give citizens of the Republic of Ireland special and privileged treatment notwithstanding the measures that Mrs Thatcher adopts on the question of terrorism. However why is there a need for this in Gibraltar. Why we should follow the United Kingdom does not in any way emerge from the Bill and therefore we would like to be convinced about the need for this special provision. Failing that we would vote against. Not against the Second Reading but in Committee on this particular Clause.

HON CHIEF MINISTER:

Mr Speaker, let me just say that the Government is committed to an expansion of the Gibraltar Registry. The application to Gibraltar of International Conventions by the United Kingdom which we have now achieved and which was something that was pending for a very long time is an essential ingredient to the credibility of the Registry in the eyes of shipowners. In my meetings in Hong Kong with a number of major ship owners, who currently have their ships registered in Liberia and Panama, there was a great deal of interest in transferring to the Gibraltar Registry provided they were satisfied that the Gibraltar Registry was not one that would be facing problems because of its technical inadequacies. We must not forget of course, as the Honourable Member opposite pointed out to me in supplementaries to a previous question, notwithstanding my world wandering we are not independent and therefore ships registered in Gibraltar do not fly the Castle and Key, they fly the Red Duster and an essential part of being able to do that is that the legislation that we have has to be one which the British Government is prepared to defend internationally because it is a British ship that would be registered in Gibraltar not a Gibraltarian ship. I do not think that should be forgotten, but let us be clear that it is not the intention of the legislation to hinder the development of the Register or to foster the development of the Register, but to foster it by enhancing the quality.

HON ATTORNEY-GENERAL:

Mr Speaker, on two of the Hon Leader of the Opposition's points. No there was no consultation within Gibraltar as to this Bill prior to it being extended. The choice we had was for an Order in Council applying the 1988 Merchant Shipping Act in the United Kingdom Part 1 of the 1988 Act to Gibraltar and I said no that we had gone part of the way along the road with our No.4 of 1987 legislation when we dealt with the powers to refuse registration and we put in representative persons there and we have done many of the things which the 1988 Act of the United Kingdom incorporated. So I said "no, please let us amend our own legislation, I do not want an Order-in-Council extending Part 1 of the 1988 Act. Blend it in with our ideas as contained in Ordinance No.4 of 1987". They agreed to that and so I had to swallow the citizens of the Republic of Ireland as well because that was one of the persons who are qualified to own a British ship and therefore that had to be taken. This is really the Gibraltar version of the 1988 Act, bringing it right into line with the United

Kingdom. I am sorry I did not know what Section 18 of the Merchant Shipping Act 1906 did, it is a small point but I will find out the answer.

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

HON M A FEETHAM:

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.

This was agreed to.

The House recessed at 1.05 pm.

The House resumed at 3.25 pm.

MR SPEAKER:

I will remind the House that we are now on First and Second Readings of Bills and I understand that the next one to be called is the Merchant Shipping Health and Welfare Bill.

HON A J CANEPA:

Mr Speaker, if you will allow me, I did not know this morning that the Merchant Shipping Amendment Bill would probably go into Committee today or tomorrow morning, otherwise I might have said and I think it might be of interest to you and to Members to know that the attitude that we will take on the citizens of the Republic of Ireland will depend on how they perform in tonight's football match against Spain.

THE MERCHANT SHIPPING HEALTH AND WELFARE ORDINANCE 1988

HON M A FEETHAM:

Sir I have the honour to move that a Bill for an Ordinance to make provisions with respect to the Health and Welfare of seamen on board Merchant Ships 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 M A FEETHAM:

Mr Speaker, I beg to move that the Bill be now read a second time. Mr Speaker, as the Leader of the Opposition quite rightly said during his contribution to the previous Bill on Merchant Shipping, Gibraltar since 1984 has been working towards the extension of the various International Conventions dealing with maritime affairs. The House will recall that on the 21 January 1988, the Merchant Shipping

(Amendment) Ordinance 1988 was passed in this House which amongst other matters gave legal effect in Gibraltar to the manning and certification of deck officers, manning and certification of engineer officers, the Convention for the Safety of Life at Sea as also the Merchant Shipping Load Lines Act of 1967. The purpose of the present Bill before the House is to enable three ILO Conventions dealing with the welfare of seamen to be extended to Gibraltar. The three Conventions are as follows: No.92 - Convention Concerning Crew Accommodation; No.133 - Convention Concerning Crew Accommodation Supplementary Provisions and Convention 147 - Concerning Minimum Standards. It is necessary for the above three International Labour Organisation Conventions to be extended, as this will enable Gibraltar registered ships to be maintained to the same standards as major maritime nations. Mr Speaker, I think you will agree that from time to time Gibraltar has received adverse press reports due to allegations made as to the state of vessels on our Register. Previously due to lack of legislation we have never been able to categorically deny such allegations. By legislating, thus committing our ships to undergo service, our ships will therefore be on par with other nations and therefore putting paid to those who automatically class us as a flag of convenience. Once this legislation is passed Mr Speaker, there will be no grounds whatsoever to pinpoint our Register, as we shall in all aspects, regardless of the name Gibraltar at the stern, be classed as a ship the same as those registered at the port of London or Liverpool. I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

We welcome this Bill Mr Speaker, in general terms and we support it. We do have one or two matters to ask the Minister about. He has just mentioned for instance at the end of his intervention that ships registered in Gibraltar will consequent on the passing of this legislation be in exactly the same position as ships that would be registered in either London or Liverpool. Does that mean therefore that in effect the United Kingdom has already included in their own legislation and thereby giving effect to the provisions of the Conventions which we are going to introduce into our legislation. I would like the Minister when he exercises his right to reply to let us know about that. Also does he have any idea, how this legislation compares with the provisions of similar legislation in other Registries, such as the Isle of Man or other Registries which are likely to compete with Gibraltar. In the light of that perhaps I could also invite the Minister to tell the House whether he is satisfied.

having regard moreso to what the Chief Minister said this morning on the previous Bill, if he is satisfied that these provisions are not going to make the Gibraltar Registry uncompetitive. Obviously we want to get away from the image of the flag of convenience, we are putting our own house in order, but as a result of all the cumulative legislative steps that we are taking, is the Minister happy, is he satisfied, that in fact we will continue to have a Registry that is going to be competitive. I would invite him to consider those points.

MR SPEAKER:

Are there any other contributors? I will then call on the Minister to reply.

HON M A FEETHAM:

The answer to the first question is yes, Mr Speaker, it had been included in the UK legislation and as to whether it compares favourably with the Isle of Man, in fact the legislation applies to all dependent territories so we are on par in that respect. With regard to the point if I am satisfied with the Registry and if it will be able to be competitive with other Registries, I am. We see the future of the Registry, not as a separate form of selling Gibraltar, we see it as part of a package with other port related matters thereby giving us an advantage to other territories, Mr Speaker, so I am satisfied.

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

HON M A FEETHAM:

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.

This was agreed to.

THE SOCIAL SECURITY INSURANCE AMENDMENT ORDINANCE 1988

HON R MOR:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Social Security Insurance 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 R MOR:

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

a second time. Mr Speaker, as can be clearly seen, the purpose of this Bill is twofold. In one respect it allows that in future all administrative costs incurred, as a result of administering the Social Security Insurance Ordinance should be charged to the Social Insurance Fund and not to the Consolidated Fund. This in effect will mean Mr Speaker, that all administrative costs of the Department of Labour and Social Security will be apportioned in such a manner that the whole of the cost related to the administration of the Social Insurance Fund will be charged to this Fund. In another respect this Bill releases the Minister responsible for this Ordinance from having to carry out annual reviews of contributions and benefits and yet allows the flexibility to carry out reviews when considered necessary. In any case increases on the weekly rate of contributions would be subject to approval by this House. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON DR R G VALARINO:

Yes Mr Speaker, the Honourable Minister has just read the explanatory memorandum of the Bill. We have now received further amendments which are to be put at Committee Stage. Now dealing with the Bill itself, Section 2, states "The Minister means the Minister responsible for the administration of the Ordinance". Now I take it to mean that this is in lieu of "Director" and I will also read the whole paragraph. "Director means the person who for the time being holding or carrying out such duties of the office of Director of Labour and Social Security or such other person as the Governor may appoint to administer the provisions of the Ordinance". I feel that in order to get the legal aspect right, as far as the amendment of this section is concerned, the words after "Labour and Social Security" should be done away with and then one could put in, "the Minister means the Minister responsible for the administration of the Ordinance". Otherwise if you put the Minister at the beginning stating that the Minister is the person responsible for carrying out the duties of the office of Director of Labour it is incorrect. The Attorney General will correct me on that point. I myself cannot see why the Minister and not the Director should be able to administer the provisions of the Ordinance. With regard to the amendment of Section 29, I agree with it since it is basically making sure that all expenditure incurred in the administration of the Social Insurance Fund will be charged to the Social Insurance Fund instead of the Consolidated Fund. The amendment of Section 52, in the original provision states "the Minister shall at such time as shall deem to him appropriate in respect of each year review the sum specified in the

following section". Now the new wording is "the Minister shall at such time as shall seem to him appropriate, therefore the words at "each year" have been replaced by the word "appropriate" and it certainly infers even if it does not mean that pensions will not be increased on an annual basis but as and when the Minister considers it necessary. Now I fully understand the reasons for this and the why this Bill has come to the House and I also fully understand the reasoning of the Government. It is in order to safeguard certain things that may occur in the future but yet by doing this, and I am thinking now of Gibraltar pensioners, and the fact that they may not receive an automatic increase to their pensions. To me this destroys the method since time immemorial of having three Motions coming to the House which increase pensions and benefits. Previously the Opposition have been able to say what they felt and the Government took it on board and it proved to be a good exercise. I feel that if in future increases are introduced in another way instead of by legislation it would tend to take away that ability from the present Opposition, because obviously once a Regulation appears we would be left with very little to say on the matter, and I am rather unhappy at this. We will at the Second Reading of this Bill vote in favour of the Bill. I intend to introduce a small amendment at Committee Stage and what I would like to say to the Honourable Mover of the Motion is that because he intends to introduce such substantive amendments at Committee Stage, I would be grateful if he could give us some time to go over these amendments and that we should therefore not take the Committee Stage and Third Reading of the Bill today. The Leader of the Opposition may wish to enlighten you further on this matter.

HON A J CANEPA:

Mr Speaker, we are very disappointed on this side of the House about the manner in which this Bill has been brought to the House and what is more about the amendments which have been circulated and we have found this afternoon on returning to the House. Amendments which indeed go much further and well beyond the scope of the original Bill. I am also very disappointed by how little Mr Mor has said about the Bill. He obviously considers it much more important to have an article on the front page of the Chronicle which says a great deal more about what the Government is intending to do on this matter, than what he has told the House. I think he owes us a little bit more courtesy, particularly since we are well disposed, and we are trying to support in every way that we can the Government in what it is trying to do. He has said very very little in support of the provisions of this Bill and therefore I am going to have to deal with some of the statements that he has made outside the House because more information is contained there than what he has put before the House this afternoon. What I cannot understand, Mr Speaker, is also how if apparently notice of these amendments was given on the 9 November, or at least it is dated

the 9 November, why we members of the Opposition have not seen these amendments until this afternoon. We find them on our desks this afternoon and the Minister does not make any reference whatsoever to them. I would have thought that during the Second Reading of the Bill he could have given us some indication as to the scope of these amendments because the Government would like us to allow Committee Stage to be taken today, if not it would be tomorrow morning.

HON CHIEF MINISTER:

If the Honourable Leader of the Opposition will give way? I will go into some explanation on these amendments and I am sorry that he has not seen them until today. However the idea is to take the Committee Stage of this Bill when we come back on the 28th, so Honourable Members opposite will have plenty of time to digest these amendments.

HON A J CANEPA:

Nevertheless, Mr Speaker, I think there are matters of principle that go well beyond what you would expect in Committee. From a very quick glance at the amendments that have been circulated, the establishment of two parts, one for the long term benefits, the pension fund and one for the short term benefits like unemployment benefit, maternity allowance. This is a major change to the Social Insurance Scheme, probably one of the greatest changes since I myself introduced the cost of living formula back in 1976 and therefore I think that it does not make for good procedure that we should be treated in this manner. I accept and I know that the Government is under pressure and that they have got difficulties because the matter is being actively pursued by the Chief Minister and obviously they do not have the elbow room that they would like but as I say were it not for the fact that we want to be as helpful as we can I think we would have been extremely perturbed about it and I hope that our acquiescence in allowing the Government to get on with the business and therefore not putting obstacles in their way, I hope that that would not be interpreted in the future as a precedence for them to treat us in this fashion. In future I hope that we are able to see matters dealt with on a different basis. The Bill now before the House, Mr Speaker, does away with a number of things. We support that the administrative charges of the Fund instead of being charged to the Consolidated Fund, in other words that taxpayers should have to pay, that it should be the contributors who will pay. There are historical reasons why these charges were laid to the Consolidated Fund. When the Social Insurance Scheme started in 1955 on a very modest basis and first of all interim pensions were paid in 1960 and five years later were again paid out of general revenue, is out of the Consolidated Fund because the Social Insurance Fund had not grown sufficiently during the first five years to be able to support these payments. Those were the first interim transitional pensions that were

paid five years later. The other pensions, the normal Old Age Pensions were first paid in 1965. Ten years after the Social Insurance Scheme had been set up and therefore again not enough contributions had come in and the Fund had not been built up to a level that could support these charges or the Government of the day took the view that because the pensions were being paid at the rate of £2.10p that as much help as possible should be given to the growth of the Social Insurance Fund and that is why these charges were made to the Consolidated Fund. For the same reason, even though the pensions in those days stood at £2.10p, £1 out of those £2.10p was paid out of general revenue. There was a sum set aside and transferred every year from General Revenue into the Social Insurance Fund thereby supplementing the Fund in order to enable the Fund to grow. That is the history of the matter and who would have thought in 1955 or in 1965 that the day would come when for other reasons it would be necessary to take these measures of charging the Fund. The Honourable Mr Mor has not told the House today what the extent of that commitment is, but he did make certain declarations in the press which indicate that the figure is around £1m according to press reports. I have done a little bit of research since then and I find it difficult to arrive at such a high figure and if it is not such a high figure in a way I am happy because the contributors who in future are going to have to meet the cost will not have their contributions increased by such an amount as if there was an annual commitment of £1m. I say that I do not think that it can be that high because what I understand is now charged to the Consolidated Fund in respect of the administration of the Fund is part of the salaries of officers employed in the Department of Labour and Social Security and for the year 1988/89, the total Personal Emoluments, the total bill for the Department of Labour and Social Security is £890,000. So therefore I cannot see how the proportion of those people who work directly in the Social Insurance Section together with a proportion of those who although not working directly, a proportion of their salary eg the Director of Labour, the Deputy Director and some other people may also be charged to the Fund. I would however imagine that that could not be much higher than 20% or 25% of the total Personal Emoluments of the Department and therefore the figure ought to be more like £200,000 or £250,000. To that amount we could perhaps add notionally a figure for rent although Government never charges any Departmental rent, but they could if they wanted to charge the Social Insurance Fund a notional figure for rent of the Social Insurance Section that part of the Haven occupied by the department for Social Insurance and they could also do something similar, I imagine, in respect of rates. There could be a figure put into the Social Insurance Fund as a charge, a legitimate charge, on the fund in respect of payment of rates. The only other matter that I think that could legitimately be charged would be the consumption of electricity, water and telephone by the department. All this I think would not come anywhere near £1m. If

they are able to confirm later on in the debate that this is the case then at least we will have confirmation of the view that I take that in fact it is not such a high figure and therefore contributors would not have their contributions increased as sharply as would otherwise be the case. I am frankly dissatisfied, Mr Speaker, that what the Bill is doing is taking away from the House the right that it now has to pass legislation originally on this matter. Originally we used to have to bring three Bills to the House and to make the procedure a little bit more straightforward, to give ourselves more time, because Bills have to be published. We changed the legislation, I think it was again in 1976 or 1977, so that it could be done by Motion in the House. That gave the department much more leeway and the Attorney General in trying to prepare the necessary legislation and now what is going to happen is that this House is not going to have any say whatsoever. Members of the Opposition, in particular, will not be able to put any input, we will not get an opportunity to debate any amendments, any changes in benefit unless we do it ex post facto when we learn about it in the Gazette, because the Government will publish Regulations in the Gazette and then we would have to bring our own Motion to the House and we will not be able in any way to influence the Government in its decision. The history of this matter is very different, I am sure the Honourable Mr Bossano will accept, that we took very close note, over the years, of what he had to say year after year when there was the annual review on the question of Social Security benefit.

HON CHIEF MINISTER:

You usually said no.

HON A J CANEPA:

No, I do not think that is correct, in fact I do recall myself being Minister for Labour and almost at the next meeting of the House bringing further legislation, as a result of points that he had made and which we had taken very much to heart, and we took very careful note and if we did not do it immediately the following year we would take note of what he had said. I think the history of what has happened in this House with regard to Social Security Pensions is a much happier one than a 14 to 1 vote against whenever he brought a Private Members' Motion that was not acceptable to Members of the House. Therefore because of that I would have hoped that he might have valued the contribution that we would make from this side of the House. Here we have in the previous Bill the Government giving us an opportunity in the Merchant Shipping Health and Welfare Ordinance Clause 4, in fact, under the second sub-clause "no Regulation would be made under this section unless a draft for the regulation has been laid and approved by resolution of the House". So this legislation gives the House powers and in another piece of legislation takes those powers away and we have not had any convincing

explanation about that, other than the Minister saying that it is for the sake of flexibility. There is much more to it than that. I feel very strongly, Mr Speaker, about the present provisions which are going to be repealed which require annual review and I am very emotionally committed and I think the Honourable Mr Bossano gave me every encouragement and support back in the middle seventies on the road that we set ourselves upon at that time. Indeed, I think that he has and he can correct me if I am wrong, I will give way, I think that he has on occasions described our scheme as perhaps the best in the world. Now what is going to happen? There is no guarantee that there are going to be annual reviews. The Minister will review the level of benefits, at an appropriate time, but workers in Gibraltar are entitled, as per the parity arrangements, to have an annual review of salaries and wages and that in effect means an increase every year in salaries and wages and I feel very strongly that if workers are entitled to that, pensioners should be treated in the same way and they should be entitled to an annual review. If that linkage is broken, if in future workers do not get an annual review, then there might be a good case for the level of pensions not to be reviewed. How is the level of pensions going to be reviewed? At the moment it is in line with the movement in average earnings. In future we do not know what is the Minister going to take into account? Is he going to take into account the level of average earnings? Is he going to take into account increases in cost of living? On what basis? These are very serious matters which obviously cause us a great deal of concern, I think the Bill effectively asks us to give the Government a blank cheque, in respect of benefits. I note that there is a provision in the Bill, Clause 4 sub-clause 3 "whereby there will be no increase in the weekly rate of contribution unless it is approved by resolution of the House". That therefore retains the present position. I would like the Government to try to convince us why the same cannot be done about the level of benefits. Why cannot the House at an appropriate time have sight of these increases or whatever increases the Government propose and give us an opportunity to debate. Why take these powers away from the House? It will amount to a complete departure from the practice used since the inception of the scheme and I feel very sorry, quite honestly, that because of the problems that the Spaniards have posed, things should come to, if that is the real reason why it has to be done, it is a rather sad day in many respects. The Minister has not said anything, in this House, about other plans which he may have. He has given information to the media about means testing. That is linked to what is before the House today, it is very closely linked to the matter. For instance, is it just persons in employment who earn more than a certain amount that may not receive their pensions, as I think is the practice in the United Kingdom. If you are in employment at the age of 65 and your income of employment is more than a certain figure, for five years you will not get your pension, but you will get your pension regardless

of whether you continue in employment at the age of 70. Is that what the Minister is thinking? Or is it just going to be income from any sources and not from employment and anyhow what about the fundamental principle, is it right that a contributor to the scheme who has been contributing for a lifetime in expectation that regardless of his income, regardless of whether he continues in employment after 65 or not, he has had every reasonably and legitimate expectation of collecting his old age pension at the age of 65. Is it right that that should be taken away? He has been paying to the scheme on a bona fide basis expecting to collect. Is that not what the scheme is about? Do you not get from the Social Insurance Scheme in accordance with what you have paid and why now this change. We are told that and I quote from press reports again "we should give money to the people who need it most". Indeed, of course, give money, but that is what we do under the Supplementary Benefit Scheme, but under the Social Insurance Scheme you are not giving money to people whether they need it or whether they do not. You are giving money to the people because they have earned the right to get an old age pension as a result of the contributions that they have paid over the years. I would say that if that is the intention, then that should be done under the aegis of a new scheme, so that new entrants, new contributors, know what there is in store for them, but a person who may be aged 64 today and is expecting in a year's time to get his old age pension and has got plans to take up a job, now he finds that if he continues in employment, apparently, he is not going to collect his old age pension. I think that that is wrong. It is alright for new entrants because they know on what basis they would be coming in and otherwise people in that position may have thought well, they may ask themselves, would it not have been better for me to have used those contributions, which today is £8 a week, to have put into a provident fund, to have gone along to an Insurance Company and taken out a life insurance. Taken out an annuity which might yield them more than what an abated pension would give or no pension at all for five years or in perpetuity if they continue in employment. These are very serious matters, Mr Speaker, which the Minister has chosen to make public, but which he has not brought to the House today and I do not know what the fear should be, quite honestly, because these are not matters that are directly linked to the problem of the Spanish Pensions, they may arise from that, but they can be debated and discussed without having a direct link in the sense of what arrangements the Government may or may not feel that they have to come to to deal with the problems of Spanish pensions. In introducing the whole concept of means testing, I think that the Government is taking a very serious step and it is not a step which one associates with socialists. I do not want to be more controversial, I am trying to be as constructive as possible

and to give Honourable Ministers opposite food for thought and therefore I do not wish to make statements that they would take offence to, but I am a student of politics and I am aware of the fact that means testing is by and large abhorrent to socialists and I am not as left as most of them are, but to me the concept is, insofar as social insurance is concerned, it is totally abhorrent. Here we are having a tremendous debate this afternoon at the same time as there is a tremendous debate in the United Kingdom precisely on the principle of means testing with the Labour Party taking issue and pillorying the Chancellor for statements which he is alleged to have made on the issue of means testing. Means testing is associated with people on the right of the political spectrum and not on the left of the political spectrum. So the Government is embarking, it is breaking new ground, it is embarking on changes which are going to go down very badly. People that have read these reports are alarmed at what is involved here. It is not clear whether we are just talking about employment, as I said earlier, or whether other income is going to be taken into account. If someone has a substantial pension already from employment what is his position vis-a-vis the old age pension? What about the self-employed? What about people who are not in employment but who are self employed? Professionals, what is their standing, what is their position going to be as a result of the measures. If it is going to be the case that pensioners in employment will not get their old age pension are we not discriminating unfairly against Gibraltarians and other Gibraltar pensioners? Because our ability to monitor and to follow up inspection outside Gibraltar is seriously bedevilled. If we are having difficulties about payment of pensions to people who may no longer be alive or to their families, how are we going to check whether people in neighbouring Spain are not in employment there and getting a pension at the same time, that is going to be very difficult. What about Morocco? The same, will apply, Moroccans will be able to collect their pensions and they will be able to take up employment in Morocco and we will not be able to do anything about it. But with regard to Gibraltar pensioners, yes, because Gibraltar is such a small place that we are going to be able to follow up, because we will know who is in employment and who is not in employment. These are also matters that I think the Government should take into account, because if a desire not to pay for Spanish pensions, we have to be careful that we do not in fact hit at our own people, that we do not indirectly make them, in some form or other pay for the Spanish pensions. Because it could be said that if I am aged over 65 and I take up employment and as a result I do not collect my old age pension, I could say, well you have done that in order to try to deal with this problem with the Spanish pensions, I am paying for the Spanish

pensions whether you like it or not, because you are penalising me. So I think we have to be careful that we do not penalise our own people indirectly under the guise, we are not going to pay, but yet in other respects apparently we are. I would imagine that there are acquired rights, I do not know whether the provisions in the United Kingdom with respect to pensioners who take up employment arose at the inception of the scheme or whether they came in later. I have a feeling that it was at the inception, because if it is not at the inception of the scheme, I think, that if not legally, morally, we are taking away acquired rights from people who are already pensioners and from those who are about to become pensioners. I hope I have dealt with all the bits and pieces of notes that I have made over the last few days with all the matters that have come up. Perhaps in Committee if we get an explanation as to what the amendments amount to and my very cursory reading gives me some indication of what they are, perhaps I will also be able to make in Committee Stage a valuable contribution. I urge the Government to view what I have said as coming from the heart, as coming from somebody who wants to be helpful, as coming from someone who attached a great deal of importance to this area of social concern during the nine years that I was Minister for Labour and Social Security. During those nine years there was nothing for me that was more important than what happened to our old age pensioners and I would urge the Government to reflect on what I have said and to see whether if the points that I am making have a legitimate basis to them, if there is reason behind the points that I am making, what they can do to meet these points and to alleviate the situation.

HON CHIEF MINISTER:

Mr Speaker, I accept what the Honourable Leader of the Opposition, says about his commitment to this particular area. I have seen it myself for many years on the opposite side and in fact I think it was in 1976 that I urged him to introduce the clause that we are now removing and he introduced it in 1978. Nevertheless much of what he has said is in fact irrelevant because I think what he is doing is speaking not to the Bill but to the article in the Chronicle and the article in the Chronicle and the Bill have nothing to do with each other. There will be no means testing of Social Security Benefits under this Ordinance. There cannot be, and there is no provision in the amendment for doing it. We are not introducing an amendment that allows us to means test benefits under the Social Security Ordinance which are Statutory Benefits. There is a fundamental difference in Community Law between Social Security and Social Assistance and it is in that area that we have to apply our minds to safeguard our citizens. It ought to be obvious to the Honourable Member that if we are looking for ways of overcoming the problem that we have of a liability of £250m to 9,000 Spanish pensioners there would not be much point in doing that by giving them means tested benefits all over Andalusia and having to

employ an army of inspectors to find out how they are living. So there is not the remotest possibility of that happening. It would be insane in our part to try and solve one problem by creating one that would be ten times bigger. All that the Bill does is to take one stage further what we did at the beginning of the summer, the last meeting of the House, where the first thing that we did was to remove the underwriting of the Social Insurance Fund by Consolidated Fund. Why? Because we were looking into the future, we have very tough negotiations to go through and we cannot be sure how they are going to finish and we want to limit the damage. Having done that, we have two choices, either we push up the cost this month or we do not push up the cost this month. Without this amendment we are required by the existing law to increase the size of the liability we are facing when we have not got the money to pay even without increasing it. Those are the realities of the situation that we face. There is no question of choice in this matter, either we take action to protect Gibraltar's basic fund and Government reserves or we run the risk of bankruptcy and we cannot take such a risk as a Government. So independent of what the Gibraltar Chronicle may have been speculating or trying to interpret or trying to predict what the Government was going to do, all that the Government is committed to doing at this stage, is introducing an amendment which gives us the right to increase or not to increase pensions and to increase it by whatever amount we think is appropriate in the circumstances of the time, and the circumstances today may be one and the circumstances after Friday may be another one. I cannot predict what the circumstances are going to be after Friday. However I can assure the House that this measure is neither intended to deprive the House of its prerogative in this matter, nor to deprive the Opposition of an opportunity to influence it. It is intended purely and simply to give us the maximum protection that we can achieve in the present circumstances without being in conflict with the Community Law and given the parameters of the discussions we are having with Her Majesty's Government which we do not want to pre-empt but nevertheless our primary obligation is to protect the Gibraltar taxpayers and the Gibraltar contributors and the Gibraltar pensioners as the Motion from the Honourable Member opposite says. It is in furtherance of what he is asking me to do in that Motion that we are bringing this Bill to the House. The amendment and I would have preferred frankly to take the Bill through before going to the meeting on Friday, but I felt it was not fair to the Opposition to bring in the amendments we want to bring in because I think if the original Bill, without amendments, had been here there would have been no difficulty in saying well right we are debating the basic principles, these are what the basic principles are about, I prefer to have it passed so that I can go with that in my pocket as it were when I go to London on Thursday evening. But I felt I could not really ask the Opposition to help me to that extent when I was bringing in lengthy new amendments and let me just say that those new amendments are only doing

one more thing and it is not as earth shaking as the Honourable Leader of the Opposition seems to think in terms of how fundamental they are. They are only fundamental in one respect, what they intend to do is to separate out short term benefits which by definition do not apply to frontier workers. Now what is the consequence of that? Well the consequence of that is that the pot that is available becomes smaller, that is all that we are doing. It does not alter the level of those benefits, it does not means test those benefits, it does not prevent those benefits from going up every year, because the only benefit that we are separating out and treating differently is the Old Age Pension for reasons that we all know. Therefore the more isolated we can have that one, which is the one that is in dispute as it were, the less we have everything else at risk. So if we face the situation hypothetically where we were unable to protect ourselves adequately and we had to spend all the money in the fund on paying out pensions, at least the money for the other things would be safe. Just like the Industrial Injury Benefits are in a total Independent Fund and therefore even if we run out of money in the Fund that pays the pensions we would still have money which could not be touched. So just like we have isolated the Consolidated Fund we now want to isolate the short-term benefits which today are at risk because they are indistinguishable in the one and only Fund that there is. That is the purpose of the amendment and it has no other purpose, but as I say I would have preferred to go ahead with this.....

HON A J CANEPA:

If the Honourable Member will give way. I am reading further now through the amendments. I take it that actuarial advice is going to be taken on the apportionment of the Fund, the existing balance in the Fund will have to be apportioned as between the short-term benefits and the long-term benefits and indeed a proportion of future contributions and what the Government is doing is getting enabling powers. That exercise will then be carried out and they will then come back to the House by resolution, that is the position?

HON CHIEF MINISTER:

That is correct Mr Speaker. That is the position and in fact we have already asked the UK Government Actuary that did the recent review of the Fund to carry out the two exercises. The exercise will be identifying what proportion of the contribution is required to finance those particular benefits and what proportion of the accumulated reserves could legitimately be considered to be for the purpose of backing these independent benefits and therefore all that this does, as the Honourable Member says, is in fact to enable that to happen. Under the existing law it could not happen.

HON A J CANEPA:

Mr Speaker, with your indulgence I think we might be able to expedite the proceedings of the House in the way that we desire if you allow me some leeway the Honourable Member gives way and I am able to elucidate.

MR SPEAKER:

Most certainly.

HON A J CANEPA:

Would the Honourable Chief Minister also explain what exactly is the Government proposing to do about the functions of this House with regard to the level of benefits. Is it just for this year, for the beginning of 1989, that this Bill is putting into abeyance the increase and is it Government's intention at some future date to come back to the House?

HON CHIEF MINISTER:

The position is that all the benefits other than the Old Age Pension have been dealt with as normally this year and it is the intention that that should continue to be so. No change is planned in any of those areas. By separating out the funds, it is much easier to do precisely that. There will therefore remain within the Social Insurance system one Fund which is the Pension Fund and where the review will not be automatic. The extent to which the review takes place after 1989 and the degree to which it takes place after 1989 is in fact conditional on the nature of the agreement reached with the United Kingdom. The position of the Government from the beginning has been that we will tailor our scheme to the degree that the British Government is prepared to contribute and then we will have to seek alternative forms of looking after those that need looking after.

HON A J CANEPA:

I understand perfectly, will the Chief Minister accept the desirability, after he reaches hopefully agreement with the British Government, of continuing to allow this House to have a say in fixing the level of benefits as was the previous practice. If he is able to come to an agreement which will allow for that, will he accept that that is highly desirable.

HON CHIEF MINISTER:

I accept that it is highly desirable, Mr Speaker. The only thing that I have to say is that whatever we do to resolve the problem that we face, has to be done in accordance with Community Law, and Community Law places certain obligations on statutory rights which do not necessarily apply in the case of non-statutory rights and therefore if it is not possible to achieve what I think

we all want by a resolution of the House or by changing legislation and it has to be done in an administrative fashion, what I am quite happy to do is to not just inform members opposite of what has been done but inform members opposite of what it is intended to do before it happens and take into account their views if we are not able to do it here.

MR SPEAKER:

Are there any other contributors?

HON P C MONTEGRIFFO:

Mr Speaker, I will just like to raise one matter in this debate which is whether this is the full extent of the protective measures that the Government envisages is necessary to protect the Fund. There has been in the past a fair amount of talk on the famous Section 10A the residential clause and whether it was still possible at this stage to effect some amendment to that clause. I would just like, so we all know where we are going, to know whether that is no longer an option and we have gone as far as the Government feels that it is possible to go in protecting the position.

HON CHIEF MINISTER:

No, there are, I think certain changes that can still be done which are of relevance to Section 10A but that is related to the qualifying conditions in terms of the annual average and that does not require a change in the Ordinance, that can be done by changing the Rules made under the Ordinance and if we change the Rules under the Ordinance we effectively overcome the problem of 10A.

MR SPEAKER:

Any other contributors, does the Honourable Mover wish to reply?

HON R MOR:

Mr Speaker, all we really wish to do is ask the Opposition whether we can have some indication of whether they are prepared to go along with this legislation today?

HON A J CANEPA:

We support the Bill, Mr Speaker, and we also support that it be taken in Committee today, if possible.

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

HON R MOR:

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.

This was agreed to.

THE SOCIAL SECURITY (FAMILY ALLOWANCES)(REPEAL) ORDINANCE
1988

HON R MOR:

Sir I have the honour to move that a Bill for an Ordinance to Repeal the Social Security (Family Allowances) 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 R MOR:

Sir, I have the honour to move that the Bill be now read a second time. Sir the obligations which have been imposed on us by membership of the European Community has placed at risk our capacity to meet Family Allowances in future under this Ordinance. The Government has therefore decided to study the possibility of devising a new scheme which will be compatible with Community Law and my department is currently involved in finalising the details. The alternative arrangements that are to be made will ensure that the position of residence is fully protected. Once the details of the scheme are finalised, it is the Government's intention to discuss the proposals, on a confidential basis, with the Opposition spokesman on Labour and Social Security and a meeting will be arranged for this purpose. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON DR R G VALARINO:

Yes Sir, the Bill is clear enough and I thank the Honourable Minister for his offer to discuss with me, on a confidential basis, details about what the Government intends to do. There is really not much else to say on this.

HON A J CANEPA:

Mr Speaker, I held a meeting with the Chief Minister on this matter in which he gave me considerable background as to the reasoning and the need behind this measure and also gave me an indication of what the Government was hoping to do. I think it has subsequently been pointed out to the Chief Minister that almost as much information as what he gave me appeared subsequently in the newspapers much to his surprise. However be that as it may, we wanted to take the matter on a rather low key here today and of

course we will do so. I note that the Honourable Mover has said on the position of residence and I made a note of his words. He did not just say that they would be protected but fully protected and therefore in the light of that we will support the Bill.

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

HON R MOR:

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.

This was agreed to.

THE MEDICAL GROUP PRACTICE SCHEME AMENDMENT ORDINANCE 1988

HON MISS M I MONTEGRIFFO:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Medical (Group Practice Medical Scheme) 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.

HON MISS M I MONTEGRIFFO:

Mr Speaker, I have the honour to move that the Bill be now read a second time. The Bill that I am moving is part of the tidying up exercise that the Government is engaged in as we see the Health Authority operating in practice. We have already mentioned at question time that we found serious practical problems with the original idea of transferring people from the Government service to the service of the Health Authority with separate and independent conditions of service, particularly with a guarantee that all those who were in post would have their rights protected. Certain anomalies were seen to be created involving people who had been recruited from the Government and people who had been recruited from outside the public service and we found that there were complications and we have restored the position in a way that we think will be more sensible. In looking at the integration of the Service therefore, Mr Speaker, we have now looked how the GPMS Scheme operates. It is quite obvious GPMS contributions were precisely provided for in the Ordinance for the purpose of running the Health Centre. In the changes introduced last year under the Gibraltar Health Authority the situation is that it is no longer the Government that collects the GPMS contributions, although in fact, the GPMS Ordinance itself has not been altered to take this into account. However in this year's estimates for the first time we gave effect to the new financial procedures introduced by the previous administration on the basis that the contributions to the GPMS now go directly

to the Health Authority and the Government subsidy to the Health Authority is in fact arrived at on a net basis. Previously, the Government collected the GPMS contributions and that was shown on the Revenue side as Government Income and the Government then made a global payment to the Medical Department which in effect included the amount it had collected in GPMS contributions. Although, Mr Speaker, we have stopped doing this since the beginning of April, as the Estimates of Revenue and Expenditure show. In fact, the desirability of altering the Ordinance for the Group Practice Medical Scheme to give legislative effect to this was overlooked. It appears to the Government that there is an inconsistency therefore in that the Ordinance says that the contributions go to the Group Practice Medical Scheme when in fact they are already going to the Gibraltar Health Authority and the Gibraltar Health Authority treats this as income which it can use to meet any of its expenses and not specifically allocate it exclusively to meet the GP Service. So we have a situation really, Mr Speaker, where the Gibraltar Health Authority Ordinance says one thing and the Group Practice Medical Scheme Ordinance says another thing and we are now rationalising the situation. Mr Speaker in doing so we are giving the additional flexibility to the Health Authority to be able to review these fees when it considers necessary by Regulation as is the case in many other Ordinances.

MR SPEAKER:

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

HON M A FEATHERSTONE:

Yes Mr Speaker. We are not fully happy with the provisions of this Bill. We quite agree that the scheme should be administered by the Gibraltar Health Authority and we are quite happy that all the monies received from weekly contributions and annual fees paid quarterly should go direct to the Health Authority, but we do not agree that the Health Authority should be the sole arbiter in prescribing the rates at which such fees and contributions should be made. This has been the prerogative of the House until now and we feel it should continue. We will therefore be bringing an amendment at Committee Stage so that the weekly contributions and annual fees should be prescribed by resolution of the House. Thank you Sir.

MR SPEAKER:

Are there any other contributors?

HON CHIEF MINISTER:

I do not think we can accept that amendment, but we will look at it and we will not discard it out of hand until we have seen to what extent it is compatible with the

forward planning that we have for the financing of the Medical Services in relation to the way contributions are collected and how they are passed on. At the moment they are taken in through the Treasury and then until last year, Mr Speaker, what was happening was, looking at last year's Estimates, was that the Medical Services on the Expenditure Side was in fact absorbing what was shown as Government Revenue as Departmental Earnings. I remember in fact asking the Honourable Member opposite to tell me in 1986/87 to explain to me how it was that they were collecting £928,000 in hospital fees and then it turned out that it was not hospital fees, in fact the bulk of it was the GPMS. However it was being treated no differently from tonnage dues and berthing charges and anything else. It was just Government Revenue being collected. We now have a situation where really it is not the Government that is collecting the revenue because it does not show up in this year's Estimates as Government income and therefore what the Government is doing is providing from the general body of its own revenue, a subsidy to the Health Service which is in a way the shortfall between the Health Service's own income and the Health Service's expenditure. I suppose it is like what we do with Mount Alvernia. Where Mount Alvernia has its own income and we as a Government give them what is the gap. Now we would not increase the fees at Mount Alvernia by resolution of the House. I really think there is an inconsistency in saying we decide here in this House by resolution what the fee should be, but when we charge the fee that money does not come to us, it goes to somebody else. So I think for consistency of logic and frankly at the end of the day whether we raise the fees by passing the resolution of the House or we raise the fees by the Health Authority doing it, the buck stops here and the Honourable Member knows that because he has been here long enough on this side to know that. The political responsibility will be carried by the Government of the day whatever the institution is. We are however trying to move towards a more rational relationship between the Government as a Government and the Health Authority as the body that administers the Health Services. It is in the light of the whole question of the funding of Social Security that the Government will give some kind of policy directive to the Health Authority as to how the level of fees should be fixed. I do not want to be negative and turn down the amendment before I have even seen it. We will look at it and maybe we can meet the point in some other way. Maybe we can table the thing in the House and although I am not too happy about the idea that we pass the resolution of the House and then the money that that produces as income is not Government Revenue.

HON P C MONTEGRIFFO:

Mr Speaker, I am grateful to the Chief Minister for his explanation, but we are not entirely satisfied with his reply. If the logic is extended then political responsibility always rests with the Government and if we have no House it is just discussed at the elections after four years and then we have another Government or the same Government. Our concern really is more in respect of contributions than the annual fees and I wonder whether

limiting its contributions will help the Government at all in being open to persuasion. With respect, I do not accept necessarily the force of the argument that logically there is an inconsistency in this House forming a view on what the level of contributions should be when the money is destined to the Gibraltar Health Authority. Because at the end of the day, as you rightly say the buck stops at the Government side. What it does is allow public debate not just by the Opposition but public debate generally in that the matter comes to light in a more open fashion. As I say our main concern is the question of contributions. If by limiting the amendment to that, that helps at all, we are willing to accept that.

HON CHIEF MINISTER:

Let me just say, Mr Speaker, that the Honourable Member opposite that has just spoken may not of course be aware of it, but I am sure the Honourable Mr Featherstone who has shown concern about this House losing this right will not have forgotten that the last time that he raised the contributions for the GPMS, he forgot to bring it to the House altogether and he was actually collecting the increased contribution for several months illegally until I pointed it out to him. So I am not discarding that we will consider his amendment but I can assure him that if we decided not to bring it to the House we will change the law first. We will not do it the way he did it the last time.

HON M K FEATHERSTONE:

The point is taken.

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

HON MISS M I MONTEGRIFFO:

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.

This was agreed to.

THE DRUG TRAFFICKING OFFENCES ORDINANCE 1988

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to make provision for the recovery of the proceeds of drug trafficking and other provisions in connection with drug trafficking be read for the 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 this is a somewhat complicated piece of legislation which is based on the provisions of the Drug Trafficking Offences Act of 1986. However I shall endeavour to explain the various clauses in the Bill. Mr Speaker, Clause 4 of the Bill obliges the Supreme Court to make a confiscation where the person who has benefitted from drug trafficking is sentenced for a drug trafficking offence. The amount of the compensation order is determined in accordance with Clause 5 of the Bill and any payments, benefits or reward proved to have been received by a person at any time, whether before or after this Ordinance comes into operation, in connection with drug trafficking and that person's proceeds from drug trafficking, as such, are liable to confiscation. Therefore everything that that person is proved to have gained through drug trafficking is liable to be confiscated, whenever it was gained either before or after the Bill. In assessing, and this is a further provision Mr Speaker, which must not be confused with the earlier provision, in assessing the amount of the compensation order, the court may assume, unless the contrary is proved, that the whole of the defendant's assets at the time of his conviction and any property which has passed through his hands during the previous six years represented the proceeds of drug trafficking. Therefore anything which is proved to be proceeds of drug trafficking is liable to confiscation. Property which he possesses at the time of his conviction of a drug trafficking offence and any property which has passed through his hands in the past six years are assumed to be the proceeds of drug trafficking unless the defendant proves to the contrary. Clause 6 of the Bill, Mr Speaker, enables the prosecution and the defendant to agree about any matters relevant to the court's determination of the amount to be paid under a confiscation order. Clause 7 provides that the amount of confiscation order shall be the amount which the Supreme Court assesses to be the value of the proceeds of drug trafficking by the defendant or the amount to which it may be realised from the defendant's property whichever is the less. Clause 8 of the Bill, Mr Speaker, sets out the maximum periods of imprisonment to be served, where the amount of the confiscation order is not paid in full. At Clauses 9 to 12, Mr Speaker, where the proceedings for a drug trafficking offence has been or is about to be instituted and the Supreme Court is satisfied that there is a reasonable cause to believe that the defendant, or a proposed defendant, has benefitted from drug trafficking, the court may make a restraint order prohibiting the transfer or disposal of any realisable property of the defendant or proposed defendant and/or impose a Charging Order on the land, security, stock, shares etc of the defendant or proposed defendant. Clauses 13 to 15 enables the Supreme Court to appoint a Receiver for

the purposes of realising the defendant's property and for the proceeds of the property so realised to be applied for the purpose of satisfying the confiscation order. Clause 16 enables the defendant to apply for a variation of the confiscation order, if his realisable property is inadequate to pay the amount of the confiscation order. Clauses 17 and 18 deal with the decision on the bankruptcy or winding up of persons and companies holding realisable property which is the subject to the provisions of the legislation. Clause 20 enables the court to order the payment of compensation to a defendant who is not convicted of a drugs trafficking offence or his conviction is quashed or he is pardoned in respect of a drugs trafficking offence. If the court is satisfied that there has been a serious default in the investigation or the prosecution of the case and the defendant has thereby suffered material loss. Clause 21 makes it an offence to assist the drug trafficker to retain the benefit of any drug trafficking. Clause 22 provides for the registration of the enforcement by the Supreme Court confiscation orders made by the courts in certain designated countries. Clauses 23 to 26 empower the judges at the Supreme Court to make orders enabling police and customs officers to have access to or to remove material for the purpose of an investigation into drug trafficking to which a search warrant has been given to such officers and to require Government departments to disclose material in their possession which the courts deem necessary for the purpose of making and enforcing restraint, charging or confiscation orders. Clause 27 of the Bill, Mr Speaker, makes it an offence where an order has been made or applied for under Clause 23 or a search warrant issued under Clause 24 for a person who knows or suspects that an investigation is taking place to make any disclosure which is likely to prejudice the investigation. Clause 28 authorises the police to delay notification of the persons arrested when a Police Superintendent or above believes that to do so will hinder the recovery of the proceeds of drug trafficking. Clause 30 creates the offence of supplying or offering to supply articles such as cocaine kits to facilitate drug taking and that deals in outline, Mr Speaker, with the various clauses of the Bill. If there are any difficulties, with any particular provisions of the clauses I can deal with them in Committee, Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

Mr Speaker, we in the Opposition wholeheartedly welcome and support this Bill. It is of course part of a series of measures which have been taken in recent years and which

we are still in the process of taking in order to combat this evil, this scourge of modern society which is drug trafficking. I recall other measures that have been taken like, the introduction of legislation on fast launches, the setting up of the Drug Dogs Section and this is a further step that we have taken to try to combat this evil. This Bill, an identical Bill, was approved by the Council of Ministers which I had the honour to chair for a little while, back in February of this year, and even though we knew that there was no chance of bringing the Bill to the House, we had it published because we thought that it should be taken as a declaration of intent on Gibraltar's part of what we wanted to do and to give notice to persons who are involved in this trafficking business, to give them notice of what we intended to do. We also committed ourselves in our electoral manifesto to enact the legislation if we were returned to Government. We therefore wholeheartedly support it. The only point that we would like further consideration to be given is the one which has been subsequently aired in the press and that is on page 122 of the Bill, Clause 5 (3) (2) namely that the period when proceedings are instituted against a defendant is limited to six years and we would urge a longer period perhaps that it should be doubled to twelve years and I would like the Government to give serious consideration to that. Presumably six years has been taken straight out of the UK legislation and I do not see any reason why we should not go further and we would like the Government, if they do not find any serious reason to object to that, to support such an amendment. So we welcome and we support the Bill.

MR SPEAKER:

Are there any other contributors?

HON CHIEF MINISTER:

Mr Speaker, the Honourable and Learned Leader of the Opposition is quite correct.

HON A J CANEPA:

Not Learned.

HON CHIEF MINISTER:

Not Learned, I am sorry. The Learned Member disappeared before I could put him into Opposition, I accept that. The Ordinance is in fact unchanged from the version that was published under the previous administration and we have not had any input into it ourselves. Therefore I have no idea where the six came from but I would imagine it is because it is so in the UK legislation. We do not have any strong feelings about it, but I believe that the Attorney General would like this to go on the Statute Book as soon as possible.

MR SPEAKER:

Does the Honourable and Learned Attorney General wish to reply?

HON ATTORNEY-GENERAL:

Mr Speaker, it is very attractive for the prosecutor to say "oh yes let us go back twelve years and get all the assets going back to twelve years ago" but I think you have got to consider the burden of proof. If I can prove, as a prosecutor, that a man has obtained the proceeds of drug trafficking, the duty and burden of proof is on me. If I can prove it, if he has got it twenty-five years ago and I can prove that came from drug trafficking, then I should be able to deem those proceeds as being the proceeds of drug trafficking because I can prove it. Now this assumption, when the prisoner or the defendant appears, when he is charged, every bit of property he has on being charged and convicted, is deemed to be the proceeds of drug trafficking. Every penny he has, is deemed to be the proceeds of drug trafficking, unless he can prove that "No I did not get that from drug trafficking, I got that from the lottery, I got that from some other thing". However, it goes further than that, every transaction, every bit of property that passed through your hands in the preceding six years is deemed to be the proceeds of drug trafficking, unless you can prove to the contrary. Now you might keep your documents proving a legitimate transaction for six years, I think the laws of contract you can prove a contract going back six years except a speciality contract which goes back twelve years, but in punishing drug traffickers, we must not put an unfair burden on them. Now quite honestly the duty is on the Crown to prove the proceeds of drug trafficking and the property which the defendant has on conviction, which is in the Bill, unless he can say no I did not get that from drug trafficking and I think property which he has acquired in the past six years or which he has handled over the past six years is reasonable. For goodness sake let us not go and hound them and say everything over the last twelve or twenty years. I think we have to maintain that there is still a burden of proof in criminal cases on the Crown and much as I despise this sort of offence we must still balance the scales of justice and be reasonable and fair and proper although it comes hard from the prosecutor.

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 be taken at a later stage in the meeting.

This was agreed to.

THE ADMINISTRATION OF JUSTICE MISCELLANEOUS PROVISIONS
ORDINANCE 1988

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to amend several provisions of the Criminal Procedure Ordinance, The Supreme Court Ordinance, The Magistrates Court Ordinance, The Court of Appeal 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 this Bill has four main objects. The first provides the machinery to enable the Supreme Court to review the proceedings of the inferior courts. This is dealt within clauses 3 and 9 of the Bill Mr Speaker. The second object is to follow the Supreme Court Act 1981 of the United Kingdom and make statutory provision for the orders of mandamus, prohibition and certiorari. Clause 4 of the Bill deals with this. And the third object is to clarify the existing law on the disqualification of jurors and to exempt members of the Public Service Commission from serving on juries. Clauses 5 and 6 of the Bill deals with that. The last object is to confer on magistrates the power to deal with contempt of court. This is dealt within Clause 8 of the Bill. Mr Speaker, I will be moving certain amendments at Committee Stage to make provision and to ensure that the Supreme Court has power to impose fees in the various inferior courts. Some doubts have been cast on the power of the Chief Justice to charge fees in the various courts and I am making sure in the amendments I am introducing in Committee Stage that that point will be covered Mr Speaker, to deal with Clauses 3 and 9 of the Bill, Section 17 of the Supreme Court Ordinance gives the Supreme Court power to review the proceedings of the inferior courts of justice in Gibraltar. But, Mr Speaker, the section provides no machinery for the exercise by the court of that power, and Clause 3 of the Bill remedies that defect by providing that the Attorney General may within a period of thirty days following a decision of an inferior court, apply to the Supreme Court to review that decision. On review and after hearing counsel the Supreme Court may set aside or vary the decision of the inferior court or send the case back to that court with the appropriate directions. There is a powerful protection against the Attorney General going too far under this particular provision, in that a proviso is added stating that no application may be made with regard to a sentence of imprisonment passed on conviction at an inferior court. Therefore the Attorney General cannot

ask the Supreme Court to review sentences of imprisonment imposed by an inferior court. Clause 9 of the Bill amends the Court of Appeal Ordinance to enable the parties to appeal to the Court of Appeal against the decision made by the Supreme Court on review. To deal now with Clause 4 of the Bill, Mr Speaker, in both Gibraltar and in the United Kingdom, the Statute Law makes no provision for procedures on application for judicial review. These procedures were governed by the Rules of Court. That decision changed in 1981 in the United Kingdom with the enactment of the Supreme Court Act and, Mr Speaker, in order to ensure that the remedy of judicial review is still available to the Supreme Court of Gibraltar, it has been decided to enact the provisions of Sections 29 and 31 of the United Kingdom Supreme Court Act and this is exactly what Clause 4 of the Bill does. Mr Speaker you probably know more about Clause 5 of the Bill than I do, but as I understand certain members of the Public Service Commission requested to be exempt from jury service. I think the reason was to avoid a conflict between their duties as jurors and their duties as members of the Public Service Commission in dealing with public servants who had the misfortune to appear in court as defendants. Clause 5 of the Bill renders members of the Public Service Commission ineligible for jury service. Clause 6, Mr Speaker, tidies up the existing paragraphs C and D of Section 21 of the Supreme Court Ordinance, dealing with persons who are disqualified from serving as jurors. The existing law, Mr Speaker, merely speaks about sentences of imprisonment or detention in Commonwealth Countries. Now, Clause 6 of the Bill refers to convictions for criminal offences by courts of law in any country and we are a little bit worried about detention orders involving some of the countries and we are also a little bit worried as to whether they had to be for criminal offences and whether the orders had to be made by courts of law. The amendments we are making in Clause 6 of the Bill makes it perfectly clear that it must be for criminal offences sentenced by a court of law in any country. Clause 8 of the Bill, Mr Speaker, follows Section 12 of the United Kingdom Contempt of Court Act 1981 and confers upon the Magistrates Court the power to deal with contempts which is in the face of the court. At the moment they do not have that power and on occasions defendants behave in a very unruly manner before the Magistrates' Court and all the Magistrates' Court can do, under the present law, is to report the matter either to the Supreme Court or to me to move the Supreme Court for contempt of court by those defendants. We consider it far better to follow the United Kingdom and deal with contempt of court there and then on the spot and Clause 8 of the Bill enables the Magistrate's Court to do that Mr Speaker. Clause 2 of the Bill Mr Speaker remedies an obvious admission in Section 53 of the Criminal Procedure Ordinance and Section 53(3) reads "in this section inferior court means the Magistrates' Court or the Coroner". All we want to do is to insert in this Section "inferior court means the Magistrates' Court or the Juvenile Court or the

Coroner. And Clause 7, inserts a heading which has been missed out by the Printer, Mr Speaker. The heading is indicating in the index to the Ordinance that it is omitted from the text of the Ordinance, Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON P C MONTEGRIFFO:

Mr Speaker, we are grateful to the Attorney General for his exhaustive explanation of the Clauses and we particularly welcome the provisions in relation to the jury eligibility and judicial review which has been in an omission for some time and now clarifies the position substantially.

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 be taken at a later stage in the meeting.

This was agreed to.

THE CHARGING ORDERS ORDINANCE 1988

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to make provision for imposing charges to secure payments of money due or to become due under judgements or orders of the court to provide for restraining and prohibited dealings with and the making of payments in respect of certain securities and for connected purposes 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, this Bill is based on the Charging Orders Acts 1979 of the United Kingdom and is brought to this House on the recommendation of the Law Revision Committee which is chaired by the Chief Justice. Mr Speaker, the purpose of his legislation is to provide a means of enforcing a judgement or order made by the Supreme Court or by the Court of First Instance that a

person, that is a debtor, pay a sum of money to another person that is a creditor. If the debtor owns property of the kind specified in Clause 4 of the Bill that is Trust, Property, Land, Securities, Stocks, Shares, Unit Trusts etc, then if this Bill becomes law, Mr Speaker, the creditor will be able to apply to the court for an order imposing on such property a charge for securing the payment of the money found to be owing under the judgement or order made by the court. An application for a Charging Order in respect of a Supreme Court judgement debt of over £1000 will have to be made to the Supreme Court but in all other cases the application may be made in either the Supreme Court or in the Court of First Instance whichever is the most appropriate. That is the purpose of the Bill and I commend it to the House.

MR SPEAKER:

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

HON P C MONTEGRIFFO:

Mr Speaker, we are entirely happy with this Bill. It follows the UK position and again it will be a very useful asset and weapon which the court will have in dealing with the matters that it provides for.

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 at a later stage in the meeting.

This was agreed to.

THE FAST LAUNCHES CONTROL AMENDMENT ORDINANCE 1988

HON ATTORNEY-GENERAL:

Sir I have the honour to move that a Bill for an Ordinance to amend the Fast Launches Control Ordinance 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 ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill be now read a second time. Mr Speaker, it is with some embarrassment that I stand here this afternoon. You will recall that I first published the Bill for the Fast Launches (Control)

Ordinance in May 1987. The Bill contained the definition of territorial waters and the chart showing those waters. Now on the 20 June 1987, I gave notice that I needed to amend the Bill, at Committee Stage, to incorporate a new definition of territorial waters and a new chart. Now, Mr Speaker, I have to come before this House and say, I am sorry not only do I have to amend the definition of territorial waters in the Ordinance but I have also got to delete the words "territorial waters" and substitute the rather less glamorous expression of "controlled area". It would seem, Mr Speaker, that the definition contained in the Ordinance, not only encroaches in one place on Spanish territorial waters but it also leaves out part of the area that Her Majesty's Government claims as the territorial waters of Gibraltar. The areas in question are not extensive and there is no need to amend the chart contained in the Schedule to the Ordinance. Clause 3A of the Bill, Mr Speaker, hopefully, now contains the correct description of the area in question. Mr Speaker, I have agreed to substitute the expression "controlled area" for the expression "territorial waters" in order to avoid anything which might possibly prejudice Her Majesty's Government's position in protecting the integrity of Gibraltar Territorial Waters. Mr Speaker, I apologise for having taken the time of this House once again to deal with an error in this legislation. I hope this will be the last time that I have to come and correct it. I do not think I will have the courage to come again. Mr Speaker I commend the Bill to the House.

MR SPEAKER:

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

HON P C MONTEGRIFFO:

Simply to say that even if an error had not been made, and I think the re-definition of the area to "controlled area" as opposed to "territorial waters" was worth bringing to this House, since otherwise I think potentially there was a prejudice to the position of what the definition "territorial waters" meant in a general context. So I think it is a worthwhile amendment in any event.

HON ATTORNEY-GENERAL:

So controlled area is alright.

HON A J CANEPA:

Will the Attorney General guarantee that the poor dolphins in the bay will now know where they are?

HON ATTORNEY-GENERAL:

With this legislation, Mr Speaker, I give him no guarantees about anything.

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 at a later stage in the meeting.

This was agreed to.

THE INSURANCE MOTOR VEHICLES (THIRD PARTY RISKS)
(AMENDMENT) ORDINANCE 1988

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Insurance Motor Vehicles (Third Party Risks) Ordinance 1986 be read a first time.

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

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. The Bill, Mr Speaker, was published earlier in the year, on the 7th July, to allow both for any representation which might be made from the insurance industry and also to give insurers time in which to provide any documentation which might follow the implementation of the measures of the Bill. The principle purpose of the Bill is to implement the obligations arising out of the Second EEC Directive relating to insurance against civil liability in respect of the use of motor vehicles. It introduces the changes necessary to extend the compulsory insurance law to cover liability for damage to third parties property as well as for injury. I should perhaps mention that the First Directive required Motor Insurance policies issued in one Member State to cover risks compulsorily insurable in all other Member States. It is an account for agreements by which National Insurers Bureau undertook to meet compulsorily insurable liabilities generated in their territories by vehicles from other Member States. These arrangements apply even when the vehicles concerned are uninsured. It is therefore for the Directive to abolish frontier checks on insurance and thus facilitate movement. The First Directive was given effect by means of the Insurance Motor Vehicles (Third Party Risks) Ordinance 1986, and an agreement was signed with the British Motor Insurers Bureau for the payment of compensation for death of or bodily injury to victims of accidents caused by uninsured or untraced drivers. The Second Directive with which we are concerned today has to be implemented by the 31st December 1988. It introduces a degree of harmonisation

of the scope of compulsory insurance requirements of the Member States and stipulates the minimum amount of cover for compensating victims of road accidents, ie 350,000 Ecus which is about £242,000 for each and every injured accident victim. The courts of law, in line with the United Kingdom's law, already provides for unlimited cover in respect of death or bodily injury and so no change is proposed to this unlimited cover. The Second Directive also requires Member States to make cover for damage to property compulsory, at least up to the amount specified therein, ie 100,000 Ecus about £69,000 per claim. Minimum guarantees are however subject to a Member States right to require a higher guarantee. Accordingly, it is proposed in line with the law in the United Kingdom, that compulsory property damage cover in Gibraltar be up to at least £250,000 for anyone accident. Many private car policies provide property damage cover up to this figure and since the new limits are within the range already provided under policies they should not lead to premium increases. The introduction of the limit on the amount for which an insured person is required to be covered in respect to damage to property requires modification of an insurers obligation under Section 13 of the Ordinance to meet judgements. The insurers liability for such damage will be to pay only up to the statutory limit even though the policy may well provide cover for more than this. Further amendments proposed in this Section binds an insurer to satisfy a judgement which is obtained against a person not insured by a policy, subject to certain exceptions in the case of vehicles stolen or unlawfully taken. However it allows the insurer to recover such an amount from either that person or a person who is insured by a policy who caused or permitted the use of the vehicle. As the amendments proposed are in keeping with those being affected in the United Kingdom, Gibraltar will be able to achieve an extension of the Motor Insurers Bureau guarantee bond arrangements in the field of property damage, on the same lines as those expected to be made in the United Kingdom itself from the 31st December 1988. As to the Bill itself, Mr Speaker, Clause 3 extends compulsory Motor Vehicle Insurance Cover in respect of the use of a motor vehicle on a road in Gibraltar to include liabilities which may be incurred in respect of damage to property and sets the minimum cover for such liability at £250,000 for anyone accident. The Clause also makes it explicit that vehicles which are now exempted from registration under the Traffic Ordinance ie motorcycles with an engine capacity of 50 cc or less need to be covered by a third party insurance when the keeper is permanently resident in Gibraltar. Clause 4 modifies an insurers obligation to meet judgement to which an insured person is required to be covered in respect of damage to property. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON M K FEATHERSTONE:

Sir, we fully support this Bill. We are pleased to see that we are moving in line with the EEC but we do hope that Spain follows suit and we do not get the incidence that we have had in the past of people coming in with the minimum insurance, creating an accident here, and not being liable to pay. I do not share the optimism of the Honourable Financial Secretary that premiums will not be increased. I know Insurance companies very well from the past and they take every opportunity to make an increase wherever they are able to do so. But the Bill does fulfill a need and we accept it fully.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

THE SUPPLEMENTARY APPROPRIATION(1984/85)ORDINANCE 1988

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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 March 1985 be read a first time.

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

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. This Supplementary Appropriation Bill seeks to appropriate the net unauthorised excess expenditure incurred in the Financial Year ending 31st March 1985 which totals £97,564 in one Consolidated Fund Heads of Expenditure and £2,854 in two Improvement and Development Fund Heads of Expenditure. These excesses were the subject of comment in the Principal Auditor's Report for 1984/85. The details of the excess expenditure by sub-heads are contained in the Statement of Supplementary Estimates for 1984/85 which I tabled earlier in the meeting. Only the net excess in each Head requires appropriation as savings in other sub-heads have been deducted from the gross excesses. I commend the Bill to the House.

MR SPEAKER:

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

HON CHIEF MINISTER:

Mr Speaker, I just want to say that I feel tempted to state that the Government will abstain and the Opposition should vote in favour since it is the money that they spent.

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:

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

This was agreed to.

THE SUPPLEMENTARY APPROPRIATION (1985/86) ORDINANCE 1988

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, 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 the 31st day of March 1986 be read a first time.

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

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. The Bill is of course on all fours with the one which I have just moved in the House, Mr Speaker, and was also the subject of comment in the Principal Auditor's Report for 1985/86. That is to say the excess expenditure was and details of the excess expenditure by sub-heads are again contained in the Statement of Supplementary Estimates which I tabled earlier in the meeting. I commend the Bill to the House.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

THE SUPPLEMENTARY APPROPRIATION (1988/89)(NO.2) ORDINANCE 1988

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, 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 1989 be read a first time.

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

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time and in accordance with tradition my speech on this occasion will be even shorter than for the two previous Appropriation Bills which I have just moved. I commend this Bill to the House.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

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 Companies (Amendment) Bill 1988; The Merchant Shipping (Amendment) (No.2) Bill 1988; The Merchant Shipping (Health and Welfare) Bill 1988; The Social Security (Insurance)(Amendment) Bill 1988; The Social Security (Family Allowances) (Repeal) Bill 1988; and The Medical (Group Practice Scheme)(Amendment) Bill 1988.

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

THE COMPANIES (AMENDMENT) BILL, 1988

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

Clause 3

HON P C MONTEGRIFFO:

Sir, we have a point we wish cleared in Clause 3. It is of general application and concerns the point made this morning and which I have been able to discuss with the Attorney General and the Honourable Mr Feetham. Although I think there is an element of validity or at least they understand the point that has been made which is one of overall concern on the question of time and the fact that although there may be a Financial Services Commission, using my reasoning there might have been an argument for some type of marrying of these systems. However because of the question of time and the desirability of having something in the Statute Book earlier rather than in two, three or four months time, we are prepared to see this happening now and then we can rethink the whole matter in the light of amendments.

HON CHIEF MINISTER:

Perhaps I should mention, Mr Speaker, that when I was in Cyprus attending the Commonwealth Economic Conference, Mr Peter Lily, the Economic Secretary of the Treasury, raised this with me and said that this was something that we could do fairly quickly and which would give some reassurance to people who were expecting some kind of reflection in the administration in Gibraltar, something needed to be seen to be happening, after the Barlow Clowes affair and this is one of the reasons why we wanted to reassure the British Government that we were acting quickly.

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

Clauses 4 and 5 was agreed to and stood part of the Bill.

Clause 6 was agreed to and stood part of the Bill.

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

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

THE MERCHANT SHIPPING (AMENDMENT) BILL, 1988

Clauses 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 MERCHANT SHIPPING (HEALTH AND WELFARE) BILL, 1988

Clauses 1 to 8 were agreed to and stood part of the Bill.

Schedule 1 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 SOCIAL SECURITY (INSURANCE) BILL, 1988

Clause 1

HON R MOR:

I wish to move an amendment to the Social Security (Insurance) Amendment Bill. Mr Chairman, in Clause 1, Sub-section 1 paragraph 2 insert at the end "and different dates may be appointed to different purposes".

Clause 1 as amended stood part of the Bill.

Clause 2

HON R MOR:

Mr Chairman, we were proposing an amendment to Section 2(1) as follows: (a) for position and definition substitute respectively "positions and definitions" and (b) An Actuary means a fellow of the Institute of Actuaries or of the Faculty of Actuaries of Great Britain.

Clause 2 as amended stood part of the Bill.

Clause 3

HON R MOR:

Mr Chairman, I wish to move an amendment to Clause 3 as follows: Omit the clause and substitute the following "Amendment to Section 29

3. (1) Subsection (1) of section 29 of the principal Ordinance is repealed and the following subsections are substituted therefor-

"(1) In the place of the Social Insurance Fund (hereinafter called the 'old Fund') there are established-

(a) a Social Insurance (Pensions) Fund (hereinafter called the 'Pension Fund') out of which there shall be paid all claims under this Ordinance for -

- (i) old age pensions;
- (ii) widows' benefits;
- (iii) guardians' allowances;
- (iv) widowers' pensions, and

(b) a Social Insurance (Short Term Benefit) Fund (hereinafter called the "Short Term Fund") out of which there shall be paid all claims for -

(a) maternity and death grants under this Ordinance; and

(b) unemployment and other benefits payable under the Social Security (Non-Contributory Benefits and Unemployment Insurance) Ordinance.

(1A) In addition to the payments mentioned in subsection (1) there shall be paid out of either Fund the costs of the administration of their respective revenues and liabilities in such proportions as the Minister may by notice in the Gazette determine.

(1B) Notwithstanding the provisions of section 5 of the European Communities Ordinance, claims for benefits payable by reason of Gibraltar's obligations under the regulations of the European Communities concerning the application of social security schemes to employed persons and their families moving within the Community, shall be paid as follows:

(a) if such claims are in the nature of pensions, benefits or allowances mentioned in subsection (1)(a) they shall be paid out of the Pension Fund;

(b) if such claims are in the nature of the grants or benefits mentioned in subsection (1)(b) they shall be paid out of the Short Term Benefits Fund.

(1C) The Funds and other assets, if any, standing to the credit of the old Fund shall be apportioned between, and shall vest in, the Pension Fund and the Short Term Benefits Fund, in such proportions as the Governor, on the advice of an actuary, and subject to the approval by resolution of the House of Assembly, may by order in the Gazette determine.

(1D) The contributions and other revenues which, but for the provisions of subsection (1) would be payable to the old Fund, shall be payable to the Pension Fund and the Short Term Benefits Fund in such proportions as the Minister may by notice in the Gazette determine.

(1E) The provisions of this Ordinance with respect to the management, audit and other matters of administration of the old Fund shall apply in a like manner to the Pension Fund and the Short Term Benefits Fund.

(1F) The references in this Ordinance or in any other law to the Social Insurance Fund shall be taken as references to the Pension Fund or the Short Term Benefits Fund according to the nature of the business in each particular case."

(2) Subsection (5) of section 29 is repealed.

Clause 3 as amended stood part of the Bill.

Clause 4 was agreed to and stood part of the Bill.

HON R MOR:

Mr Chairman after Clause 4 add the following new clause.

"Amendment to Public Finance (Control and Audit) Ordinance.

5. The Public Finance (Control and Audit) Ordinance is amended in section 12 by inserting after paragraph (e)(viii) the following new paragraph:-

"(ix) the Social Insurance (Pensions) Fund and the Social Insurance (Short Term Benefits) Fund."

The New Clause stood part of the Bill.

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

THE SOCIAL SECURITY (FAMILY ALLOWANCES) (REPEAL) BILL, 1988

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 MEDICAL (GROUP PRACTICE SCHEME)(AMENDMENT) BILL, 1988

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

Clause 3

HON MISS M I MONTEGRIFFO:

Mr Speaker, the Government is prepared to consult with the Honourable Member in Opposition before we decide to change the Regulations.

HON M K FEATHERSTONE:

In view of this, Mr Speaker, we will not put forward our proposed amendment.

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

Clause 4 was agreed to and stood part of the Bill.

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

HON ATTORNEY-GENERAL:

Sir, I have the honour to report that the Companies (Amendment) Bill 1988; The Merchant Shipping (Amendment)(No.2) Bill 1988; the Merchant Shipping (Health and Welfare) Bill 1988; the Social Security (Family Allowances) (Repeal)

Bill 1988 and the Medical (Group Practice Scheme)(Amendment) Bill 1988 have been considered in Committee and have been agreed to without amendments. The Social Security (Insurance) (Amendment) Bill 1988, was also considered in Committee and agreed with amendments. I now move, Mr Speaker, that all Bills be read a third time.

Mr Speaker then put the question and on a vote being taken the Companies (Amendment) Bill 1988; the Merchant (Amendment)(No.2) Bill 1988; the Merchant Shipping (Health and Welfare) Bill 1988; the Social Security (Insurance)(Amendment) Bill 1988 as amended; the Social Security (Family Allowances) (Repeal) Bill 1988; and the Medical (Group Practice Scheme)(Amendment) Bill 1988 was resolved in the affirmative.

The Bills were read a third time and passed.

MR SPEAKER:

I understand that the Chief Minister wants to move the adjournment of the House.

HON CHIEF MINISTER:

Mr Speaker, I beg to move that the House do adjourn until the 28th November, when we shall be meeting initially for the purpose of endorsing the group of MEPs that represent us in the European Parliament and they will be here for that occasion.

Mr Speaker then put the question which was resolved in the affirmative and the House adjourned until Monday the 28th day of November 1988 at 10.30 am.

The adjournment of the House to Monday the 28th November, 1988 at 10.30 am was taken at 6.30 pm on Wednesday the 16th November, 1988.

MONDAY THE 28TH NOVEMBER, 1988

The House resumed at 10.45 am.

PRESENT:

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

GOVERNMENT:

The Hon J Bossano - Chief Minister
The Hon J E Pilcher - Minister for GSL and Tourism
The Hon J L Baldachino - Minister for Housing
The Hon M A Feetham - Minister for Trade and Industry
The Hon J C Perez - Minister for Government Services
The Hon Miss M I Montegriffo - Minister for Medical Services
and Sport

The Hon R Mor - Minister for Labour and Social Security
The Hon J L Moss - Minister for Education, Culture and
Youth Affairs
The Hon E Thistlethwaite QC - Attorney General
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

The Hon A J Canepa - Leader of the Opposition
The Hon P C Montegriffo
The Hon M K Featherstone OBE
The Hon Dr R G Valarino
The Hon Lt-Col E M Britto OBE, ED
The Hon K B Anthony

ABSENT:

The Hon G Mascarenhas (Away from Gibraltar)

IN ATTENDANCE:

C M Coom Esq - Clerk of the House of Assembly

PRAYER

Mr Speaker recited the prayer.

DOCUMENTS LAID

The Hon the Minister for Education, Culture and Youth
Affairs moved under Standing Order 7(3) to enable him to
lay on the table the following document:

The Department of Education Biennial Report for
the period September, 1986 - August, 1988.

Ordered to lie.

The Hon the Financial and Development Secretary moved under
Standing Order 7(3) to enable him to lay on the table the
following document:

The Accounts of Gibraltar Shiprepair Limited for
the year ended 31st December, 1987.

Ordered to lie.

MOTIONS

CHIEF MINISTER:

Mr Speaker, I have the honour to move in the terms of the
Motion standing in my name: "That this House:

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

Lord Bethell
Mr Alf Lomas
Dr Caroline Jackson
Mr William Newton Dunn
Mr Anthony Simpson
Mr Glyn Ford
Mr Tom Megahy

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

Mr Speaker, the people of Gibraltar need no introduction
to the Members of the Group, nor do they need any persuasion
of the way that they defend our interests and rise to stand
up on our behalf in the context of the lobbying that we
know takes place, constantly, in the European Parliament
and European Institutions in relation to our position as
Members of the Community with a constitutional relationship
with United Kingdom which clearly is different from that
of any other area of the European Community. I think it
is essential that we should have a lobby present in Europe
that can counteract any decimation of information, about
us, which happens to be at variance with the reality of
the Gibraltar situation and of the development of our
community as a European Community, that can stand up with
any other area of the community in terms of its democratic
institutions and to ensure that the concept of Gibraltar
as an area of Europe, which is in fact treated as a colonial
territory, with no rights is completely false and that
the aspirations of the people of Gibraltar in the progress
of self government, currently, has to be something that
Europe itself cannot ignore and must support in the exercise
of the fundamental rights of self determination. We are
lucky that we have such friends who are willing to devote
their time and energy to defending our cause. Mr Speaker,
I remember when we went to the House of Lords to lobby
on the Nationality Act, a lobby which was, I think,
organised by Lord Bethell, and which we were there in the
public gallery a reference was made to our presence and
some of the noble lords got very upset because one should
not recognise strangers in the gallery. I am happy to
say that since our friends in the group are no strangers
to Gibraltar, I can recognise their presence here without
any problem from other Members of the House. Let me just
say that there are not enough words to express our deep
appreciation for their commitment to Gibraltar. We need
friends in places where decisions are taken, we are too
small to fend for ourselves without the friends that we
have, we would have even more problems than we have already
and I am sure that the people of Gibraltar join the House

in sincerely expressing our thanks and our appreciation to our friends in the European Parliament.

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

HON A J CANEPA:

Mr Speaker, we on the Opposition benches are delighted to have the opportunity today of associating ourselves with the words of the Chief Minister and in fully supporting his motion. What this present House is doing today is re-enacting and re-affirming something which was done by a previous House of Assembly when we formally adopted this group of British Members of the European Parliament, as a group, that would represent the interests of Gibraltar and whom the people of Gibraltar would view in that context. They have become over the years well known to us, to some of us quite well known personally, we have had the opportunity to meet them both here in Gibraltar, in the United Kingdom and in September of last year in their own environment in the European Parliament itself, when a delegation from Gibraltar visited the Parliament, and three of the Members of that delegation are here in the House today notably the Chief Minister, the Honourable Mr Feetham and myself. The only absent Member of that delegation being Sir Joshua Hassan. If Gibraltar were to be successful, if the people of Gibraltar were to be successful in being enfranchised and if we were therefore to have a direct representative of Gibraltar by some means or other, in the European Parliament, we for our part, Mr Speaker, would wish nevertheless to retain as far as possible the present arrangements. The present arrangements are working so well, the group of British Members of the European Parliament have taken such a close and active interest in the affairs of Gibraltar, that we from the Opposition benches and I am sure that I am echoing, probably the views of the Members opposite as well, we would not wish to lose this very close contact which we have with them and we would wish to have this arrangement superimposed on the more direct arrangements of having a representative of the people of Gibraltar in the European Parliament. We at the Gibraltar end were aware of the great work that they were doing for us and of the interest that they were taking over a long period of time and when we went to Strasbourg last year, in what at the time was perhaps something of a fiasco, we saw them at work in their own environment, they took a great deal of interest, they made strenuous efforts to guarantee and to ensure the success of that visit which they endeavoured with might and mane to have the Gibraltar delegation recognised and to enable us to meet various European groups. Even in the unfortunate circumstances in which it occurred they tried to stave off the unfortunate arrangements that eventually were not accepted by us for meeting Lord Plumb, the President of the European Parliament. I think that that relative fiasco was valuable though, it taught us all a valuable lesson and perhaps our representatives in

the European Parliament even more so. We were all taught a valuable lesson about the lengths to which Spanish MEPs would go in lobbying, in obstructing in order to ensure that Gibraltar is isolated, as far as possible, and that the representatives of the people of Gibraltar do not get the recognition that they ought to get in the context of Europe and of the European Parliament. There was a valuable lesson to be learned, we all now know, if we did not know previously, what we are up against and a few weeks later, I think it was, the lesson learned in September was perhaps valuable in ensuring that there was a positive vote in the Petitions Committee when the question of the enfranchisement of the people of Gibraltar came up. During that visit, in September, those whom we did manage to meet gave us a very fair hearing and took a great deal of interest in the affairs of Gibraltar and for that we are grateful to the Members of the European Parliament who are in the public gallery, this morning, and we are indeed grateful for their continuing interest and for their desire, once again, to be formally adopted by this House as representing the interests of the people of Gibraltar in Strasbourg. We hope that they will continue to be associated for many more years in this manner, we hope to see them again in Gibraltar, this is their third visit as a group, though as individuals some of them have come to Gibraltar on many more occasions. They are staunch supporters of the people of Gibraltar and of the cause of Gibraltar. There can be no doubt about that. On both sides, of what one would regard as being both sides of Parliament in London, both from the Conservatives benches and from the Labour Party benches they have been unflinching in their support for the people of Gibraltar and for that we are very grateful. Perhaps xxx xxx xxx who have had direct contact, have been able xxx xxx xxx this to a greater extent, but we want from this House this morning the message to go out to the people of Gibraltar, because perhaps last September the unfortunate events surrounding that visit could have sown some doubt in the minds of our people and we want to reassure them that the arrangement is a good arrangement, that the arrangement is working particularly well because of the direct efforts that are being made by the people whom we have adopted and by the people who have taken such a direct personal interest in our affairs. We are very happy to see them here in the House with us this morning, Mr Speaker, and to have an opportunity to discuss also informally matters of common interest on yet another occasion. So we from the Opposition benches welcome them and we are very happy to be able to support this motion formally adopting them as representatives of the people of Gibraltar.

MR SPEAKER:

Are there any other contributors to the debate? Does the Honourable Chief Minister wish to reply?

HON CHIEF MINISTER:

Simply to say, Mr Speaker, that the support of the Opposition of course was expected and I hope that after they have set such a good example, they will be supporting all the other things on the Agenda.

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

The House recessed at 11.00 am.

TUESDAY THE 29TH NOVEMBER, 1988

The House resumed at 10.45 am.

MOTIONS

HON J E PILCHER:

Mr Speaker, I have the honour to move in the terms of the motion standing in my name, that:

"This House takes note of the Accounts of Gibraltar Shiprepair Limited for the year ended 31st December, 1987".

First of all Mr Speaker, I would like to start by saying that this is purely a noting motion inasmuch, Mr Speaker, that this side of the House, the present Government, was not in charge or at that stage did not have anything to do with the running of Gibraltar Shiprepair Limited. This only happened after the 25th March this year and I was made Chairman of the Company on the 11th April. So to a point, Mr Speaker, most of the comments made by the Auditor's, are comments made on the previous administration, and as I go through the accounts, for clarification in some areas, it has to be seen in that context. It is, Mr Speaker, an important document, particularly at this stage, inasmuch as it will be used by me and certainly by the Opposition, as the document that highlights what the yard was doing in 1987. Obviously the 1988 Accounts will show the difference in the procedures of the yard, the difference in the accounting systems of the yard through 1988. If I may, Mr Speaker, just start by tackling the comments made in the Principal Auditor's Report which is in fact at the front of the Accounts. There are various points made by the Auditor and these points obviously were made by the Auditor, after the Accounts had been finalised or in the process of the Accounts being finalised, and therefore apply to this administration inasmuch as the points were raised with the present General Manager of GSL. There are three points which I would like to highlight. One is under stock, where it states "a substantial proportion of issues made from stock were not charged to productive jobs, nor was there a formal system of monitoring the levels of issue to the different cost

centres from the various categories of stock. This Mr Speaker, was a problem which we had in fact highlighted early on when taking over the yard where there was a code which was "unassigned costs" where most of the stocks not appertaining to a particular job were dumped. This was a code given to stock not assigned to any particular job and is why we called it a dumping code. It is not a normal practice, because obviously all stocks that are bought must be allocated to a specific job. This was done away immediately and this unassigned code cancelled. Under Billing Mr Speaker, "it was noted that the job profitability report produced by the costing system did not always include all costs. Consequently contracts which had been transferred to the cost of sales when invoiced, had to be reopened when additional charges were identified". Again, Mr Speaker, we determined that this was not a valid process because after the ship had been invoiced the previous administration used to assign costs that had occurred during the ship's stay but which had not been invoiced at the time. The contract was then reopened and the extra cost included. Although it was not possible, once the ship had been invoiced, for these costs to be recovered. It was therefore just a paper transaction. What we have now done, Mr Speaker, is created a system where all costs are assigned to the ship prior to the ship leaving and if that is not possible it is included under a special code which is then investigated. It is not dumped into a contract which will never be billed. I think the only other point that I have to bring to the Opposition's notice made by the Principal Auditor, is job-cards which is obviously a purely administrative problem which we are already reviewing. There is, in fact, at the moment a study going on in order to review the whole system of job-cards and the whole system of clocking. I think we will see over the next month or so, a change in the system of clocking, in the system of job distribution and in the system of allocating works for a particular job, to a particular individual. Mr Speaker "a provision of £400,000 was included in this year's accounts because an examination of the stock balances had revealed that there was an overstocking on a number of items". Provision was made in these Accounts, but it was only a provision, as nothing was done in 1987. We have throughout 1988 made a thorough check of the stocks and we have agreed with the Auditor, we had picked it up ourselves very early on, in fact it was something which the previous Board of GSL had already noted. This is the fact that the stock levels were very very high and what we have found over the last six to seven months is that there is a large amount of dead stock ie stock which had been bought, but which has no movement whatsoever. This obviously is something that the Company would like to correct and will in fact try and correct before the end of the year. To date we have identified £523,000 of dead stock, an astronomical amount of dead stock for any Company to be carrying, Mr Speaker. If we just now go on to the Accounts of Gibrepair for 1987. I think the Chairman's Report, Mr Speaker, is in fact self-

explanatory. It must be of course taken into account that this Report was written in the early part of August and therefore to a point does not give an up-to-date picture of the position. However, if my memory does not fail me, during Question Time we did discuss the position from August to date. In fact I will be extending, once we finish the proceedings of this House, an invitation to the Leader of the Opposition to view, on a commercial-in-confidence basis, this year's Accounts and next year's business plan. I think there are three points that need to be highlighted here, Mr Speaker. One is the fact in the first six months of 1987, the Company was still benefitting from the guaranteed RFA work which provided about $\frac{3}{4}$ of the workload. I think, Mr Speaker, if one looks at page 7 of the Accounts, on turnover the figure is £16,137,000 and that, Mr Speaker, has to be seen in that light. The breakdown in fact for the gross income of 1987 was, commercial just in excess of £4m, RFA just under £10m. The RFA work together with the RMAS work at GSL nearly £1m and at Gun Wharf was just over £1m. This shows that out of the £16,137,000 nearly £12m was accounted for by RFA and RMAS work. This has to be taken into account since the yard only did slightly in excess of £4m of commercial work. This is a figure which must be watched closely in the 1988 Accounts, since from the 1st January 1988 there has been very very little RFA and RMAS work. Another point which must be mentioned, Mr Speaker, is that highlighted at 4 which I think highlights the problems related to the previous administration and that is the very low level of work in progress at the end of 1987. When we came in in April 1988, very little marketing was being done at that time and the small amount of work in progress is in fact proof of the fact that the Yard, at that stage, had come to a virtual standstill. The 1988 Accounts will show that this fell through into January, February and March 1988, was in fact a very very low period of work activity which cost the Company in excess of £2m in the early part of 1988. I think the other point to be made, Mr Speaker, is made at 6 and this is the fact that the previous Government enacted retrospective legislation making some of the payments tax-free because they were ODA grants. Although the law was passed in the House of Assembly, the fact that the terms of the engagement of some of the expatriates managers contracts included tax-free inducements beyond those provided by the law and the Government at the time turned a blind eye or did not realise what was happening and what the Company found out late in 1987 or early 1988 was that the fact that the Company is now liable to the tax of the expatriates managers tax bill. The amount of money involved could be as much as £1m. A provision of £800,000 has been included and has to be viewed together with the staffing costs at Appendix 1 which shows the expatriates salaries inducement, accommodation costs, terminal bonuses, airfares electricity and water expenses, Director's fees and other expenses. To that £800,000 or nearly £1m, has to be added what these expatriates managers cost and which I think was somewhere near £3m

a year, Mr Speaker. Other than that, Mr Speaker, the Chairman's statement goes on to add what the yard has been doing, the restructuring of the workforce, the Joint Industrial Council, etc. There is also the Joint Ventures which will very shortly be coming on stream. Mr Speaker with regard to the accounts, the balance sheet at page 8, the tangible assets, is something which I wanted to comment on are the assets that the Company has, which we think are overvalued and we have brought out a valuer to look at them. As an example, the slop barge was valued at £2,250,000 by the previous administration whilst the real value of the slop barge has now been identified by the valuers at £450,000, the slop barge, Mr Speaker, had been overvalued by £1.8m. I think this in fact shows again the problems related to overvaluing, because obviously this then has an effect in the depreciation cost to the Company. I have just pointed this out, Mr Speaker, so that the Opposition will take note of the fact that during 1988 there will be a substantial rundown of the assets because the proper value of the assets are way below the valuation put by the Company through 1986/87. The Valuation Report has not been totally finished and I am therefore not in a position, at this stage, to give concrete evidence of what that rundown in the value will be Mr Speaker. Mr Speaker I commend the Motion to the House.

Mr Speaker proposed the question in the terms of the motion moved by the Hon J E Pilcher.

HON LT COL E M BRITTO:

Mr Speaker, I thank the Member opposite for his detailed comments on the Accounts, some of which should have preferably been included in his Chairman's statement or report, rather than in his speech in this House. The Chairman's Report as drafted seems to us to be more politically based than commercially based and I would venture to suggest that a few comments on the commercial and financial aspects of the Company would have been welcomed as an addition to the Accounts. Be that as it may, let us go on to the Accounts themselves and I will repeat the scenario painted by the Minister on the year 1988, with particular stress on what was happening in the Yard then, because I think it is very relevant to consider that, in looking at these accounts today, and that is the point made in the Chairman's Report in detail and expounded by the Minister today that for the roughly, in general terms, for the first half of the year, the Yard depended to the tune of 66% on RFA work and more to the point, there was comparative industrial peace in the Yard and there was a comparative lack of problems in the Yard during those first six months. In fact it has been publicly reported in the past, that in the year ending 30th June 1987, the Yard was reputed either to have broken even or even to have made a small profit. Not in the Minister's Report, it had been reported in mid 1987 by the then managers of the Yard. In comparison we had to take the second half of the year where the Minister has highlighted the complete opposite was the case and as Chairman he has told us that

the Yard had come to a virtual standstill and because of the lack of marketing or because of the amount of industrial unrest that was apparent in the Yard at the time, as detailed in his own Report, the Yard had virtually closed down. It is in that scenario of a split of six months either way, that one has to look at these accounts. In retrospect, maybe this whole discussion is academic, because of the changes that we are told are taking place or have taken place it will probably be so great that it would be extremely difficult, this time next year, to make a direct comparison as the Minister has said, but in any case, the comparison will no doubt be made. I would venture at this stage to suggest that unless, and I do not know what the Government's intention is on this point, the Accounts of the Joint Venture Companies linked to GSL are published or made public, at the same time, such comparisons will be extremely difficult because it will not be possible to make a direct comparison between a GSL that was standing on its own in 1987 and a GSL that has Joint Venture Companies linked to it and where there is interchange and inter-transfer of funds. Now coming on to the Accounts themselves and page 7 of the Accounts, in particular, the obvious point that comes to mind is that the turnover is obviously too low for the overheads, running at 29.3% of the turnover. However, the point is that with this split in the Yard and with the Yard functioning at a degree of normality in the first half of the year and a large degree of abnormality in the second half of the year, we have an increase of turnover for the whole period in the order of 34.6%, and we have an increase in cost of sales to the order of 27.1%. Similarly the growth profit itself rose in the whole year from 7.8% to 10.4%. It would thus appear logical to say that if the second half of the year had been functioning to the degree of normality of the first half, the increase in turnover could have been expected to be much larger than it was, as presented in these Accounts. I say this, because in the second half of the year with the comparative industrial unrest, a Yard which was at this stage dependent on attracting commercial work and that work was obviously shying away, and therefore not available and one could almost say that those, roughly £4m of increase, of turnover are to a very large extent directly attributable to the first half of the year. Similarly if one takes point 8, of the extraordinary items, highlighted by the Honourable Member opposite. Of the £1.25m, 0.8m roughly is attributable to the tax of the expatriates. I think the Minister will agree that when the previous Government enacted retrospective legislation on the expatriates allowance, the intention was to make these allowances non-taxable and it was only apparent later, because of misinterpretation or whatever, that it had not been taxable, and if so, it would seem to me that it would be relatively easy to enact similar retrospective legislation, at this stage, to make that £1.8m not a liability on the Company and therefore an item that can be removed from the Accounts. If that is indeed so, if one looks at the figure of a loss of £4.15m over the whole year and we remove the best part of £1m from the liability for extraordinary items and we add a percentage of say another £2m for increase in turnover in the second half

of the year, assuming that the Yard had been allowed to work normally, then the situation in the Accounts, as shown today, of a loss of £4.15m would be reversed into the order of a small loss or even a break even position. Finally Mr Speaker, I will end by repeating what I said at the beginning that in order to make comparisons for the Accounts of 1989 against the Accounts of 1988, it would only be possible and relevant to make these comparisons if the Accounts of Joint Venture Companies linked to GSL are made available to this side of the House or are made public at the same time. Thank you Mr Speaker.

MR SPEAKER:

Are there any other contributors to the debate?

HON CHIEF MINISTER:

Mr Speaker, I am assuming that the analysis of the Accounts put forward by the Honourable Member opposite constitutes the collective view of the Opposition on this matter. All I can say is that as an example of creative accounting, I have never seen anything that could earn a higher accolade than what the Honourable Member has just tried to show. That the Yard was last year really breaking even or making a small profit based on a series of hypothetical situations none of which were occurring. Let me say, to put the record straight, that he is completely wrong in saying that the AACR Government passed retrospective legislation in this House to make the allowances tax free. When that legislation was passed in this House, the argument that was put and it is recorded in Hansard, if he cares to go back and check his facts, was that it was necessary to do that because the expatriates were receiving payment from ODA Funds.

HON LT COL É M BRITTO:

If the Chief Minister will give way. Let me quote from paragraph 6 of the Chairman's Statement, "The previous Government enacted retrospective legislation making some payments tax free because they were from ODA grants". I will not bother to read the rest of the paragraph.

HON CHIEF MINISTER:

The Honourable Member has just said that it was the intention of the previous Government to make these allowances non-taxable and I am telling him that he is wrong. The intention of the previous Government was to make them non-taxable whilst they were being paid by ODA, once ODA stopped paying them they became taxable. This is why there is a liability of £800,000 because when they should have paid tax they did not pay tax. Under the Tax Legislation, if an employer does not deduct the tax from an employee that he should, then the employer becomes liable. That has been the decision of the Commissioner of Income Tax treating GSL like they would do any other Company, which I am sure the Honourable Member would agree should be the case. If we look at a Company that has to compete commercially, it must be treated the same as any

other business in Gibraltar. In fact, when this matter was debated previously in the House, the Honourable Leader of the Opposition took the line of saying precisely that, that it had never been the intention of his Government that these expatriates managers should be paid hundreds of thousands of pounds or to have their electricity and water paid by the Company and get everything tax free. It was subsequent to my raising the matter in the House, from the Opposition benches, and the Government saying that the legislation to which the Honourable Member has referred was not intended to make all these allowances tax free. That only the element of the allowances that was paid by ODA should have been tax-free and in fact the Leader of the Opposition said at the time that he was stating this publicly so that the tax authorities should take the matter up, they did, and the consequences are that we have now received a bill for £800,000. It is not enough to say "we can now legislate and do away with the bill and there is no loss, there is a profit". Obviously we can also give them a subsidy and therefore we can say they have not made a loss because they have been given a subsidy. However what we want to do is to establish whether it is possible to repair commercial ships in Gibraltar at least breaking even. That is the essence of the brief that I have given GSL and the Minister for GSL. At the end of the day, the simplest test of success or failure will be that we will not provide any further assistance beyond the £3m that we have voted this year. The Honourable Member, when we come to the Budget in April 1989, will find out that there is no further money provided for GSL. GSL was told when we came in, "we recognise there is an inherited problem, we recognise a restructuring has to take place, we are prepared to provide once and for all an extra £3m to help the restructuring but at the end of the day by July 1989, you either make it or break it. The Yard has to be breaking even by July 1989, if it is going to continue repairing ships. If in fact the analysis made by the Honourable Member of what was happening in 1987 was accurate, which I regret it is not, I wish it were, if it was accurate, we would not have a problem in 1989, because in fact, the Yard today is leaner and fitter than it was in 1987. Because we are not paying £350,000 to Appledore, because we are not paying £170,000 to Thornstien Anderson, however good he might have been, because the Chairman has to do the job for nothing and the previous Chairman charged the Company £30,000 a year, because we have reduced the number of expatriates and we have reduced rates, water and electricity bills. Now with all those things removed, we are still not certain that it will be possible to break even. So it is quite obvious that if today with all the industrial peace in the world, we were carrying the load of expatriates that we were carrying in 1987 we would be losing money today. In fact, when the Honourable Member opposite says that the Yard was making money or breaking even in the first six months of last year, he is wrong, that was an argument that, in fact, was refuted at the time by Sir Joshua Hassan who made a statement and I can send him copies of the statement. He made a statement in July 1987 saying that the Yard in

the first six months of the year had lost £600,000 and therefore had no money to meet the pay increase. This is why there was a dispute, because they were not breaking even and they were not making money. At least that is what was said then, and as a consequence of not having money, and as a consequence of not being able to increase wages, they had a dispute in the second half of the year. Eventually the previous administration, gave the Yard a subsidy so that they could settle the dispute and increase wages. Then having made an agreement, the Company having made an agreement with the Union, that part of the wage settlement was for the redundancies starting from the 1st November, the Government then felt that the redundancies should not start on the 1st November but wait until the whole study of the restructuring took place and by deferring those redundancies until February they cost the Company £1m at least. Because they were carrying more people than they needed, because in fact the workforce that the Yard had, to be able to do the RFA work, was greater than the workforce they needed to do the commercial work and the distribution of skills and trades needed for the RFA work was different from the distribution of skills and trades needed for pure commercial work. This is why today the Yard, with its industrial workforce, has got a different balance of skills from what it had in 1986/87, when it was not really "commercial" because 70% of the workload was navy. As I had pointed out on many occasions, Mr Speaker, from the other side of the House, since it was implicit in the Accounts that were then being produced, as it is in this set of Accounts, that if the Company was making a profit on the RFA work, and I was told many times in answers to questions in this House, that the work for the Navy was profitable, they would not tell me how profitable because it was commercial in confidence, but the Government confirmed that they were not losing money on the work they did for the Navy then, it therefore follows that if out of the 100% work, 70% is profitable then the loss on the other 30% must be astronomical to have an overall loss. It means that two ships out of every three are Naval ships and that these two ships out of every three were making money then the third ship was losing so much money that it was eating up the profit of the first two and still leaving a loss. That is the situation we had until the end of 1987. Therefore if the Honourable Member says that the Naval work was profitable, then he should realise that if it had not been for the Naval work the losses would have been even more than £4m and clearly what this shows is that the entire projection and the entire scenario in 1985/86 and 1987 are an indictment on the package put together by A & P Appledore it cannot be put any other way. I think these Accounts, which are the last Accounts under the mismanagement of our Yard by A & P Appledore, partly, we got rid of them in May eventually. Therefore we are still in this year's Accounts paying a price of five months of their continued presence in the Yard. What the Accounts do demonstrate and frankly we had not wanted to make this an occasion for an attack on the previous administration, because at the end of the day it is quite obvious that if the previous administration was guilty of one thing it was guilty of giving A & P Appledore too much of a free hand. I think if they had themselves been

on top of the situation and discovered some of the work practices, not from the people on the shop floor, of the work practices of the people on the top, I have no doubt in my mind that it would have been as unacceptable to many Members opposite as it is to us and as it was to us when we discovered it. Fine, the philosophy of the Government was that the Yard had to be kept at arm's length and therefore part of the price that one pays for keeping something at arm's length is that if the people who are running it take you for a ride, well at the end of the day you have to foot the bill. That is what we have been doing for the last three years. We have accepted the political responsibility for turning the Yard around and we are trying very hard to do it and we are very grateful for the support that we are getting from the managers of the Yard and the workers in the Yard because without their support it cannot be done. We think it will be a good thing for Gibraltar, if we can continue repairing ships here, the situation at the moment is that our latest indicators from the Economic Model that is being produced for us in the Input/Output Study shows that if the Yard were to close, on the basis of the 1987 contribution, which is the one we have got because obviously we do not know what the contribution to the economy is going to be in 1988, from the basis of the 1987 contribution, a Yard closure would mean a reduction in our GNP of 10%, which is to put it in context like the MOD closing by 50%. The MOD probably contributes about 20% of our economy now and the Yard 10%. The Yard was very close to closure in March this year and certainly the Internal Reports which Members opposite must be aware of, had been recommending closure since October and November, on the basis that the Yard could not survive without continuing Government subsidies. I think this is why in December, I think it was, that we voted in this House a £2m grant and it was clear having gone back now and looked at the internal accounts for the end of 1987 and beginning of 1988, that if the House had not voted that £2m in December, the Yard would not have lasted January. There is no doubt about that. The importance of the Yard to the economy of Gibraltar is real enough, but we have no doubt in our own minds that it is a false economy if we have to keep the Yard going for the repairing of ships and be kept alive by subsidies from the Government and by using money earned in the rest of the economy to subsidise the repair of ships. Quite apart from the fact that of course it is contrary to Community Law and therefore what we have done, in the restructuring exercise, is to isolate the shiprepair side. In fact when the Honourable Member talks about what the accounts are going to say next year, well what the accounts will say next year is what the turnover is as regards shiprepairing and what the income and the expenditure is as regards shiprepairing. It will be, if you like, a truer picture and perhaps a fairer picture for GSL, because eg if we have a situation as we have now where we have already got Gibraltar Security Services functioning, what we are doing is in a way reverting back to how it started in 1985. When the Yard opened in 1985, GSL contracted out security services to a private company and then they decided after seeing what it was costing them, that the contracting out to a private

company, over whose billing they had limited control, was costing them more than employing the people themselves. So they just terminated the contract and absorbed all the Security Guards. However that created a situation when the Yard revised its business plan and decided that it was not going to be repairing ships to the tune of £20m and that it was not going to be employing one and a half thousand industrial workers obviously having fifteen Security Guards for 1,500 workers is one Security Guard per 100 and having fifteen Security Guards for 500 is 3 Security Guards per 100, and the 100 people that are doing the productive work have to carry the overhead of the Security Guard. That imbalance is part of the scaling down from the original A & P Projections. The reality is that none of their predictions came true and as none of their predictions came true the superstructure of overheads from Managers to Managing Director, from Security Guards to the support services, all were feeding off an increasingly smaller productive workforce. We are still, in 1988, dealing with that inheritance and part of the strategy of diversification is precisely to slim down the overheads in relation to the production workers so that at the end of the day we can say to ourselves, 'right we can get for the sake of giving a figure £10 an hour for repairing ships, and therefore we ought to be able to produce an hour's work at £10 inclusive of all the overheads". At the moment we are still losing money in the Yard. We have cut down the losses very dramatically this year. When we came in April, it was running at about £1m per month and we are probably running now at about £80,000 or £100,000 per month. It is still £100,000 too much. Obviously whilst we have cut the big element in those losses like getting rid of A & P Appledore, part of the loss of every month was the fees paid to Appledore around £60,000. That was the easiest thing to eliminate. Once you get the big elements of overheads removed, like the Appledore contract, the Managing Director, the allowances to the expatriates, but the more you progress in that direction, the more difficult it becomes to find new things to save money on. Therefore the going has become more difficult in the period October/September than it was in May/June, when we made very dramatic inroads into overheads. The trend still is that overheads are coming down and therefore we are still reasonably confident that we will be able to reach break even by July 1989. As my Honourable Friend, the Minister for GSL has said, we are quite happy to provide the information to the Members opposite on a confidential basis, so that they see the progress that we are making and the targets that we have set ourselves and how close we are to achieving those targets. I however regret to say that I wish that what the Honourable Member said about how close the Yard was to making a profit in 1987 was true, because if it had been true in 1987 then I can assure him that in 1988 we would be looking for dividends from GSL, unfortunately that is not the case.

HON A J CANEPA:

Mr Speaker, the Honourable the Chief Minister said a few

moments ago that the Yard was very close to closure or at any rate that the Board were recommending closure in October/November of 1987. That is true, they were, but where he is not correct is in ignoring the fact that the Board were recommending closure in even stronger terms earlier, in the summer of 1987, at the time when there was a serious dispute and industrial action was being taken by the workforce over the question of the pay settlement. The Board at the time to all intents and purposes had thrown in the towel. Their strong advise on, commercial grounds, that the Yard should be closed and when the then Chief Minister, Sir Joshua Hassan, and I met the Honourable Mr Bossano, in his capacity as Branch Officer, and we made that point to him, I do not think that it was taken very seriously, I can however assure the Honourable Members opposite, and those who are with me in Government at the time will bear me out, we were really extremely close to closure. We were not in October or November we were not accepting the advise of the Board by then, because we really felt that it was a case of very very low morale and they were just fed up and wanted to have nothing more to do with GSL. That is really what it amounted to. He prefaced his intervention, his contribution, by saying that today was not an occasion for a political attack on the previous administration, and whilst neither in his contribution, nor in that of the Honourable Mover of the Motion, Mr Joe Pilcher, the Minister responsible for GSL, would I quarrel with that, I must nevertheless regard the Chairman's statement as a political attack on the previous administration and it is on three points in that statement that I want to concentrate on. Mr Pilcher introduced his contribution with the comment that he was dealing with a period in the lifetime of the Yard during which he was not responsible, quite so, but nevertheless in his statement I think he has grasped the opportunity of going to town and I think that if he had done us a little bit more justice in the statement, as he did in his contribution, perhaps I would not be quarrelling with him to the same extent. Because, for instance, on the question of the Income Tax payments, he did say here in his contribution, "perhaps the previous administration did not realise that this was happening, namely that the expatriate managers had been engaged with contracts which included tax free inducements which went beyond those provided by the law" Now if only we had, and he could very easily have included that remark in his statement, having regard to statements that we, when in Government, had made on the matter earlier this year, at the end of 1987 or in January. Therefore what the Chairman's statement amounts to is this. Mr Pilcher has been accused recently of trying to manage the Yard, although the accusation is made against him in the same breath that he knows nothing about shiprepairing. However he knows quite a bit about politics and the Chairman's Report is a politician's report who is well capable of coming up with a political attack, I will not describe it as a diatribe, it is however an attack on cue and that is why the discussion today, as far as I am concerned, becomes a little bit more controversial because I have to concentrate on one or two political elements. Let me

reiterate that in respect of the tax inducements going beyond those provided by the law, we did not turn a blind eye on the situation. You turn a blind eye to something that you know is happening, if you do not know that it is going on, then you are not turning a blind eye and we did not realise that this was occurring and we were shocked when it was brought to our attention. Far too late in the day that it was actually going on. In respect of the losses which the Yard sustained, the additional losses, of £1m because no action was taken in accepting or in commencing the programme of voluntary redundancy in November, let me state quite categorically that the Government did not accept the programme which had been drawn up by the management and which did not have by any means the full support of Members of the Board, certainly not of Government Members of the Board, not to say of others who were not particularly enamoured of it either. The Government did not accept that programme, because it contained insufficient information, but what is more serious, is that in fact redundancy arrangements concentrated very heavily and would have affected very seriously the Gibraltarian element in the workforce and we just were not prepared to have a very large number of Gibraltarians being made redundant, who need not be made redundant if we were given an opportunity to look at the matter in depth and to look at the matter closely. So we constantly asked the managers for information. I myself, as Chief Minister, have got copies of letters that I wrote to them explaining why we could not go along with their programme and asking them for more information which was not forthcoming and hence the delay. I think if we had accepted the programme that they drew up, then there would have been a repetition, on this issue of redundancy, of the industrial action which had occurred in the Autumn of 1987. In fact I think that the industrial action which would have resulted would have been more serious and with all good reason because there would have been an over-concentration in those redundancy arrangements on the Gibraltarian element of the workforce. Therefore if the delay led to a further loss of £1m then I think a damaging industrial action, which would have been the third occasion on which industrial action would have been taken in the space of six or seven months, would perhaps have been even more damaging and would have led to losses, perhaps greater than that £1m. The Chief Minister said that now in the Yard they have all the industrial peace in the world.

HON CHIEF MINISTER:

If I can correct that Mr Speaker. I have not said we have, I wish I could say that. I said "even if we had all the industrial peace in the world", correcting the analysis that the Honourable Member had made of the accounts, "it still would not be enough to guarantee profits". That is what I said.

HON A J CANEPA:

Well they certainly are in a much happier position than we were, but then of course they do not have to deal with

40% wage claims. We had a 40% wage claim in 1987. There has been a settlement of around 10%, which the Yard could not afford and yet Honourable Members opposite are able to settle with the workforce on a four year pay settlement of the order of 12%. What a contrast. If only we had been able to have that level of settlement during the time that we were responsible, as an administration, how much happier the situation would have been and how much better would the financial standing of the Company have been over the years. Of course we could not get that sort of cooperation and sadly we all know in Gibraltar why, not that it has mattered, because even though people know why, they nevertheless voted for the Honourable Members opposite and that in political terms is what matters. The reality however is, and if one comes now to the point made in the statement, by Mr Pilcher, "that they have inherited a shipyard full of problems", of course they have, but some of them were created or helped by the Trade Union arm by some of the Members opposite for whatever motive. Of course the managers treated the workforce very badly, I have no doubt about that, we were telling them constantly, but nevertheless some of the action taken in the Yard was politically motivated, there was an objective behind it and that objective has been achieved. In political terms that objective has been achieved and that the stark contrast of course between what is happening today, and I think it is summed up in a situation which even Mrs Thatcher would jump at, of a four year settlement on the basis of 12%, 3% a year, as against the claim of 40% for one year and a settlement of 10%. So that is the reality of the matter and we look forward to next year's Report, by which time having regard to the fact the 1988 Report only covers less than three months of our administration, I think that the Honourable Member opposite will then have to be defending his own record in the Yard. This is of course what we are looking forward to, the day is soon arriving when Honourable Members are going to be answerable for what they are doing and they will not be able to look back over the past few years.

MR SPEAKER:

Are there any other contributors?

HON J C PEREZ:

Mr Speaker, it is quite clear from what the Honourable the Leader of the Opposition has said, that the whole argument that the Opposition is trying to put on the Accounts of GSL, is that they are claiming that those accounts would not be as bad had they had certain conditions in the Yard which we had been able to obtain and the reason for that, Mr Speaker, is not what the Honourable the Leader of the Opposition says because we have an industrial climate which they did not have, that is not the case. They by their own choice decided to take less of an interest in Gibrepair and less responsibility for Gibrepair, they allowed their managers to do what they wanted and when they started taking stock of the situation the whole matter was out of control completely and they were not able to answer

for those decisions. That the Honourable Leader of the Opposition should accuse this side of the House of not having to deal with claims of 40%, of course we have had to deal with claims of 40%, of course we have. When the Trade Union Movement put the claim for 40% the year before, they were much more lenient on the previous Government than they were with us because they were able to settle for 5% after that 40% claim whilst we have had to settle for 12%.

HON M K FEATHERSTONE:

Over four years.

HON J C PEREZ:

No, there is a pay review every year, check your facts first. What is clear, Mr Speaker, that all that the Honourable and Gallant Colonel Britto and the Honourable the Leader of the Opposition have been doing is trying to cover the £4.5m losses and I do not see why because as the Honourable the Chief Minister said "we were not trying to use it as a platform for an attack on the mess that they left behind in Gibrepair". We have brought the Accounts, because they need to be brought to show the real position and the real position is that when they were allowing A & P Appledore to run it, Gibrepair finished with £4.5m losses. We are trying to cut those losses, we are not saying that it is an easy task, because a lot of the mistakes like employing Appledore, who we sacked, cutting down the overheads of manager's expenses, perks on houses and everything else, like medical contracts, by a particular clinic for an annual fee of £60,000, all those losses have been cut Mr Speaker. The Honourable Member now comes and tries to imply that if they had had a different climate of industrial relations, the situation would have been different. By his own exposition he has admitted that the industrial problems that took place were not over a pay review, he has admitted that if he had taken the steps that the Board wanted in October/November he would have had a worse industrial situation and that he did not take steps to make the redundancies because he wanted to avoid that industrial situation. If he had however taken steps to take control of the situation before, as he did in October/November perhaps we would not have reached this stage and perhaps we would have had some money left over from the £30m that have been thrown down the drain, by the previous administration allowing A & P Appledore to get away with murder in the Yard.

MR SPEAKER:

Are there any other contributors? Does the Honourable the Minister wish to reply?

HON J E PILCHER:

There are a couple of points I would like to make. I have been taking notes of various things that the Honourable Lt Col Britto had said but they have been answered by the Honourable the Chief Minister. However there are two points that need to be highlighted. The Hon Member turned the argument round when I used the figures for £60m of turnover and that £12m was in fact for RFA work. What the Honourable Mr Britto forgot was the fact that that was guaranteed RFA work and which did not require any effort by A & P Appledore to obtain and virtually everything within came in during the last year £10m of the £14m came in the last year and therefore Mr Speaker, as the Chief Minister has stated, that RFA work was done at a premium, was done at a profit and therefore should have created a profit making mechanism within GSL.

HON LT COL E M BRITTO:

If the Honourable Minister will give way. I think he has misunderstood the point I was making, what I was attributing, was the increase in turnover of some £4m for the whole year, in a very great proportion directly to the RFA work, and therefore if the Yard had been working to the same degree of normality in the second half of the year, one would have expected the turnover to increase by more than £4m.

HON J E PILCHER:

No, Mr Speaker, Mr Britto still does not understand. The RFA work which was £10m and which he claims is the 34.6% increase in work, was not work that was produced by A & P Appledore. It was guaranteed work from the MOD. That was completed by July/August, in fact the RFA got caught up in the industrial dispute. By that stage the RFA work was finished. If the Yard had been free from industrial action totally through 1987, the RFA work was not there, just as much as since March of this year, the Yard has been totally free from industrial action and we still have not got one extra RFA because, we have now have to tender for RFA work. No, Mr Speaker, I will not give way because the argument is, if there is a 34.6% increase in work over the first six months and if there had been no industrial action for the next six months, just imagine the amount of work that they could have done. Well they could not, because they only did £4m of commercial work when they were predicting in the 1985 plan, for £10m of commercial work in 1987 and they only did £4m of commercial work. Out of the £4m only about £3m is in fact shiprepairing. That again has to be balanced against the 1,200 jobs that they in fact, in their own assumption, said they would have by 1987. I think, Mr Speaker, that is the point that was being made by the Honourable the Chief Minister, that what we want to do is at the end of the day see exactly what the shiprepairing element of GSL is doing to the economy of Gibraltar. How much work we can do as far as shiprepairing is concerned and how many people we employ directly in shiprepairing. This is part of the strategy

of the Joint Venture Companies eg like the Honourable the Chief Minister mentioned, Gibraltar Security Services Limited, well it has nothing to do with shiprepairing. The Electrical Company has very little to do with shiprepairing because the electrical maintenance fitters are being retained at GSL. It is those elements around the Company that were really doing work for the Company and outside the Company. In fact out of the £4m, there is an element there of work already that was being done outside the Yard. I think what we will see in 1988, is as we shed off the Joint Ventures, I think I have explained certainly in this house what GSL is doing with its workforce, it will not be a cosmetic exercise. Those workers which are needed for shiprepairing activities, because the shiprepairing element of it is 100%, 95% or 90% of their work, will in fact be kept on as GSL employees. It is only those elements of the Company, those areas of the Company, that they are doing a percentage of work outside and a percentage of work for the Yard, it is only those areas where I am looking to create Joint Ventures, because they can stand alone and they can be isolated from shiprepairing. This is why, Mr Speaker, as part of the strategy we are trying to isolate shiprepairing and see what exactly shiprepairing produces. This is why, Mr Speaker, what we will find in the 1988 Accounts, is the GSL Accounts only in the balance sheet and then obviously what the Honourable Mr Britto is referring to, is in fact the consolidation which happens already and if he looks at pages 8 and 9, he will find that page 8 is in fact the Shiprepair Limited and Subsidiary. That will happen next year. So what the Honourable Mr Britto will find is that he will have under page 9, the Gibraltar Shiprepair Limited balance sheet for shiprepairing only and the balance sheet for Shiprepairing Subsidiary. That is what has to be done under normal accounting procedures. Turning now to the comment by the Honourable the Leader of the Opposition, Mr Speaker, I do not shy away from my responsibilities nor do I shy away from my responsibilities in this House as indeed I do not shy away my responsibilities when I am sitting down at the Yard as Chairman of the Yard. I do in fact manage the Yard because this is the brief that was given to me by the Honourable the Chief Minister, in conjunction with people that know a lot about shiprepairing, the General Manager, the Production Managers and in consultation and negotiation with the Trade Union. This is what I do and I do it all the time. This is why through the last six months I have spent a lot of time tackling GSL and to working towards a situation where.....

HON A J CANEPA:

If the Honourable Member will give way. Has he had a chance since he returned from the UK to read the back numbers of the Gibraltar Chronicle?

HON J E PILCHER:

Yes of course, I had the opportunity of reading them because they were faxed to me in UK.

HON A J CANEPA:

He knows that Dickie McCarthy does not agree with him?

HON J E PILCHER:

Yes I know that Dickie McCarthy.....

MR SPEAKER:

Order, order.

HON J E PILCHER:

I dare say Mr McCarthy is not motivated politically. At least I hope not. Although I know that the Honourable Leader of the Opposition has already asked to see him. But that is besides the point. The fact, Mr Speaker, I am not going to go into that because I am already in negotiations with the Branch Officer. I did start yesterday in fact and the problem that was highlighted in the Chronicle.....

HON A J CANEPA:

If the Honourable Member will give way. I do not want that statement to appear in the media. He is not serious surely when he says that I have asked to see Dickie McCarthy?

HON J E PILCHER:

No, Mr Speaker. The problem, Mr Speaker, with that particular incident has already been tackled by me and the Trade Union yesterday afternoon and I hope to be in a situation by Wednesday or Thursday, Mr Speaker to see that particular problem through as well. Now that it has been mentioned, I think I should mention the fact that it is my intention by the end of this year, Mr Speaker, in order to start from the 1st January next year to wipe clean the slate of GOTO which is now the Gibraltar Labour Services Limited and to start a system as from the 1st January where we do not have the recurrent problems that we have at this moment. The problems related to GOTO.....

MR SPEAKER:

We must not raise matters which Members will not be able to reply to.

HON J E PILCHER:

I accept that Mr Speaker, it is just that it had been mentioned and we will have a full statement hopefully by the end of this week on the solution of that problem. However as I was saying, I do not shy away from my responsibilities and I will be sitting here, hopefully, March/April next year defending the 1988 Accounts and showing what we have been able to do with the Company.

I also hope to be here once again for the 1989 Accounts, having gone straight through July 1989 and having shown that the Company can break even and the Company can make a profit, Mr Speaker. I think that there are various points that were made by the Honourable the Leader of the Opposition. I do accept that I am a politician and that is why I am on this side of the House, but I honestly think we have now come to a stage Mr Speaker, where the past is now the past. I remember when we dismissed A & P Appledore and we were asked why we had not taken them to court, why it was that we had not highlighted all the problems of mismanagement and tried to sue them. The answer is very very easy, Mr Speaker, what we are trying to do is take the Yard forward and to stop and analysis everything that had been done in the past, I think, would not have augured well for the Company. I do accept that in the Chairman's statement there are a couple of political points, but to be told, like Mr Britto was saying, that the Company was in fact profitable last year, is, Mr Speaker, something which we cannot accept. I think that the situation must be put right and must be put in perspective. We do not want to have to keep going back to what the previous administration had done what the previous management had done, what we want to do is, go forward and in going forward I will be making myself responsible for all the things that the Yard does, Mr Speaker. Of course I have inherited certain things and I am trying my hardest to resolve them. Some may be possible others may not and that will have to be seen by middle of 1989 whether the Yard breaks even or not. There are however various points made by the Leader of the Opposition which are not factually correct, Mr Speaker. He mentioned the delays in the redundancies, which according to the Honourable the Chief Minister and I agree with him, cost the Company somewhere in the region of flm. He said that he did not go forward with the redundancies because he thought that that would have created industrial action at the Yard, well, Mr Speaker, he is not right because that may have been the case prior to November, when the Unions reacted to the Company making people redundant but not because they thought that a redundancies procedure was not necessary but because the Company with the full backing of the administration, tried to implement redundancy procedures without Trade Union agreement. That was why there was nearly industrial action prior to November of last year. In November, Mr Speaker, when the Union agreed to the redundancy procedure it was on the understanding that the procedures would be put into effect immediately and this did not happen until January/February 1988. There is a four month gap. During this period it was difficult to motivate people because most of them were doing their sums to see how redundancy affected them. It was also difficult for management to market a Yard that was in the process of issuing redundancy notices. It was not A & P Appledore, it was not the workforce that were creating the problem, it was, in fact, the previous AACR Government by delaying the redundancies they created a problem for the Yard by lack of motivation in the workforce and management unable to market the Yard. The other point has been dealt with by my Honourable colleague and

and friend Juan Carlos Perez. We did face a 40% pay claim this year like we have had pay claims across the board, not only in GSL. The pay claims that the previous administration was saying were politically engineered, have been made this year, Mr Speaker, and we have had them at GSL, the same pay claims that were tabled last year to the A & P management and obviously to the AACR Government. There was no money to pay, Mr Speaker, in 1987 because as is clearly shown in the Accounts most of the money was going to the expatriate managers and there was no money to pay local workers. That is why this year, we were in a better position, it is not that GSL, Mr Speaker, can afford huge pay claims and our workforce know that. What we did do this year is we apportioned to the local employees what was previously going to the A & P Appledore management. This was certainly much less than the A & P Appledore had been getting, Mr Speaker, this coupled with our better negotiating ability is what helped resolve things at GSL. I will finish by saying to the Honourable Leader of the Opposition, we have not yet reached our political objectives simply by sitting on this side of the House, the practical objectives of this Government is not only to cure GSL but to cure Gibraltar, that is the political objective of this Government, Mr Speaker.

MR SPEAKER:

Well gentlemen, we have taken note of the Accounts of GSL for 1987 and we will leave it at that.

HON M A FEETHAM:

Mr Speaker, I have the honour to move in the terms of the motion standing in my name:

"Be it resolved that this House do approve the making by the Governor of the following order -

COMPANIES ORDINANCE

COMPANIES (FEES) (AMENDMENT)

ORDER 1988

In exercise of his powers under Section 313 of the Companies Ordinance and all other enabling powers, the Governor, with the approval by resolution of the House of Assembly, has made the following order.

1. This order may be cited as the Companies (Fees) (Amendment) Order 1988 and shall come into operation on the 1st January 1989.
2. The table of fees set out in Schedule 8 to the Companies Ordinance is omitted and the following table is substituted therefor -

(a) Incorporation, registration (including registration under Part IX of the Ordinance), or submission of any change in status of a company, that is to say, the fact of its being public or private or limited or unlimited (except from public limited to private or from limited to unlimited) - regardless of share capital.	£50
(b) Registration of change in status from public limited to private or limited to unlimited.	£10
(c) Registration of Change of Name.	£30
(d) Lodging of Annual Return.	£20
(e) Search Fee.	£ 1
(f) Certified copy of a certificate	£ 2
(g) Certified copy of any other document.	20p per page search fee of £1
(h) Photocopies	10p per page & search fee of £1
(i) Lodging document to substitute other document in file.	£ 5
(j) Lodging prescribed particulars for registration of charges or any other forms of security.	£ 5
(k) Lodging of particulars of directors or any change of directors.	£ 5
(l) Connection or reconnection of telephone/ computer links with the Registry.	£50
(m) Annual telephone/computer link subscription	£100"

Mr Speaker proposed the question in the terms of the Hon M A Feetham's motion.

HON P C MONTEGRIFFO:

Mr Speaker, if our understanding is correct, some of the changes which are being introduced here are fairly significant increases in percentage terms, at least, from the amounts payable at present. Perhaps the Honourable Minister will correct me if I am wrong. For example the lodging of an annual return is a £5 fee at present and is going up to £20. In principle we have no objection to Government revenue being boosted further by what is obviously a lucrative business for many people in the Private Sector. However, we only want to make sure that the general infrastructure on Companies, on Name

approval and on everything else that goes with providing a proper service is also put on a firmer footing. There have been improvements over the last year or so in connection with Name approval but it is still the subject of some delay. There is also of course delay in the granting of Exempt Status and the matter was raised at the previous adjourned session of this House and we simply want to put the Government on notice that whilst we are prepared to allow these increases to go through and agree on the legitimacy of such increases at the same time we want to make sure the whole infrastructure if not rationalised is at least made more efficient.

MR SPEAKER:

Are there any other contributors?

HON A J CANEPA:

I just want to add one point, Mr Speaker. As my colleague has said, we do not object to these fees being increased. They have to be kept under constant review, but I do draw a distinction between what one would regard as an occasional fee, for instance the registration of a change of name, that is only going to happen occasionally, as against what is an annually recurrent fee, such as the lodging of an annual return. That has got to be done every year and therefore the effect of it is somewhat more sharp. I think the existing fee is £5, I am not sure for how long it has been £5, perhaps for too long, for very long, but that is the only distinction that I would make and if on this occasion Honourable Members nevertheless feel strongly that that figure should remain, it is a point that I would commend to them, indeed, when they assess the level of fees not just under the Companies Ordinance but under any other piece of legislation to try and draw a distinction between an annually recurrent fee and one that is occasional and therefore one perhaps in the case of annually recurrent fee, one should not apply the same percentage increase all things being equal.

MR SPEAKER:

Does the Honourable Mover wish to reply?

HON M A FEETHAM:

Mr Speaker, first of all, the point that the Honourable Mr Montegriffo has made. Yes indeed, we want to restructure the Companies Registry to become more efficient. Improvements over the last few months have been aimed at, the installation of the computer and computer link. As far as the fees are concerned there is a need to cover the cost of introducing these services. However the reason why we have brought these increases to the House now is because this Government on taking up office looked at all the different fees which were being charged for the different services being provided by Government and in respect of the Registry of Companies there had not been

a revision since 1982. A fee of £5 for the lodging of annual returns is ridiculously low and the reason for an increase to the level that we are proposing. It is also pertinent to note that the expansion in recent years in Financial Centre activities has not been to the benefit of Government revenue to the extent that it could have been and we are now in a catching up process. For the House's information the number of Tax Exempt Companies that are registered is still only a small fraction of the total number of Companies incorporated at the Registry. So relatively speaking, only a small proportion of companies pay the £225 or £200 annual tax to the Government. They of course do not pay any income tax on their profits. There are also an increasing number of non-trading, non-tax exempt companies being formed to hold property abroad, which bring little if any benefit to the Government and it is against that sort of background when we talk about enhancing and providing better services that the fees being charged have to be seen. What we cannot do is find ourselves in a position that the tax payers should be indirectly subsidising the activities of the Finance Centre. There has to be the right balance. Let me say that in our judgement, Mr Speaker, the proposed increase in fees will not have any effect on Gibraltar's competitiveness with other centres having looked at the comparability of fees being charged elsewhere and that consultations have taken place with the Financial Centre Group.

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

BILLS

THE LANDLORD AND TENANT (AMENDMENT) ORDINANCE 1988

HON M A FEETHAM:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Landlord and Tenants 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 M A FEETHAM:

Sir, I have the honour to move that the Bill be read a second time. Mr Speaker, as Honourable Members are aware the Crown is the major land owner in Gibraltar and virtually all premises outside the city centre are held from the Crown on leasehold terms. Since taking up office and in examining some of these leases we have discovered that in many instances rents have not been paid for years. In other words commitments entered into with the Crown have not been complied with. Whilst these leases make provision for forfeiture, when breaches do occur, the Crown is tied by the existing provisions of the Conveyancy and Law Property Act 1881. In practical terms therefore, to ensure compliance with the covenant contained in so many leases would require an army of civil servants and law officers,

who would need to seek rectification through the courts. This action would also unduly burden the resources of the Judiciary. The existing legal framework may prove adequate where private sector interests are concerned however where public monies are involved a greater measure of protection is clearly necessary. The Bill before you will therefore correct the situation, so that the Crown can enforce its right without the restriction imposed by Section 14 of the Conveyancy and Law Property Act 1881. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON LT COL E M BRITTO:

Mr Speaker, we on this side of the House have grave reservations about this proposed legislation. We feel and let me start by saying that straight away, we feel that not enough thought has been given to the wide powers that this Bill gives or to the wide extent that it envisages. The Honourable Minister in moving it has restricted himself, and I was very interested in hearing what the aim of the exercise was, he has restricted himself in highlighting lack of payment of rents, and I will therefore carry on on the assumption that that is the Government's intention, to recover premises where rent has not been paid. Now this measure has to be seen in relation to the simple situation or simple relation that exists between a landlord and a tenant. The law is very clear on that, in that the tenant has certain obligations envisaged by the lease and amongst those obligations is one of paying rent. The landlord is fully protected under the provisions of the Conveyancing and Law Property Act 1881 and he can take action against a tenant who does not pay rent because rent is specifically excluded under the terms of this Act. We are worried by the fact that these powers apply not only to commercial properties which I assume is the area that the Minister is most concerned with, but as the proposed change in the law stands, if also they apply to private homes as well, which by implication means that half the tenants of Government housing, for example those having pets or dogs in their houses and are technically committing a breach of their lease and could be asked by Government in theory although I am sure they have no intention of doing that, to relinquish their property. I am giving this as an example of the wide extent that the Clause covers. Similarly we are worried by the fact that this measure gives Government tenants far less protection than private sector tenants because private sector tenants will continue to be protected by the full strength of the law and Government tenants will not. I will highlight the part of the Clause that says "provides for right of entry or forfeiture for a breach of the lessee for any covenant or any condition of the lease". That is what I mean when I am talking about the wide powers, it means any breach however small. You would

have a ridiculous example of a tenant who has not painted his windows and the lease says that he has to paint his windows or his shutters rather and that could be interpreted as reason for loss of the premises. Now Section 14 of the Act of 1881 which the Government is seeking to make non-applicable to Government tenants states "that if a tenant is in breach of a lease, remember this includes someone in Government housing, then the landlord is simply required and there is no question of the three months to it, the landlord is simply required to serve notice on the tenant before exercising his right of entry or forfeiture. In this notice the landlord has simply to say three things: What the tenant is doing wrong; what he, as a landlord, requires to be done to remedy what the tenant is doing wrong; and any compensation, if any, that he as a landlord requires the tenant to make. simple and fair. Similarly under paragraph 2 of Section 14, the tenant having received this notice and if he feels aggrieved or if he feels that something wrong has been done against him, has total liberty to apply to the courts for redress against the landlord applying forfeiture or right of entry, and further most importantly the court has full powers of discretion to decide in favour of one or the other party to provide compensation in the light of all circumstances or in the light of the conduct of the parties concerned. A fair situation envisaged by an act of Parliament of 1881 and which has existed for over 100 years and now after eight months in power we have a GSLP Government saying that it is not suitable for Gibraltar. I would further stress that the provisos of this Act, and this is where I fail to understand the Minister's logic, the provisos of this Act of 1881 do not apply in the case of non-payment of rent it is specifically excluded by paragraph 6 of Section 41. They do not apply on non-payment of rent, if the tenant goes bankrupt, and if the tenant assigns, underlets or parts possession or disposes in any way the property. So if the whole intention is to enforce right of entry and exercise forfeiture against the tenant who has not paid his rent, there is no need to repeal the Act which affords protection in general terms to all tenants because that provision is already there in paragraph 8 of Section 41. I shall be interested to hear, I think we all are, at least on this side of the House, the Attorney General's views on this Clause and unless we are proved totally wrong we would suggest to the Government that the Third Reading of this Bill be delayed until a future meeting of the House, so that the Government can have an opportunity to seek legal advice on the necessity of this Clause. I would then ask them to consider what I have said and leave the Third Reading to a further meeting of the House or better still we would suggest that the best thing that could be done with this Bill is to withdraw it. We think it is bad legislation which is bad for Gibraltar. Thank you Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, this is not a matter of legal opinion, it is a matter of political responsibility and I am not sure

whose interests the Honourable Member opposite is defending or who the AACR is defending on this occasion, but it is certainly not the interest of Gibraltar, that is clear. Of course the Honourable Member has got most of what he has said wrong. I do not know whether I am going to have to spend the whole of my time in this House telling him he is wrong every time he gets up to speak. I would however wish he would do his homework. It is a complete nonsense to say that Government tenants in Government flats are covered by this, because, of course, they rent the property on a weekly rent and do not have a long lease. What we have is a situation where there are people who were given leases by the previous administration, the AACR, and in those leases they included conditions which they clearly have made no attempt to enforce. We had assumed when bringing the legislation that it was due to an oversight but we have found out that people were blatantly doing with Government property what they liked, and getting away with it, because the machinery for enforcing the agreements, these contracts, was so cumbersome that all they had to do was not pay the fee laid down in the lease for five years, and then when taken to court they paid at the last minute. They however got away without paying them for five years. There are many other things that are included in leases given by the previous Government, not by us we have not given any leases to anybody so far, which we have tried to enforce to protect public property which belongs to the people of Gibraltar but we have found that this ancient Act of 1881 was a barrier and we had assumed that the Act of 1881 was still there, not because the AACR believed in it or because they defended it, but because it had been overlooked, we took it to be an oversight that we were correcting but it seems incredible that the Honourable Member opposite should be defending with pride this 100 year old Act. It would appear that they would have kept it in existence if we had not come into Government. I thought when we came into Government that we had to wipe out, Mr Speaker, the cobwebs of 40 years of AACR administration, I did not realise that we would have to go back 100 years to put things right. We will certainly put things right, and when people, in future, enter into a contract with the Government for the use of Government property they must understand that what they sign on a piece of paper is what the Government will expect them to abide by and if they do not abide by it, then the property will revert to the public and to the Government. To me it is not a matter of interpretation of law, it is a matter of where we stand politically and we stand politically in protecting public property from abuse by private individuals who sign contracts and then do not comply with the contracts that they sign. We are not going to have a situation perpetuated, Mr Speaker, where individuals make huge profits at public expense by making use of property that belongs to the Government and then doing with it what they like. If the AACR has allowed that to continue throughout its term of office and we had thought it was being allowed, not as a deliberate policy but simply because it was another example of their neglect, we will not, it is a political decision that we will defend and if they chose to vote against it, well they can vote against it, but the Bill will go forward. It will be evidence of which side

of the fence they sit on and it is better that they should come clean rather than try and camouflage their political position by talking about how good an 1881 Act is in 1988 they should say that what they are doing is protecting people who are profiteering with Government property. If that is what they want to do.....

HON LT COL E M BRITTO:

If the Honourable Minister will give way. Just a correction, Mr Speaker, I did not intend to interrupt the Chief Minister and allow my colleagues to reply. However some of the comments are in direct reply to what I said and cannot be left without answering. Let me make one thing quite clear that I stand in this House defending the interests of the people of Gibraltar in general and not any particular section of interests as has been insinuated. I am defending, in this particular case, the interests of democracy as I see it. I feel very strongly that the Government is taking excessive measures in carrying out what it intends to do and if the intention, as the Chief Minister has said, and which I fully agree with, is to stop people from profiteering with Government property at other peoples expense, I support that. I however maintain that there is no need to remove tenants rights in all properties for the sake of penalising the small number of people who may be profiteering. The Act is there and the point that I was making about it being there for 100 years is that it has served to protect the interests of people for 100 years. It is there to protect the innocent and precisely because it does not prevent the tenant from exercising his right to forfeiture against someone who does not pay his rent. If that is what is worrying the Government then there is no need to repeal the Act because you can take back the property and examples of people not paying rent for five years have been given. Well fine, but you can correct that now if you want to. You can take action now. The point is that there is no need to take draconian measures verging on the dictatorial for the sake of a small number of people who may be breaching the law.

HON CHIEF MINISTER:

Well Mr Speaker, I have to assume after the Honourable Member's contribution that it is in fact my first interpretation that he does not know what he is talking about and not my second interpretation that he does know what he is talking about and that he is therefore defending sectarian interests. I have explained to him that we found a situation when we came in to Government, after having looked at hundreds of Government leases, that the wording inserted by the previous administration said 'in the event of the leaseholder not doing (a), (b) or (c) the lease is forfeited'. We checked and found that the leaseholder

had not done (a), (b) or (c), and it seemed to me a very simple contractual situation. I am not a lawyer, but for me my reaction was, if somebody signs a contract saying that I give him (a) and he gives me (b) then I expect that he should give me (b). When I asked "why is he not doing it?" I was told that he was not doing it because in fact the cost of getting him to do it, irrespective of what the lease said, and the lease said, the lease signed by them not by us, "if a person is in default this lease shall be determined", we said well all these people being in default why are their leases not being determined, and we were told "because of the 1881 Act which required a set procedure which was expensive in time and expensive in resources and people knew that by the time that you went through the whole procedure it is going to cost you more to collect than what was owed". Alternately at the very last minute they pay up and when you go to the court, the court says "the thing has been redressed". All they need to do is to wait until the final stage and then they cough up and they get off the hook and then they can start all over again. Now looking at the public interest and in protecting public property we thought well clearly this cannot have been the intention because why put into leases that you can do something if you cannot do it. It must be that obviously it has not been looked at like so many other things have not been looked at and people have not checked what their leases say, the leases signed in 1987, say something that is in fact in conflict with the requirements of the 1881 Act. Now what we are doing is making it possible to implement what the leases signed by the previous administration said that the Government could do but which in fact cannot be done unless those leases are taken out of the restrictive requirements of the 1881 Act. There is nothing draconian about it, we are not going after people who do not paint their shutters and kicking them all out, and we are not going after people who have dogs in the House. No we are talking about people being required to comply with Government leases and in the majority of cases overwhelmingly we are talking about commercial premises where the majority of Government leases apply. I do not know whether there are individual tenants who have leaseholds, I suppose there are some but there are very few of those in the context of the 5,000 domestic units owned by the Government and I doubt if more than one hundred, out of five thousand are held on long leases. Four thousand, nine hundred are weekly tenancies that are

covered by a tenancy agreement with the Housing Department and which has nothing to do with the 1881 Conveyancing Act and which is not protected by the 1881 Conveyancing Act. You can, in fact, kick all Government tenants out now. The Honourable Member may not know it as he has never been in Government but presumably if he has a Government tenancy himself? He has not. Well if he had, he would know that the practice every year when the Government raises its rents was to write to every Government tenant saying, "I am raising your rent next week and I hereby give you notice to quit". So we are not talking about introducing draconian legislation which is going to affect all the Government tenants in all the housing estates, when in fact those people are not covered by the 1881 Conveyancing Act because they could be given notice to quit the moment their rent is raised. Its the people that have leases and which determine already what they pay and when it is increased that are affected. It is a contract and that contract is a contract between two parties. One of the parties is not complying with the contract and the other party, which is us, is going to enforce the contract. Members opposite should have been enforcing it in the last sixteen years they were sitting on this side of the House and they have not done it. If they are against us doing it then it can only be because they were not enforcing it previously deliberately to protect vested interests. This Government is going to fulfill its public responsibility, irrespective of why it has not been done for 100 years or what the previous administration did, and if Members opposite want to make an issue of it well fine we are happy to make an issue of it. We are happy to stand up politically and defend this decision and let them defend their opposition to it, it is as simple as that.

HON P C MONTEGRIFFO:

Mr Speaker, first let me take up the Chief Minister on his homework, I think it is important to point out that we are not given enough time to do our homework. The way things are being done with Bills being chucked under our noses relatively late, about a week or ten days ago and then they are going to be bulldozed through during this session. However our homework has been done and on this occasion what the Chief Minister is telling the House is that this is not a matter of law, but that it is a matter of political responsibility or political judgement. Of course, what is a matter of law is what the Chief Minister wants to do or does not want to do because politics translates into law and in this situation, Mr Speaker, what is very obvious to us is that the man who is speaking nonsense today is the Chief Minister himself. Nonsense in a way, with respect, which I have not heard him speak of before or to such a great extent. A contract is not a contract as you think it should read or as I think it should read. A contract is a contract as according to what the law says it should read.

HON CHIEF MINISTER:

Or the lawyers.

HON P C MONTEGRIFFO:

No how the law says it should read and if the law says that whatever you put in a contract there is something else by statute which the politicians have passed, saying that that contract is interpreted in a certain way, then I am afraid that it is totally unprofessional for the Chief Minister to suggest the contract says "I paint your window", but then there is a statute that says, "well you cannot paint windows on Saturdays" and that is what applies. Mr Speaker, a contract is not just what is on a piece of paper, it is also about how the law interprets that, so in coming to this forum to talk about what you want to do politically, you have to do that legally and understand the implications. I think the point here is, unless I am totally misreading what we have before us, that the Government does not seem to know what it is putting in its own Bill because the first Section of 4A(1) states "This Section applies to every tenancy where the interest of the landlord belongs to the Crown". Tenancy means tenancy, Section 4 of the Ordinance is not part of the Ordinance that refers to commercial premises, it is the preliminary provisions of the Ordinance. As that now stands, and I stand to be corrected by the Attorney General, this is totally ambiguous, if this is only going to refer to commercial premises, the placing of the Section, I mean, if it does not mean that, then it is going much further than would appear to be necessary and it certainly does include somebody with a weekly tenancy. It is a moot point, but somebody with a weekly tenancy in Moorish Castle Estate, has a tenancy to which the landlord, the lessor is the Crown is the lessor and technically therefore the provisions of this Bill do affect detrimentally the position of every single Government tenant. That is how I see it. I do not see the wide wording of the Section limited to provide otherwise. The point goes further, there are other things. If this provision of 1881 is unfair, because it is an obstacle to the recovery of property, and it is an obstacle to the recovery of property, but it is an obstacle that the law specifically has included to protect tenants, then let us exclude it for everybody, let all landlords in Gibraltar have the ability to enter into commercial contracts which say, "if you do not pay rent, then I throw you out and give you thirty days notice of whatever". Why have a distinction between Government and other landlords. There would be consistency in an argument which said, "let us remove the 1881 Act, if you think that is archaic and the Bill of Rights was enacted in 1699 and nobody suggested that is archaic, just because it has got four hundred years. But if you think a thing that goes back a hundred years is archaic, let's leave it out for everybody but let us not have a situation where the Government will become a privileged landlord. Government lessees will be under greater threat than those in the private

sector without the distinction having been rationalised or justified in anyway whatsoever. Our reading of Section 14 of the Conveyancing of Law Property Act 1881 and Sub-section 8, subject to any correction which the Attorney General will give, makes it very clear that the Section shall not affect the law relating to re-entry or forfeiture or relief in the case of non-payment of rent. What this says then is that if a tenant has not paid rent, you can still go against him, you can get recovery without the tenant being able to invoke the provisions of this Section. If we agree to that extent and that is the malaise we are trying to cure, then all you need is to sue and to take action in court without having to repeal the Section. The logic, when looking at this Bill, what it appears the Government wants to do is to say that matters, other than non-payment of rent and for the various other exceptions also contained in the 1881 Act, we would like to have this ability to throw people out. That is obviously dangerous because it is totally open-ended. As the Attorney General will confirm, probably the most useful provision of Section 14 of this archaic piece of legislation, is the general relief afforded to a tenant. In other words, you can turn up in court and say, "look it is true that I have not been paying my rent for six months and I have breached that other covenant, but the reason is that the whole of Gibraltar has had an enormous recession or I have had a walkout or an industrial dispute for six months". A judge in 1888, not in 1881, in 1888, then takes a rational objective decision on what is fair in the circumstances and we think that that is not unreasonable. We think it is a proper way of dealing with the matter and either everybody is treated in the same way all landlords and tenants have equality of treatment or else we are going to have a two-tier system which we think is not justifiable. There is another point of principle as well, Sir, which is that as far as we understand it, the Government is committed publicly to a fullscale review of the Landlord and Tenant Ordinance and this amendment covers both residential and commercial, it therefore seems to us to be piecemeal at this stage to make a fundamental change in the way Government leases are going to be structured, Government tenancies, because it is not just a lease in the normal sense of the word, but all tenancies without execution anticipation of that overall review. We think it would be prudent for the review to be conducted with the proper consultation that is required when we change a fundamental piece of legislation and if this is Government's intention it should have been part of the changes which might have been Government policy to introduce. We do not think it is appropriate to bring this in piecemeal. Of course what it also does potentially, and I do not know, I bow here to the advice of the Attorney General, is that it has retrospective effect on leases that already exist. If that is the effect of the Clause and I think it is the effect of the Clause, I raise the question of constitutionality here, because you cannot have a situation where a landlord and tenant have entered into an agreement

say in 1985, where the tenant then thought as he would have been advised that had a right of relief against forfeiture, if I did not do x, y or z, because that is what Section 14 of the 1881 Act says. Now quite unilaterally we are going to pass a law in this House of Assembly that tells him, by the way you signed a document five years ago which you thought meant this, but what the law now says is different. I think the effect of the Clause is retro-active, it is retrospective and if that is the case, that must be bad. I think there is no argument on this side of the House that such retrospective legislation would be bad. There are a number of amendments that one could suggest to mitigate the damage, the impact that this Bill will have. For example a provision that there should be a Notice Clause, so that at least the tenant is given a chance to remedy an alleged breach before action can be taken. But that would be tinkering about with what is something which conceptionally, we think, has not been properly thought through. We strongly feel, Sir, and I said this on one or two occasions already and I suppose I will have to repeat it, that the Government does not appear to be open to persuasion on many things. Here we have a case where accepting the legitimate right that Government has to make sure that if people are in breach of their leases and Government is not therefore exploiting to the full those assets which the people of Gibraltar own and which therefore are entitled to have a return on, accepting that, this is not the way to do it. This has not been, I think with respect, properly thought out and for the sake of doing things properly this matter should certainly not be taken through the three stages at this sitting of the House. It should be put aside, let us have a chance for direct consultation with the Attorney General and with the Minister opposite, if he wishes, so that if it can be rectified, if our points are valid and have merit it can be dealt in that basis.

HON A J CANEPA:

Mr Speaker, very briefly I have three points that I want to make. One of them of a general nature and which I think is incumbent upon me specifically to make. That is that in the earlier part of this meeting, we were very cooperative with the Government in allowing legislation that was of an urgent nature, notably that on Social Security, to be rushed through the House. However, I do not think that all the Bills now on the Agenda and which are going to get First and Second Readings need go through Committee during the second half of this particular meeting of the House. The Chief Minister used to complain for many many years, when he was on this side of the House, that not enough notice was given of Bills and one would have thought that if he complained about that practice, and on many occasions I think that he was right, he ought now not fall prey to the same temptation. We will always cooperate in allowing the Government to introduce and to rush legislation through the House whenever it is in the public interest so to do but I do not think that the number of the Bills on the Agenda Paper, on the Supplementary

Agenda, really come under that category. There is this particular one, there is the Bill to amend the Income Tax Ordinance and the Bill to amend the Public Health Ordinance. These are all Bills where there should be an opportunity for the public and for certain representatives of organisations to have an opportunity to consider them and to hear about the points that are made in the House during the Second Reading of the Bill and which is a matter of principle, before the Committee Stage is rushed through. Otherwise they have no opportunity, no time to react to any of the points that are being made and moreover if amendments are given as sometime happens on the same day, as is the case today. So I think that as a principle that is not a good way of going about legislating. Some of the Bills that I have referred to, for example, the one on the Income Tax is very fundamental because they go to the whole root of the matter of citizens rights and I think that the public ought to hear what the Opposition has to say on the matter and if what the Opposition has to say does not matter, then democracy is going to be the loser and perhaps in time to come people may regret that this state of affairs was allowed to continue. So I would urge the Government on those three or four Bills to think again and to leave Committee Stage for a subsequent meeting. Now with regard to the two points that I feel should be made. My Honourable colleagues have mentioned, I think I ought to stress that, that there should be a proviso in the Bill for a notice in writing to be served on someone in breach of a Clause in a lease. It should not be incumbent, natural justice demands that it should not just be incumbent on the person to know that for three months he has been in breach of a specific clause. He should get a notice in writing bringing to his attention that he is in breach of a specific clause in the lease and that if he does not put this right then the Government is going to exercise its right to forfeiture. That is what natural justice demands, that people be given an opportunity for redress. The other point is, and perhaps some thought could be given to this, that I do not recall that there is a definition in the Landlord and Tenant Ordinance of what is a lease or when is it a tenancy agreement and not a lease. I must confess that I am not very well up with the Landlord and Tenant Ordinance and I was asking my colleague, Mr Featherstone, who was the Chairman of the Select Committee who is more familiar. He does not recall and I myself have not had the time, when the point occurred to me, of checking the main body of the Ordinance, the principle Ordinance, to see whether there is. If there is not, it might be good practice, good legislative practice, to define what is a lease in order to make it clear, if that is the desire of Honourable Members opposite, that a normal tenancy agreement which four thousand nine hundred of Government tenants have is not affected by the provisions of the legislation.

HON ATTORNEY-GENERAL:

Mr Speaker, if I could deal with the last point raised by the Leader of the Opposition. As I understand it, a

lease is a document which creates a legal estate, a term of years absolute and this is the sort of document that we are talking about and not a simple tenancy agreement for the occupation on a weekly basis. This is a document which creates.....

HON P C MONTEGRIFFO:

Mr Speaker, with your leave, I would perhaps take issue conceptionally with the Attorney General on this point and in any event the Bill does not talk of a lease. The Bill talks that this Section applies to every tenancy. It is quite clear in 4A(1) that the Section "applies to every tenancy where the interest of the landlord belongs to the Crown notwithstanding any provision where the lease creating a tenancy to which the Section applies", ie Section 4A(1). I bow down if you are willing to say legally that is the case and of course it comes in 'A, it could very well perhaps come in the Section - Commercial Property, part 3 of the Ordinance, I think, I forget now, this would clarify the matter further.

HON ATTORNEY-GENERAL:

My friends opposite will realise that the relevant Section of the Conveyancing Act refers to leases, and it is leases that we are talking about, documents which create terms of years absolute and I think that is made perfectly clear, Mr Speaker, by Section 4A(2), "notwithstanding any provisions in this Ordinance to the contrary where the lease created a tenancy to which this Section applies, provides for a right of re-entry". I do not think you will find it in many of your tenancy agreements a right of re-entry created. However my understanding of this particular Clause is that it applies to a lease which creates a term of years absolute, creates a legal estate, a leasehold estate, as distinct from a freehold estate. That, Mr Speaker, deals with the last point raised by the Leader of the Opposition. I do not think the Clause has any retro-active effect because the Clause only comes into life when there is a breach which remains unremedied for a period of three months. Mr Speaker, this is one of the things which is very difficult to explain to a lay client. But every lease contains a Clause saying any breach of this, any of the Clauses in this lease, shall give the landlord the right to re-enter upon the premises and thereupon the legal estate created in this document shall cease and absolutely determine. Now that is what the parties had originally intended, that if you do not comply with the conditions of the lease, the landlord will be able to go in and take possession of the premises. However then the 1881 Conveyancing Act came along and said well this is not right and before you can march in, you have to give a written notice specifying the breach, giving the tenant the right to remedy the breach and allowing the tenant to go to the court and say why his tenancy should not be forfeited. Sir, I think this particular Bill does have a retro-active effect in that it applies already to leases which contain such a Clause, but it only will apply for future breaches of any terms and conditions in that lease.

HON P C MONTEGRIFFO:

Mr Speaker, if the Attorney General will give way. That is exactly what retrospective means in this context, that if I enter into an arrangement with a landlord today with the law saying you have a right of entry, but the law also says that that right of entry is qualified in this particular way that is the basis which commercially I go into the arrangements and it is when I sign that lease, the Attorney General will accept, I do not just read that piece of paper, I know what the effects that piece of paper has. What those words mean and what those words mean that I have a right of relief against.....

HON ATTORNEY-GENERAL:

I take the point. It will affect of course rights of re-entry in existing leases, but only in respect of future breaches.

MR SPEAKER:

Are there any other contributors? Does the Honourable Minister wish to reply?

HON M A FEETHAM:

Mr Speaker, I think that when all the legal jargon has been expressed in this House by people who obviously are quite capable of expressing themselves in legal terms because it is part of their job, in their own private lives, and they are therefore quite confident in what they are saying. However let me add that what we are doing today is a matter of deciding the political will of the Government and that is enshrined in the policies that we bring to this House. That policy when it is reflected in a Bill, is on the basis of the policies we have explained to the Law Draughtsman and he is the one who says to the Government this is the way that that policy can be pursued in the House when changing legislation. This is precisely what we are doing as we have explained and the Honourable Chief Minister has made very clear, the will of the Government when it comes to situations where there are agreements made with the Crown and where one party is not meeting those conditions, and I will be very blunt in what I am going to say. The Honourable Leader of the Opposition, when he was Minister for Economic Development and was in the position that I now find myself in, must have had the same problems that I am now faced with. The difference is that this Government has shown the political will to face its problems and nobody should therefore be unnecessarily worried about this particular Bill. Because at the end of the day it is not going to affect the innocent but those people who do not comply with their legal obligation on the use of the public property which they have leased, property which is owned by all of Gibraltar for the benefit of the people of Gibraltar. That is what we are doing in bringing this Bill here and we have done so on the advice that we have been given to enforce

obligations that have been voluntarily signed by two parties, the Crown and the lessee. That is the reason why we have got this Bill here Mr Speaker.

Mr Speaker then put the question 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 R Mor
The Hon J L Moss
The Hon Miss M I Montegriffo
The Hon J C Perez
The Hon J E Pilcher
The Hon E Thislethwaite
The Hon B Traynor

The following Hon Members abstained:

The Hon K B Anthony
The Hon Lt Col E M Britto
The Hon A J Canepa
The Hon M K Featherstone
The Hon G Mascarenhas
The Hon P C Montegriffo
The Hon Dr R G Valarino

The Bill was read a second time.

THE LANDLORD AND TENANTS AMENDMENT ORDINANCE 1988

HON M A FEETHAM:

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

This was agreed to.

THE TRADING LICENSING (AMENDMENT) ORDINANCE 1988

HON M A FEETHAM:

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

SECOND READING

HON M A FEETHAM:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill in itself does not constitute any drastic changes to the substance of the Trade Licensing Ordinance but should, in the main, be seen

as an exercise to tidy up the provisions in a couple of areas and to give effect to certain outstanding EEC commitments. At present the fees charged under the Ordinance are contained in the Ordinance itself in a form of a Schedule, Schedule 1. This means that any changes in the fees require an amendment to the Ordinance and consequently reference to this House. It is considered that this is an unnecessary cumbersome arrangement and it is therefore proposed to remove the fees from the Ordinance and include them in Regulations which can then be altered without reference to the House. This Bill also contains various amendments which have become necessary to meet our EEC obligations. These can be summarised as follows:

- (1) to expressly cover companies and firms under the provisions of the Ordinance, notwithstanding that the word 'person' has always been interpreted to cover companies, firms and partnerships;
- (2) to update the wording in Section 16(2), to take account of the British Nationality Act of 1981 and the new declaration by Her Majesty's Government at the time of its enactment on the definition of the term 'nationals' in the EEC Treaties replacing that made on the signature of the Treaty of Ascension;
- (3) to introduce and express reference to the terms and conditions of the licences to make it clear that these may not be used as a means of discrimination;
- (4) to set out in terms of current EEC legislation, the evidence that will be acceptable to establish the state of non-bankruptcy in another EEC state of an application for a licence made under the Ordinance in Gibraltar; and
- (5) to delete Road Transport Contracting from the list of Specified Business Schedule 2 requiring a licence. The inclusion of this item in the Ordinance in 1976 was wrong and in contravention of the Treaty of Rome. The deletion however will not take place until the necessary amendments to the Traffic Ordinance, which will in effect introduce the need for new transport contractors to hold an operator's licence which will only be issued if certain criteria is met.

The amendment proposed under Clause 6 seeks to regularise the position with regard to the importation of goods under a Trade Licence following an amendment made to the Ordinance on the 16th December 1982 and which coincided with the opening of the frontier. As a result of which the definition of trade was extended to include the importing of any goods into Gibraltar in commercial quantities. The purpose of the 1982 amendment was to control indiscriminatory importation into Gibraltar by requiring

the Importers to hold a Trade Licence. Quite apart from the Import Licence which is required under the Imports and Exports Ordinance for the importation of certain goods. Although the amendment itself contained transitional provisions to extend existing Trade Licences to cover importations, these provisions required licence holders to go through an abnormal cumbersome process of applying for a Trade Licence as if it was a new licence, and the event probably for this reason, and because not sufficient publicity was given to the requirement, only a handful of licence holders applied for the extension of their licence. Notwithstanding their failure to comply with this requirement, it is known that many traders have been importing goods under their unextended licence. The amendment before the House seeks to regularise the position with retrospective effect. I commend the Bill to the House.

MR SPEAKER:

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

HON P C MONTEGRIFFO:

Mr Speaker, we have no difficulty in accepting this Bill for the reasons which have been stated by the Hon Minister and we therefore propose to support it.

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

HON M A FEETHAM:

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.

This was agreed to.

THE TRAFFIC AMENDMENT NO.2 ORDINANCE 1988

HON J C PEREZ:

Sir I have the honour to move that a Bill for an Ordinance to amend the Traffic 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.

HON J C PEREZ:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, the minor points that are being altered in the Ordinance are self-explanatory and are as stated in the Bill's EXplanatory Memorandum. I therefore do not propose to extend myself unless the Opposition raise any queries on any of the proposed amendments. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON M K FEATHERSTONE:

Yes Sir. We are not too happy that Section 2 should be classified as a minor point, as the Honourable Member who has just spoken has stated. This is the non-transferability of licences. We would like further explanation on exactly what is provided in this non-transferability? Will it mean the taxi licences are not transferable? Will it mean that road service licences for motor buses are non-transferable? Will it mean that Private Hiring Car licences are non-transferable? We would like to have some further explanation rather than the quick gloss over which the Honourable Member has made. As far as the rest of the Bill is concerned, we have no objections whatsoever. Thank you Sir.

MR SPEAKER:

Are there any other contributors? Does the Honourable Minister wish to reply?

HON J C PEREZ:

Mr Speaker, the Honourable Member seems to have a short memory. The purpose of this amendment is as a result of an agreement the Hon Member opposite made with the Taxi Association on the 9 August, 1987 and which committed him to the Private Hire Licenses given at the time being non-transferable. The Hon Member signed that agreement, his signature is on it. Therefore in order to be able to give effect to that agreement, which he signed, we have been forced to change the law. That is the explanation, Mr Speaker.

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

HON J C PEREZ:

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 today.

This was agreed to.

THE INCOME TAX AMENDMENT NO.2 ORDINANCE 1988

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Sir, I have the honour to move that the Bill be now read a second time. I do not think there is a great deal I need say about the first Clause in this Bill, Mr Speaker, which is in fact self-explanatory indeed the explanatory Memorandum states precisely what the purpose of the Bill is. I should however say to save the Members of the Opposition's time that it is our intention, as I think we may already have informed you, Mr Speaker, to withdraw the proposed amendment to Section 37, which is Clause 3 of the Bill, at Committee Stage. I think I owe it to this House, at this stage, to explain this. As Honourable Members will be aware we have recently introduced Rules under the Income Tax Ordinance dealing with the question of the proportionality of the allowances which "permitted individuals" may be given and the effect of those rules would be to reduce the allowance, and this is in furtherance of the amendments to the Income Tax Ordinance which were introduced in 1986 so that the provisions governing "permitted individuals" are not in fact abused by people who only work in Gibraltar for very very short periods and then be able to claim the whole allowance for one month. I accept that that is an extreme position, one might have a situation where an individual worked one day in one month, one day the next, shall we say a total of twelve days throughout the year, this is an extreme position for the purposes of exposition and he would be able to claim the full allowance, the full personal allowance, for the whole year as a result of twelve days work. Clearly that is not the intention, that would be an abuse of the provisions of the Ordinance. The recent amendment to the Rules, which we introduced, corrected that position and it had been our intention to take the provision a little further but we came up against a technical problem when we looked at the wording of this particular amendment in relation to Section 36 of the Income Tax Ordinance as it was amended in 1986. It is as a result of that that we have withdrawn, or we are proposing to withdraw, the proposed section 3. We explained that this Clause was to correct the defective phraseology for Section 37 and I am afraid that because of the phraseology of Section 36, we will have to withdraw this particular Clause. I felt that I should give the Opposition some notice of that so that they need not consider this particular Clause in their reply. I commend the Bill to the House.

MR SPEAKER:

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

HON P C MONTEGRIFFO:

Mr Speaker, this is another of those Bills where we would be seeking Government's agreement to defer Committee Stage to a later sitting. I am grateful to the Financial Secretary for his explanation of the reasons for the deletion of Section 3. We are however concerned with Section 2 and I think it is important for people generally to understand what it is we are talking about in this Ordinance. We all know but people outside the House may not. What this Clause says, Mr Speaker, and with your leave I will read it. "Notwithstanding anything contained in this Section, the Commissioner may at the request of the Financial and Development Secretary provide such information relating to any matter referred to in this Section as the Government of Gibraltar may require for the purposes of formulating the Economic and Fiscal policies of the Government". That subsection, Sir, arises in the context of a Section within the Ordinance that protects secrecy. The secrecy of information which the tax authorities receive from individuals when they pay their tax and they make their returns. I think it is important for people to understand that and to place the debate on that footing. Our view very simply is that the provision is much too wide, much too loosely worded, to allow it to go through without comment or an attempt to amend it. The UK position, Sir, on secrecy of information, of similar information, is fairly complicated. There have been a number of amendments and numerous provisions relating to information that Employment Boards may ask for or Statistical Information which different entities in the UK may ask for. The fact however remains that in the Gibraltar context where we have a much simpler structure, we are moving dramatically away from a situation where there was, by and large, a high degree of secrecy except in certain provisions in the existing law, which allowed disclosure to the Principal Auditor and various other entities, to this new situation where technically the Financial and Development Secretary at the insistence of the Government, obviously, will be able to provide any information which comes into the hands of the Commissioner of Income Tax. True the Commissioner of Income Tax would appear to have a discretion by the use of the word 'may' in the second line, but I think that is more a matter of form than of practical protection, because I would not have thought that the Commissioner of Income Tax is going to be in a position or it would be difficult for the Commissioner of Income Tax to take a stand and say "I do not think that this information should be divulged" when the Council of Ministers, acting through the Financial and Development Secretary, might think it is necessary. What we are seeking is that the Government consider introducing some guidelines within this Section as to the type of information or what form it should take. For example, could there be a reference to statistical information, instead of stating such information, "such statistical information". Could it be on a no names basis, so that whatever information was produced, would be without identification of particular employers or companies or

individuals, but simply listed, as I say, anonymously so to speak. The matter is complex and I do not think there is an easy comparison in the UK which we can find, but the Clause as is drafted appears to us to be wide, much too wide for the purposes to which we think legitimately there is a use. Because I should point out that we are as interested in statistical information being made available to the Government to help them with the formulation of their economic policies as anybody else, but we think this is going too far and we feel that there is genuine ground for a proper definition of the type of information that is going to be obtained, for making it on a no names basis and perhaps to also saying that any information shall be in relation to three or more contributors. Let them be grouped into a certain amount of numbers, so that individuals or particular firms cannot be singled out. Sir, this is another of those Bills that came to us fairly late in the day and I think it is important to try and prune the extent of it and I would therefore suggest that the Government take our comments on board prior to the Third Reading.

HON CHIEF MINISTER:

Mr Speaker, the second Clause of the Bill, which is the one that interests Members opposite, will quite rightly be defended by the politically elected Government and not by the official because it is a political decision. The political decision is a very simple one. I would have thought that between the 10th November and today, the Honourable Member opposite would have been able to work it out.

HON P C MONTEGRIFFO:

We did not get the Bill on the 10th November, we got it way after that.

MR SPEAKER:

No, with respect, not way after. The Bill was served on the Opposition on the 11th day of November.

HON CHIEF MINISTER:

It is in fact only one clause. I can understand that the Honourable Member, in spite of his legal training, might require several months to decipher lengthy complicated legislation but there is nothing lengthy or complicated about this. It is very simple. What we are saying is the Government should have access to the information on its revenue sources to enable it to do its planning function properly. Of course we have a situation where this has not happened in the past. The previous administration did nothing to correct it. Presumably they were happy with that situation, they did not mind, but we mind and we have in fact found on taking office that the Commissioner of Income Tax felt that he could not provide information that we required, with the law as it was, and therefore

we gave instructions as a result of policy decisions of the Council of Ministers that the law should be amended to enable us to obtain the information that we wished to obtain, whatever that information may be, in order to govern Gibraltar. Let me say to give an illustration that although the Commissioner was eventually persuaded, that within the existing law he could provide it, it took a bit of shall we say, not argument, but a bit of illustration to demonstrate that the information that we wanted was not in conflict with the existing law. We had asked "how much tax is paid by the whole construction industry in Gibraltar" which we think is an important and relevant piece of information and we asked "how much tax is paid by all the banks in Gibraltar on company profits" and it was felt that this information could not be provided. Then after a certain amount of toing and froing it was agreed that since we could not identify from which bank the information was coming from, it could be made available. Let me say that it has been phrased in a way that it is not subsequently interpreted as preventing us from having access to the information that we want to have and I am certainly grateful to the Honourable Member for pointing out that the word 'may' in the amendment might be open to interpretation and if that is so I shall certainly move an amendment to substitute 'may' for 'shall'.

HON P C MONTEGRIFFO:

I think that is what is meant, Mr Speaker.

HON CHIEF MINISTER:

I mean 'shall', I do not mean 'may'. There is no doubt about it. We will move an amendment at Committee Stage.....

MR SPEAKER:

Perhaps you mean 'will'.

HON CHIEF MINISTER:

Yes, I am being absolutely clear about it. I do not want you to be in any doubt.

HON P C MONTEGRIFFO:

The amendment says 'may'.

HON CHIEF MINISTER:

That is why I am grateful to the Honourable Member for bringing it to my attention because we had not seen that possible danger. We will consult the Attorney General to see if there is any risk of Government being refused information because of the possible interpretation that the word 'may' is discretionary and then the information cannot be obtained. As far as we are concerned the Government expects to be able to receive information that it requires to carry out its job. Of course, although

the primary purpose is, as I have said, for formulating Economic and Fiscal policies, and I would draw attention to particularly the word 'Fiscal', because we are talking about people meeting their obligation to contribute to Government revenues. Obviously, I do not think this is going to worry anybody that is quite happy that they are paying all the taxes that they should. If anybody is going to be worried, it must be necessarily those who are not. Certainly, I cannot imagine any PAYE tax payers who themselves are quite happy to publish how much PAYE they pay, getting concerned about that being published.

HON P C MONTEGRIFFO:

I am sure the Chief Minister is not suggesting that our concern arises from that.

MR SPEAKER:

Order, order.

HON CHIEF MINISTER:

I am not suggesting that. I am just trying to reassure the Honourable Member of his concern about whom might be worried. The Government for example has been able to obtain, even without the support of this Clause, a detailed breakdown of all the employers who have been collecting PAYE from their employees and keeping it. I am also sure the rest of Gibraltar would be delighted to know their names. I do not see why the rest of Gibraltar should not and the matter is, of course, with the Attorney General who is taking action to pursue them. Of course if these debts are not settled and action is taken then it will become public knowledge. This business of the sanctity of the secrecy, I do not know what the view is, in the United Kingdom, but certainly the view of our Government is that the information that comes into the Government, is for the use of the Government, and therefore the Government will use it in order to implement its policies and the Government collects that information for that purpose and the information collected by the Income Tax Department, in implementing the Income Tax Law, is information that has to be fed back to the Government so that the Government assesses how successfully its Income Tax Laws are being implemented. If we find as we did find, for example, that a couple of years ago the entire construction industry in Gibraltar, the whole of it, was making so little profit that they only paid £30,000 at 40% Company Tax, I think that information has to be made available to a Government that cares about whether people are paying their proper taxes or not. To a Government that does not care, perhaps they did not need that, but we need it, and therefore, Mr Speaker, it is not a question of it being a complicated thing, there is nothing complicated about it and we take political responsibility for it. We intend implementing Government policies and making sure that the burden of meeting Gibraltar's public costs are equally shared by all sectors of the community

and ensuring that we are able, in the exercise of our fiscal policies or our tax policies, to producing results and in terms of our economic policies that the economic programme that we have got is in fact reflected in what we see happening on revenue yields. I think we can do that in a detailed breakdown with import duties where we can identify today, and there is no secrecy about it, the Government is able without any change in the law, as the law stands today, to get a detailed breakdown of every single item that comes into Gibraltar, how it comes in, who it comes through, how much is paid and how much duty is collected. We think that the same should be true of other sources of economic activity in Gibraltar, other than importing, and we therefore think this amendment is necessary to carry out the policies of the Government.

HON A J CANEPA:

Mr Speaker, I have always known what the essential difference was between the manner in which the Government gets draft legislation and how the Opposition gets the draft legislation which sees the light of day when it is published in a Bill. But particularly for my three colleagues who are new to the House, there is an important factor that I think needs to be stressed. If a Bill is published on the 10th November, and it is circulated to the Honourable Members of the Opposition on the 11th, in theory before the Bill can come to the House today, the 29th, there are eighteen days available for the Opposition to do its homework, study the Bill and discuss it. It does not, however, always work out in practice, as I am sure Honourable Members know from the time that they were in the Opposition, it does not always work out like that. The Government however has an in-built advantage, the Government sees the legislation, in draft form, the Government will probably discuss what legislation it wants, in principle, even before hand. It will discuss what it wants, take a decision, ask for the legislation to be drafted and then the Government is able to see the draft Bill and invariably that happens or ought to happen in fairly relaxed circumstances. The Bill will be an item on the Agenda of Council of Ministers and therefore Ministers will have an opportunity to study it before that particular meeting, discuss it and then see it again before it comes to the House. That is not necessarily what happens to the Opposition. The Opposition may get the Bill on the 11th or the 12th, when it receives the Bill, they do not necessarily know whether that Bill is going to be on the Agenda of the next part of the current meeting of the House, or even of a future meeting of the House. Until it gets the Agenda, the Opposition does not know when that Bill is going to be dealt with. Then you may get a Supplementary Agenda a week before the date on which we are going to meet. That is the time when you perk up and take notice and say right this is the Bill that I have definitely got to give my attention to. There is now a Bill in published form, something about the carriage of goods that I think was published in July and it has not yet come to the House. We do not know when it is going

to come to the House, so sometimes effectively what happens is you get a Supplementary Agenda and then you know that the Bills are down for discussion in the House. Then you may find that for a variety of reasons, some of the Honourable Members could be absent, could be away, as happened last week, when I was away for three days, so was Mr Pilcher away for three days, but Mr Pilcher had the advantage of seeing the Bills in Council of Ministers which is not the case when a Member of the Opposition is away and we may meet normally, say on a Tuesday, for our normal business and we get the Supplementary Agenda on a Thursday and the House is going to meet the following Thursday. It might not be totally convenient for all Members of the Opposition to get together, discuss the Bill, our attitude to the Bill, such as it is, try to do something first, try to do our homework, try to find out what the position is elsewhere such as the United Kingdom on similar legislation. These are the difficulties under which the Opposition labours, and I know that Honourable Members opposite when I used to tell them from the Government benches, well look you have to do a bit of work because you are being paid an allowance as a Member of the House, I think privately they used to complain about this sort of thing. Sometimes we do have to work under pressure, and that is the reality. Sometimes you are not able to come to the House as prepared as you would like and to have taken all facts into consideration. Therefore when you see a Bill for the first time such as this one, the impression that you get is, here is a piece of legislation which gives the Government very wide powers, which does not seem to afford a safeguard and protection for the individual taxpayer. It is alright for the Government to get information in general terms on matters to do with Income Tax and so on, but very specific information about the amount of tax being paid by an individual or not being paid, that gives rise to certain qualms. When you have been in Government for sixteen years and you would very much have liked the Department for which you are responsible to have had that type of information and I do not mind telling Hon Members, that when I was Minister for Labour and Social Security to try to get possible cases of fraud, I would naturally have liked my Department to have been able to get information from the Commissioner of Income Tax about the tax being paid by certain individuals who were claiming Supplementary Benefits, but I could not get anywhere. Maybe, and I will be absolutely frank about this, we should not have paid as much attention to officials on these matters as we did. However, if we did it would certainly have been out of goodwill and for no other reason. It seems to be a very sensitive matter and I think Honourable Members will understand that from 1972 to 1988 we have moved a very long way on matters to do with taxation. In those days, in the early seventies, there was very little tax being paid because very little tax was being levied and for no other reasons. It was a completely different environment and you tend to get conditioned in your way of thinking, it is inevitable, it happens, it should not, but it does. You tend to be conditioned by what you have heard on a

previous occasion. In my case, as Minister for Labour, I could see that I was not able to make headway in trying to get information on possible cases of fraud. Then when you leave the Department later on, your mind tends to be conditioned in such a way that this is an area that you do not look at. That is the advantage, I think, of a fresh look at the matter. I have now heard, today, what the Chief Minister has said and my mind is much more at ease because I see nothing wrong in the Government knowing or indeed of it being public knowledge, what is the total tax paid by the construction industry. I cannot see anything wrong with that. What is the total tax paid by the banks, we get a figure of £21m or £22m collected from the Income Tax and to have a breakdown as to what each industry pays, to me there does not seem to be anything wrong in principle. On the contrary, it might be very useful to have that information in order to aid the Government in its economic policies. But in the hands of an unscrupulous Government without safeguard, the powers that enable you to obtain general information of that nature may also enable you to obtain information about specific cases, and that is where one is somewhat concerned. Therefore ones attitude is always to ask, what has been the practice in the United Kingdom, and is it, whatever the practice may be, is it one of long-standing, is it a practice which successive Governments in the United Kingdom have honoured or does the Government of today in the United Kingdom, the Thatcher Government, does it take a different view and has it enacted different legislation to what the Labour Government did between 1974 and 1979. This is the sort of thing that it is always useful to know. So there is just this underline area of concern, I think, we can accept what the Chief Minister is saying, what the information is aimed at, but we would like to hear a little bit more, we would like to know whether in fact, having regard to legislation elsewhere, such as in the United Kingdom, whether certain safeguards and further provisos could not be introduced at Committee Stage. Failing that one's tendency is perhaps to suspend judgement and if the Government abuses the powers which it is getting under this Bill, when we come back to Government, we will repeal it.

MR SPEAKER:

Are there any other contributors?

HON M A FEETHAM:

Just a couple of points. On the question of procedure, Mr Speaker, we are actually following the same procedure as we found when we came into office. If they are under pressure with regard to Bills, we have been under pressure also. Nothing has really changed as far as that is concerned, there is nothing new, I remember the Honourable Ex-Chief Minister saying "you are getting a reasonable allowance, you should be doing your homework". That is what we were told when we were on that side of the House. On the question of the principle of the Bill itself, if we were to forsake obtaining necessary information where one can, as the Honourable Chief Minister has said, to

establish the economy of Gibraltar, to see what is stimulating the economy of Gibraltar at any particular time, if we were to forsake that on the hypothetical assumption that in the future there could be an unscrupulous Government that was going to abuse this legislation, then we might as well not do anything. One works on the assumption that any Government that comes after us will behave in a scrupulous manner and I recognise that the Opposition, if it came into power, would use such information for the benefit of Gibraltar. On that basis I do not think anybody should be arguing about the Bill in itself, Mr Speaker.

HON LT COL E M BRITTO:

Mr Speaker, I do not want to repeat the arguments that have already been expressed here by Members of this side of the House, except to say, that I was pleased to hear the clear comments made by the Chief Minister and to reiterate that we have no objection to the Government's intention of compiling information, as long as it is of a general nature, of a statistical nature and on the basis that it will preserve the confidentiality or individual information submitted to the Income Tax Department. On this point I would like to quote the reaction of a former senior official from the Income Tax Department, who on seeing the wording of the Bill, said "that he found it alarming and contrary to the principles of taxation". If an amendment preserving the confidentiality of the individual information is included we will support the Bill and we shall be moving such an amendment at Committee Stage.

HON J C PEREZ:

Mr Speaker, the retired official in the Income Tax Department that found the Bill alarming was probably the same person who prohibited the Honourable the Leader of the Opposition obtaining the information he needed when he was in Government. No wonder.

MR SPEAKER:

Are there any other contributors?

HON A J CANEPA:

I think I ought to make clear what the Honourable Mr Britto meant. What he meant was that at the Third Reading of the Bill, when we move an amendment, if it is accepted then we will vote in favour of the Third Reading. However at this Second Reading stage we are abstaining.

Mr Speaker then put the question 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 R Mor
The Hon J L Moss
The Hon Miss M I Montegriffo
The Hon J C Perez
The Hon J E Pilcher
The Hon E Thislethwaite
The Hon B Traynor

The following Hon Members abstained:

The Hon K B Anthony
The Hon Lt Col E M Britto
The Hon A J Canepa
The Hon M K Featherstone
The Hon G Mascarenhas
The Hon P C Montegriffo
The Hon Dr R G Valarino

The Bill was read a second time.

FINANCIAL AND DEVELOPMENT SECRETARY:

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.

This was agreed to.

THE PUBLIC HEALTH AMENDMENT NO.2 ORDINANCE 1988

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Public Health 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 FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, this amendment to the Public Health Ordinance like many other features of the Public Health Ordinance has nothing to do with public health. The first amendment has of course to do with rates and I think the purpose of the amendment at Clause 2, is fully explained in the EXplanatory Memorandum. The other sections of the Bill are of a relatively minor nature. In Clause 3 as explained again in the Memorandum the intention is to alter the rating year and therefore there are a number of consequential amendments throughout the Public Health Ordinance which shall have the effect of postponing the commencement to the rating year from the 1st April to the 1st July in order to make it coincide with the Income Tax

Year. Clause 4 of the proposed Bill applies these provisions, the amendment to Section 297 1A being relevant, to hereditaments occupied by the Crown thus bringing the Crown into line with the arrangements for privately owned property. There is however, Mr Speaker, one point which I should make at this stage, again, to anticipate any possible representation which might be made by Members of the Opposition and that is that we propose an amendment at the Committee Stage, in particular, to Clause 2, subsection 2, which as it now stands says that "the arrangements shall have effect with regard to all rates and arrears of rates which remain unpaid on or at any time after the 1st April 1989". It has been pointed out to us, since the Bill was published, that the effect of this would be rather too drastic and perhaps contrary to the normal principles of natural justice, in that it would make the transfer of responsibility retrospective, and hence the owner of the property, the landlord, shall we say, could become liable for arrears of rates for some considerable period of time in past history and the Government felt on further consideration that it should not introduce such a measure, so at Committee Stage Mr Speaker, amendments will be introduced so that the Ordinance will have effect from the 1st July 1989 and only on any arrears which may accumulate thereafter. I commend the Bill to the House.

MR SPEAKER:

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

HON M K FEATHERSTONE:

Yes Sir. This Bill's purpose is to make me my brother's keeper. The owner of a hereditament is going to be liable to pay the rates for his tenant, if the tenant does not pay the rates in the due period, it does not say whether he will have to pay the extra interest claimed on those rates or not. Surely it goes against the principle of natural justice in which you pay for what you get. It is the occupier of the premises who gets the benefit of the rates, he gets his refuse collected, he gets the Fire Brigade to look after his property etc, and therefore he should pay. It should not be the owner who should be the policeman to see whether he should pay. Whether this is an attempt to make the collection of rent, inclusive of rates for all hereditaments is something that I would like to know. Is that Government's intention? There are certain facets in this which do bear a little consideration. Take a piece of property which includes a shop now very often these pieces of property are not owned by wealthy property owners, but are owned by a widow or a single lady who depends on the rent of that shop for her livelihood. Let us assume the shop is going bankrupt. The first thing the shop will do if it is starting to lose money etc, is not pay its rates. After the first three months the rates will then devolve on the little old lady to pay. Something

which she is not going to be very easily able to meet. As time goes on the shop goes from bad to worse and eventually becomes bankrupt. What is the position of the property owner? When eventually the bankrupt shop's assets are ascertained and the time comes to make a partial payout to the creditors, is she going to be in the position of a preferential creditor, because she has paid the rates for the shop? Because rates are a preferential creditor as far as Government is concerned. Or is she just going to be just one of the run of the mill creditors and perhaps get back only 20% of what she has paid out. This can create considerable hardship for the small property owner and we do not think that full consideration of these points has been taken into account. There is also the case when a shop is empty. Will the property owner have to pay the rates for that shop? Under normal circumstances when you have an empty shop no rates should be paid upon it. Again this does not seem to be clear. We are grateful for the amendment which has been proposed for Clause 2. At least it does not have retrospective effect because we know there are certain properties where the rates have not been paid for a considerable amount of time and it would be almost unbearable for those rates to be passed on to the property owner. We feel that this piece of legislation should be looked at again and the Committee Stage and Third Reading should not be taken at this stage. We suggest to the Government that they look at it once more to see whether they can ameliorate the conditions under which they are making the property owner's the policemen for the payment of rates. We had some years ago a similar piece of legislation in which the seller of a wireless or television set had to see that the license was paid by the person purchasing a television set. The Bill became law but it never worked properly and it has not worked to this day. I foresee that this law also will not be satisfactory in its day to day working. Instead of suing the tenant of a property, the Government will have to sue the property owner and I cannot see really what difference that would make. Thank you Sir.

HON CHIEF MINISTER:

Mr Speaker, one of the things that we find in this House is that Members opposite do not remember what has been said before when they were in Government, otherwise they would know that this was GSLP policy since they were in Opposition. The Honourable Member will know that I proposed it to the Government when we were in the Opposition. When they came here seeking to write-off, as irrecoverable, arrears of rates and I put it to the Government then, that one of the reasons why they were not able to collect these arrears of rates was because the rates were not levied on the building but were levied on the occupant of the building who then disappeared. The only way to ensure that everybody paid their proper share was to make sure that there was an asset that could be pursued and this clearly meant the responsibility should be the landlords. The landlord owns an asset which is the building on which the rates have been levied so all the argument, if the Honourable Member cares to go back he will find it is all

in Hansard, and it was all put from the Opposition. When I voted against what the AACR was doing, I told the AACR at the time, that a future GSLP Government would act to rectify the situation and this is what we are doing, what we said we would do before we got into Government. I do not think he is going to change my mind by the story of the little old lady. Maybe he should try the one about Little Red Riding Hood, that might be more effectively. In which case, I am then the big bad wolf. The decision to amend, at Committee Stage, the proviso of the arrears arises because the argument has been put to us, by landlords, that why should they be penalised for the negligence of the AACR. We accept that they have got a valid argument. They said to us if the AACR through its negligence of its public obligations failed to collect the rates of my tenants, why should I now be charged for all that money and since we cannot get the money from the Members opposite we feel it would be unfair to get it.....

HON M K FEATHERSTONE:

If the Honourable Member will give way. If it is the case of a tenant who has not paid the rates for the year up to the end of April 1989, it will be the negligence of the GSLP.

HON CHIEF MINISTER:

Fine. Then I think what we are prepared to do is to amend it as from the 1st April 1988 that will then meet the argument and we shall charge the landlord for the arrears for this current twelve months. I accept that point. We will take that into account when we come to the Committee Stage and we can always recover one year of arrears, it is a very good point and I am very grateful to the Honourable Member. As regards the arrears prior to our coming into office, Mr Speaker, we are talking about very very high sums of money which unfortunately we may not be able to get back. We have in fact improved the situation somewhat by the re-introduction of the penalty, which was put on by the previous administration and then taken of again. If you will remember, Mr Speaker, I supported them when they put it on and I opposed it when they removed it. We have now re-introduced it, it has only been really in place for six months, but it has had the effect of reducing arrears by something like £1m. We hope that that effect will be there and we think that this strengthens the position of the Government, and at least we ought to keep one member of the Opposition happy, the Honourable Mr Anthony who is the one who asked us in the House how the arrears were doing. We hope that as a result of this Bill which we hope he will support, we will be able to give him answers showing progress.

HON P C MONTEGRIFFO:

Mr Speaker, humility is not one of the Chief Minister's.....

HON CHIEF MINISTER:

Or of the Honourable Member opposite!

HON P C MONTEGRIFFO:

I am not sure about that but that is something the public will have to judge. But humility is certainly not one of the Chief Minister's attributes and neither do I think is his political honesty, I know this appears to be a strong word, but the Chief Minister has said that he has been approached by landlords and that one of the points they raised on this Bill was that they did not want to pay the price for the negligence of the AACR. Well, Mr Speaker, if you make a statement like that, the Chief Minister makes a statement like that, which is either complete rhetoric or a point which is of merit and therefore for debate in this chamber. Well let him also say that the view of the Gibraltar Bar Association was and I quote, "that the measures can probably be described as draconian measures to collect rates due to Government by occupiers of property from the owners thereof". They were draconian not because of any alleged negligence, although there is mention to the fact that they had not been collected in the past, but because they were anti-constitutional, because they had retrospective effect going back six years, because the measures were a sledge-hammer to crack a nut, and this Bill, the green piece of paper we got, has come to this House now substantially amended, by the amendments on a white piece of paper and which take away that retrospective element which was anti-constitutional and totally offensive. The Government really does not get it right all the time when it publishes its Bills. The point that arises, in principle, is whether an occupier who normally is responsible for payment, because he is getting the services, should now find that an owner foots the bill when the owner does not receive those services at all. That is a matter of judgement, a matter of political judgement whether or not you are willing to make the owner responsible for services he or she does not obtain. In principle, it seems wrong, in pure theory, but if there are practical difficulties in collecting rates from tenants, then pragmatism might determine that you take a practical approach and charge it against the landlord. But there are real issues that I do not think have been addressed which are still a problem in this Bill. For example, the retrospective element of it have been done away with partially and I say partially because although it now says "rates affected in this Bill are only those Bills after April 1989", many leases, agreements for leases, may have been signed commercially on the basis of a document which does not encompass the type of provision a landlord may well need now to protect his own position. So whereas a lease which is in place already is safeguarded, because we will not have retrospection of rates going back, you may well have now in a development, any particular development going on, in Casemates for example, the situation where somebody has purchased the unit on the basis of an agreement to lease, which document is technically a binding document attached to the agreement, and which both parties will

now have to renegotiate in the light of this. I think that it is unfair, Mr Speaker, I do not expect a snigger, and I have said this before, Mr Speaker, I am insulted by the Chief Minister's sniggering at me, because I am being paid to do a job and I expect to be heard. I think it is a problem that should be addressed and I think, the problem that has also been pointed to by the Honourable Mr Featherstone is also relevant. What happens in the case of a liquidation? You have a liquidation of a company that is a tenant of a property. It starts being wound up and before that property is effectively delivered back to the landlord, it can take a considerable period of time, the liquidation may take eight months, a year or a year and a half. Throughout that period of time the landlord will have to be footing the bill without receiving any rent, without receiving any other type of income from that property. That must be wrong surely. But that landlord would still have technically a tenant in possession, a tenant that is a company in liquidation. That must be wrong and surely there must be ways of protecting that situation. Another point that arises, is what happens if rates are not paid by a tenant? Does the Government then levy them against the landlord? What rights has the lessor or the landlord then have to throw that tenant out? Is it clear that for simply non-payment of rates, the landlord will be able to throw out a tenant swiftly? We are going back to the whole position on forfeiture which we were discussing under the Landlord and Tenant Ordinance this morning. A simple breach of a covenant in the lease whereby rates are not paid, I think, will still entitle a tenant to go to court for relief against forfeiture, even if the breach was six or nine months long. What is the position of the landlord in that situation? I think, it exposes him to a danger, can he get his tenant out quickly? Can a landlord effectively, even if he provides for it in his lease, say to a tenant, "out you go, I give you notice, simply because you have not paid rates"? Sir the most objectionable elements of the Bill have indeed been corrected as a result of representations made by various parties, to the Government. In fact they were made, not so long ago, it may have been an indication of how soon they get to know of Bills, it is not just when the Opposition gets the Bills but when the public at large gets the Bills. There are still various matters that we feel should be looked at and which we think are probably capable of remedy even assuming that the principle of a landlord being charged rates is accepted. I have gone over these and I do not want to repeat the points, but I would suggest that the matter, the points that we have raised be looked at by Government and safeguards introduced accordingly.

HON J C PEREZ:

Mr Speaker, even the previous Chief Minister, the Honourable Sir Joshua Hassan, who is a long-standing Member of the Bar, never always took seriously what the Bar Association had to say. Presumably the Honourable Member being a younger Member of the party takes these points more

seriously. The fact that the Bar Association said it, does not necessarily indicate that, politically, we are wrong in passing the Bill which is what he is basing all his arguments on and I would have ventured that the Honourable Member should have in fact declared an interest, because all the Bar Association was doing when it made those comments was defending the clients of the solicitors, that is what they were doing. I will not give way. I do not think the Honourable Member opposite has put any argument at all to defend a political position against the move that we are taking. They are all technical legalities here and there, but there is no philosophical or political argument saying, this should not be done because this is against the interests of the people of Gibraltar or because this infringes the rights of people in this way or the other. He is not doing that, he is just being rather petty in the issues that he is raising and frankly speaking..... No, Mr Speaker, not the Gibraltar Chronicle. If he cannot substantiate anything more solid than the views of the Bar Association, in this House, to defend his opposition to the Bill then he should not object to it with further legal arguments.

MR SPEAKER:

Are there any other contributors?

HON LT COL E M BRITTO:

Mr Speaker, I am sure you will be glad to hear that all I want to do is, in fact, commend the Government on the speed with which they have moved on the amendment circulated to us today, put forward by the Bar Association in a letter dated the 24th November. I would also like to commend them for having taken on board these suggestions made by the Bar Association. I would also like, Mr Speaker, to ask the Government to take into account that when we on this side of the House propose amendments or propose arguments or changes to Bills, which the Government brings forward, we are acting with the intention of improving the final Bill and improving the product for the people of Gibraltar. I do not know whether it is because there are only seven persons on this side of the House, who are not likely to vote for the Government in the next election, and there are certainly many more landlords and many more members of the Bar who would be persuaded to. I would however like to ask the Government to deal with our suggestions with the same interest and indeed alacrity with which they have acted to this letter and suggestions.

HON J E PILCHER:

Mr Speaker, it was not my intention to get involved in this particular Bill but I have been sitting patiently through a number of Bills and I think I have a point to make which is as a consequence of the contribution of the Honourable P C Montegriffo, who will never be a sergeant at this rate. Mr Speaker, Mr Montegriffo, the Honourable Member opposite, has the ability to get up for every single Bill and make point after point as if he was speaking to

a court of law. If he expects us, Mr Speaker, to take him seriously, then I think he has to concentrate more in looking at the political angle of the situation he has to defend in this House and try to convince us, the Government, with the amendments which he is trying to introduce and not, to a point, play to the gallery by looking at the legalities of a particular Bill. This is something which appertains to the Attorney General and not to the political side of the Government. Mr Speaker, we do take certainly very seriously our role as far as policy and it is true to a point, and I have been sitting here listening to what has been said in the last couple of Bills and the different legal implications of some of the things that we are doing. I think however that the Honourable Mr Montegriffo if he stops for a moment and thinks about the reasons why we have to do a particular thing and why there are so many difficulties or technicalities in implementing a particular law, what he has to realise is that we have to make, or we have to put the thing right. Obviously there are going to be complications, obviously there are going to be little old ladies, obviously there is going to be people who have signed leases and have contractual responsibilities, but it has to be done, Mr Speaker, because it is a question of putting things right and unless they are put right now, Mr Speaker, all that will happen is that all these problems that have been raised by the Bills discussed today, all the little old ladies, all the people who will have difficulties with income tax etc, are really in a minority. The majority of the people involved are playing within the rules and it is those circumventing the rules that have forced us to put things right so that the owners, the people of Gibraltar, are protected. Mr Speaker, that is the political responsibility of the Government, the legality is something which the Attorney General obviously looks after. We do have regular meetings with the Attorney General and there are certain legalities which have to be looked at and obviously the Attorney General looks at those before he comes to the House. However like in everything else there are different interpretations and different legal interpretations. I have had three different legal interpretations from three different lawyers over the past few days about one particular situation. So there are different interpretations. What the Honourable Mr Britto said, Mr Speaker, is incorrect on the one hand and correct on the other. I thank Mr Britto for realising the speed with which this Government is moving, that is precisely what we pride ourselves in, Mr Speaker, in the quickness and in the speed with which we are moving as a Government and is something which has never been done before in the last twenty years. The amendments which he has in front of him have nothing to do with the Bar Association. The Bar Association wrote to the Attorney General, the landlords approached the Government. The Bill, Mr Speaker, is a political Bill and implies the policy of the political Government. We changed our minds over this Bill and that was a political decision, although I must admit that the Bar Association wrote to the Attorney General and he has also been recommending certain things to us. But the amend-

ments are as a result of the landlords approaching the Government. It is not a question of not giving the merit where the merit is due. The Bar Association did also pick up certain points and that shows, Mr Speaker, that we do move with speed, we do move quickly, but we are not, certainly not an unscrupulous Government and I think I have got that right this time. We are, Mr Speaker, a Government that can be swayed by arguments and that can and will change its course if the arguments are solid arguments. Not, Mr Speaker, if what is clear is that there are certain elements trying to protect certain interests that have been there for many many years. Mr Speaker, this Government does not have any vested interests and will defend one vested interest, the interest of the people of Gibraltar. We have to put things right now and unfortunately because over the last twenty years there have been many many problems, those problems will start surfacing as we start to change our laws and undoubtedly we will find many teething problems, but it has to be done.

HON LT COL E M BRITTO:

Will the Minister give way? Mr Speaker, possibly because the Honourable Member was speaking to his colleagues on that side of the House, he did not quite understand what I was saying. The point is not whether the changes were made because of the letter of the Bar Association, or because of a representation of the landlords. The point that I was making was that it is the wish of members on this side of the House that the Government pay as much attention to our comments and our suggestions as they have done to this letter, to this approach, from the landlords and to act on with the same alacrity.

HON J E PILCHER:

Mr Speaker, I accept that, except that the arguments that have been used by the Honourable Mr Montegriffo today are in fact the arguments that were put by the Bar Association in their letter and which were also put to us by the landlords and which have been taken into account. I can assure the Members opposite that if they raise valid points they will be taken into account. The only thing I dare say, Mr Speaker, is not our arrogance, as I think the Honourable Mr Montegriffo said earlier on, I am not sure if it was before or after the sniggering, but the fact is that we do move with speed but we also take into account all the possibilities and we look at all the different interpretations, with the legal advice of our advisers, officials and people in the knowhow. Therefore when we bring a Bill to the House there are very few occasions when the Opposition can raise some points that have not already been taken into account by us. However if they do raise new points are logical and make sense, they will be taken on board, Mr Speaker, like we have taken on board the point made by the Hon Mr Featherstone a moment ago. Thank you Mr Speaker.

HON A J CANEPA:

Mr Speaker, during the years that I have been a Member of this House, I have invariably found that on complex legislation, in particular, those Members of the House who have belonged to the legal profession, have tended to make quite a valid contribution and other Members have listened to their contributions carefully, not that they were always right or not that they were necessarily the most intelligent people, but there are notable instances over the years of very useful contributions being made by people like Peter Isola, Brian Percz, they both come to mind. I think it is unnecessary for the Honourable Mr Pilcher to have to go to the columns of *calentita* in order to bring what some people may think is an original remark. I think that the Honourable Member on my right, Mr Peter Montegriffo, is not just going to be a sergeant, Mr Montegriffo is going to go much further, Mr Montegriffo is going to sit on that side of the House before he is through with politics and only time will tell not only on that side of the House, but probably in the centre of that side of the House. Honourable Members opposite know this and that is why they are making a beeline for him and are attacking him very very hard here in the House and in the columns of their party newspaper. What Mr Montegriffo does is that he studies the legislation carefully and he makes a sincere attempt to put a point across, whether he impresses Members opposite or not is a matter for them, but I can tell Honourable Members opposite who were not here at the time that during twelve years from 1972 to 1984, I used to hear in this Chamber an Honourable Member get up and speak on every single Bill that came up before the House, 90% of the time he did not know what he was talking about and he used to do that in order to get as much coverage in the press and on television as possible because of course he did not live in Gibraltar and he so impressed, over those twelve years, the Honourable Mr Bossano that he is set on making him Speaker of this House.

MR SPEAKER:

No, that is completely and utterly irrelevant. Any other contributors?

Mr Speaker then put the question 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 R Mor
The Hon J L Moss
The Hon Miss M I montegriffo
The Hon J C Perez
The Hon J E Pilcher
The Hon E Thislethwaite
The Hon B Traynor

The following Hon Members abstained:

The Hon K B Anthony
The Hon Lt Col E M Britto
The Hon A J Canepa
The Hon M K Featherstone
The Hon G Mascarenhas
The Hon P C Montegriffo
The Hon Dr R G Valarino

The Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

THE GAMING TAX AMENDMENT ORDINANCE 1988

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Gaming Tax 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 FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. I should explain Mr Speaker, that the purpose of the proposed amendment is simply to increase the bingo tax from 2p to 3p. Bingo cards were first taxed in 1975 at the rate of 1p per card and was increased in March 1980 to 2p which is the present level. In order to keep face simply with inflation an increase of 50% is felt to be quite reasonable. This is the purpose of the Bill before the House and it is estimated that the revenue yield as a result of the increase will be about £60,000 per year. The amendment will not actually come into effect until later in the year when stocks of new bingo cards with the 3p stamp printed on the back are received. These are of course specially printed because of the security marking required. As is usual in these cases those persons holding stocks of the existing 2p cards when the amendment comes into effect will be reimbursed the duty on the surrender of the old cards. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

Mr Speaker we support 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:

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.

This was agreed to.

THE SAVINGS BANK (AMENDMENT) ORDINANCE 1988

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Savings Bank 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.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, the Post Office Savings Bank has traditionally catered only for the small investor and has traditionally offered a relatively low rate of interest, with limited tax exemptions, and the facilities and design of the Savings Bank have in fact remained virtually unchanged since its foundation. The Government has now decided that the facilities offered by the Savings Bank should be expanded and that the range of deposits accepted and indeed the various savings instruments which are made available should be brought more in line with those which are, for example, available in the United Kingdom. The amending Bill now before the House seeks to provide the necessary statutory powers to enable these extra facilities and these instruments of saving to be made available to the public. Very briefly the changes involved are the power to vary interest rates at reasonably short notice in consonance with changes in market rates and which is an essential ingredient in any modern savings system. Accordingly it is proposed to remove the present requirement to obtain the approval of the Secretary of State before any change in the interest rate can be effected. In any event the requirement to seek the approval of the Secretary of State can be regarded almost as anachronistic and colonialistic a feature as the office of the Financial and Development Secretary. The other main change is, of course, the structure of the Savings Bank Fund. It is proposed to offer higher interest bearing deposits to distinguish between, as the Bill does, an ordinary deposit which while the interest may be higher than the rate of interest at present available on ordinary deposits, would of course be lower than the interest rates available on other instruments, for example Income Bonds, Deposit Bonds,

Capital Bonds. I am not actually announcing the introduction of such instruments now, but merely explaining that the provisions of the Bill will enable the Government to introduce these. I should of course add that although there will be other instruments of savings available, this in no way alters the status and the Government's guarantee behind such instruments. The main distinction will be two-fold. First of all, accessibility at short notice, it is normal to give longer periods of notice before withdrawals, for example, from a higher interest bearing deposit and the second feature will be the amount on deposit. Again if one is only depositing a small sum in the Savings Bank, one would not expect to get as high a rate of interest as if one were depositing a much larger sum, so those are the two circumstances in which one would expect a higher rate of interest for an investment bond. The additional facilities will, of course, be the subject of individual Regulations and the opportunity has been taken here to provide for the determination by Regulations of matters which are now contained in the principal Ordinance. I think Mr Speaker, that I have covered the main points of the Bill and I therefore commend the Bill to the House.

MR SPEAKER:

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

HON P C MONTEGRIFFO:

Mr Speaker, in principle we have no difficulty with this Bill, which really opens up possibilities for the Savings Bank and which we understand is part of the general policy of attracting investment to Gibraltar. We are not aware of what incentives will be provided to induce investors to place their money in the Savings Bank. Although I would assume that we will have to introduce something to rival deposits presently being made, eg, in Building Societies. It will have to include tax incentives to make this type of saving a credible alternative but this will be seen in due course when we get further details eventually. One matter which we have noted has been introduced in this Bill and which raises one of the points that obviously would have been taken up by us, is the provision of Section 13(2)(b), as Clause 10 and which introduces the 10% margin which has to exist between assets and liabilities. The question that arises, and I would be grateful if it could be clarified is that the present margin in the Ordinance is 15% and on what basis has this been changed and why there should be a difference in the present situation. My final point, Sir, is that I notice from the proposed Section 8 of the Bill itself, that there is provision also in the new law for advances to the Consolidated Fund from the various Investment Accounts. I assume, Mr Speaker, that that provision is technical in that it would not really be the policy of the Government to top up the Consolidated Fund from the Investment Accounts as opposed to, for example, putting such funds into the Gibraltar Investment Fund. I am not sure, Mr Speaker, whether therefore the

inclusion of the Consolidated Fund as a possible destination for the funds is in fact there because it is intended to be used or rather as a possibility which it will not be Government policy, at present, to actually call upon. Those are the matters that we would like some clarification before being able to support the Bill fully.

HON CHIEF MINISTER:

Mr Speaker, the purpose of the Bill is to bring the Ordinance up to date and make it possible for the Government to operate the Savings Bank more in line with what other Savings Bank of this nature, with the same kind of history, are doing elsewhere in the world. In particular we are looking at the model of National Savings in the United Kingdom as a source of inspiration, shall we say, for the possible types of accounts, and I think this is why the Financial and Development Secretary was making reference to things like Income Bonds and Deposit Bonds which we have been looking at in the United Kingdom. As regards the specific points which the Honourable Member opposite has made, I do not know why there is 15% in the present Ordinance, except that it must be there because somebody put it there initially. The reason why we are introducing an amendment to change it to 10% is because we have had to consult Her Majesty's Government on the Ordinance, because in fact the existing Ordinance, as the Honourable Financial and Development Secretary pointed out, does give powers to the Secretary of State to virtually determine the policy of the Bank. As we are, with their agreement, removing those powers and therefore devolving them on to the Gibraltar Government, they have asked us to introduce this 10% margin which is less than the 15% although both the 15% and the 10% is anachronistic because at the end of the day what you must make sure is that your liabilities match your assets. Effectively what you are saying is that you must retain a 10% profit margin within the Savings Bank which you cannot use. At the moment it is 15%. In a way when you are talking about a percentage margin of this nature, the reason why we have the additional part in that amendment that the Governor may decide from time to time a different percentage, is that of course if what you are giving yourself is a safety margin so that you can meet, it necessary, a sudden call of funds, then normally the bigger the deposit base you have got the lower the margin that you can operate with. If 15% is OK now for something like £2½m, then I would imagine that if we had £20m certainly we would not need 15% of £20m as a reserve to fall back on. So essentially the British Government is happy to see it coming down at this stage to 10% and is happy to see it reviewed in the future depending on the progress that the Bank makes in growth. As regards the other point about the policy of the Government to use monies in the Savings Bank to make advances to the Consolidated Fund or the Improvement and Development Fund or the Gibraltar Investment Fund, what we have done is to introduce the discretionary powers to be able to do this, should it be considered desirable at any point in time, but certainly it would not be the policy

of the Government to do it. But in fact, currently, the Bank makes advances to the Consolidated Fund. If the Honourable Member looks into the audited accounts, for the last year of the previous administration, he will find there that there were uninvested funds in the Savings Bank which were on loan to the Consolidated Fund, so in a way what is new in this Ordinance is not the point that he has made, about advancing money to the Consolidated Fund, but advancing money to the Improvement and Development Fund and to the Gibraltar Investment Fund. Certainly it would be our view, consistent with what we have said about not borrowing for Recurrent Expenditure, to use any money that is a result of borrowing for Capital Expenditure rather than Recurrent. I can confirm that that will be the policy. The purpose of the Ordinance obviously is to produce an opportunity for the Savings Bank to obtain some share in what is clearly a fast growing savings market in Gibraltar. If we look at the Building Societies, for example, whereas the Savings Bank has been virtually stagnant, the Building Societies' deposits have been growing quite dramatically. In the last couple of years while the Building Societies have grown by 100%, the Savings Bank has grown by something like 15%. We are convinced ourselves that given competitive and attractive rates of interest, people would feel happier with the Savings Bank because as the Financial and Development Secretary has mentioned, it is in fact a Government Bank and the Savings Bank Ordinance guarantees that the Government will meet the deposits and the interest should the Savings Bank ever be in trouble. So this would really be a Gilt-Edged Investment. In the United Kingdom, National Savings are treated no differently from the rest of the money raised to meet the Public Sector Borrowing requirements by the Government, except that in current circumstances they actually have a Public Sector Repayment policy, rather than a Borrowing policy. What we see is an opportunity to expand the Savings Bank to provide a secure home for investment, particularly for small savers, with better opportunities for earning interest than the one we have got today which is just 5% and at the same time with a source of revenue for the Government that will be running the Savings Bank profitably and with an access to funds for Government projects. We can see that it meets a number of important and desirable features in the economic and fiscal programme of the Government and we welcome the fact that the Opposition see it like that too and will be supporting it.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

The House recessed at 5.10 pm.

The House resumed at 5.30 pm.

COMMITTEE STAGE

HON ATTORNEY GENERAL:

I have the honour to move that the House resolve itself into Committee to consider the following Bills clause by clause: The Drug Trafficking Offences Bill, 1988; the Administration of Justice (Miscellaneous Provisions) Bill, 1988; the Charging Orders Bill 1988; the Fast Launches (Control)(Amendment) Bill, 1988; the Insurance (Motor Vehicles) (Third Party Risks) (Amendment) Bill, 1988; the Supplementary Appropriation (1984/85) Bill, 1988; the Supplementary Appropriation (1985/86) Bill, 1988; the Supplementary Appropriation (1988/89) (No.2) Bill, 1988; the Trade Licensing (Amendment) Bill, 1988; the Traffic (Amendment) (No.2) Bill, 1988; the Gaming Tax (Amendment) bill, 1988; and the Savings Bank (Amendment) Bill, 1988.

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

THE DRUG TRAFFICKING OFFENCES BILL, 1988

Clauses 1 to 30 were agreed to and stood part of the Bill.

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

THE ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) BILL, 1988

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

HON ATTORNEY GENERAL:

Mr Speaker, I would like to move that this Bill be amended by the addition of the following new section:

6A. The Supreme Court Ordinance is further amended by inserting after section 36 the following new section -

"Fees to 36A. Without prejudice to the provisions be taken of sections 37 and 38, the Chief Justice in the has, and is deemed always to have had, the Supreme power by rules to prescribe, vary or abolish Court the fees to be taken in the Supreme Court."

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

Clause 9

HON ATTORNEY GENERAL:

I would like to move that this Bill be amended as follows:

Amend the clause by omitting the words "after section 10 the following section" and substituting therefor the following -

"in their appropriate numerical positions the following new sections, namely -

"fees to 8A. The President has, and is deemed always be taken to have had, the power by rules to prescribe, in Court vary or abolish the fees to be taken in the of Appeal Court of Appeal."

Mr Chairman put the question in the terms of the above amendment which was resolved in the affirmative and Clause 9, as amended, stood part of the Bill.

New Clause 10

HON ATTORNEY GENERAL:

I would like to move that the Bill be amended by a New Clause 10 to read as follows:

10. The Court of Appeal Ordinance is further amended as follows -

(a) in section 9 by deleting from subsection (1) (b) the words -

"or on any ground which appears to the Court of Appeal to be a sufficient ground of appeal; and"

and substituting

"or with the leave of the Court of Appeal on any other ground which appears to that court to be a sufficient ground of appeal; and";

(b) in section 11 -

(i) in subsection (1), by deleting the words "or of application for leave to appeal, as the case may be,";

(ii) by deleting subsection (2) and substituting the following -

"(2) where an appeal lies only with leave or on a certificate that the case is a fit case for appeal, it shall not be necessary to obtain such leave or certificate before giving notice of appeal,";

(c) in section 12 by deleting the words "or of application for leave to appeal" from sub-section (1);

- (d) in section 13 by deleting the words "or of an application for leave to appeal".

Mr Chairman put the question in the terms of the above amendment which was resolved in the affirmative and the New Clause 10 was agreed to and stood part of the Bill.

New Clause 11

HON ATTORNEY GENERAL:

I would like to move that the Bill be amended by the addition of a New Clause 11 to read as follows:

11. The Court of First Instance Ordinance is amended -

- (a) by repealing paragraph (f) of section 55, and
(b) by inserting after section 55 the following new section -

"Fees to be taken in the court 55A. The Chief Justice, has and is deemed always to have had, the power by rules to prescribe, vary or abolish the fees to be taken in the court."

Mr Chairman put the question in the terms of the above amendment which was resolved in the affirmative and the new Clause 11 was agreed to and stood part of the Bill.

New Clause 12

HON ATTORNEY GENERAL:

I would like to move that the Bill be amended by the addition of a new Clause 12 to read as follows:

12. (1) The Coroner Ordinance is amended by inserting after section 21 the following new section -

"Payment in respect of jury service 21A. The Chief Justice may make rules to provide for payment of compensation for loss of earnings suffered by a person in consequence of his attendance as a juror at an inquest".

- (2) The said Ordinance is further amended by inserting after section 25 the following new section -

"Fees 26. The Chief Justice has, and is deemed always to have had, the power by rules to prescribe, vary or abolish the fees to be taken by the Coroner for copies of any documents put in evidence at an inquest and for the certification of any such copy as a true copy of the original".

Mr Speaker put the question in the terms of the above amendment which was resolved in the affirmative and the new Clause 12 was agreed to and stood part of the Bill.

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

THE CHARGING ORDERS ORDINANCE, 1988

Clauses 1 to 7 were agreed to and stood part of the Bill.

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

THE FAST LAUNCHES (CONTROL) (AMENDMENT) ORDINANCE, 1988

Clauses 1 to 4 were agreed to and stood part of the Bill.

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

THE INSURANCE (MOTOR VEHICLES) (THIRD PARTY RISKS) ORDINANCE, 1988

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

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

THE SUPPLEMENTARY APPROPRIATION (1984-85) ORDINANCE, 1988

Clauses 1 to 4 were agreed to and stood part of the Bill.

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

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

THE SUPPLEMENTARY APPROPRIATION (1985-86) ORDINANCE, 1988

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

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

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

THE SUPPLEMENTARY APPROPRIATION (1988-89) (NO.2) ORDINANCE, 1988

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

Clause 2

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I would like to move that in Clause 2 subclause (1) the expression "£453,000" should be deleted and the expression "£1,453,800" should be substituted therefor.

Mr Chairman put the question in the terms of the above amendment which was resolved in the affirmative and Clause 2, as amended, stood part of the Bill.

Clause 3

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I would like to move that in Clause 3 subclause (1) the expression "£1,758,400" should be deleted and the expression "£3,843,400" should be substituted therefor.

Mr Speaker put the question in the terms of the above amendment which was resolved in the affirmative and Clause 3, as amended, stood part of the Bill.

HEAD 4 - EDUCATION

HON A J CANEPA:

Mr Chairman, could I have details from the Honourable the Minister for Education of what equipment is involved in this £2,000 for community use?

HON J L MOSS:

This is quite simply the fact that due to community use, there will be obviously more wear and tear of equipment which is available in the schools. We thought we would have to make extra provision for this.

HON A J CANEPA:

Specific provision or is it general, of having £2,000 in case they are needed? Or is it for some specific item.

HON J L MOSS:

Mr Chairman, it is not really for specific items. We are talking about stuff like basketball rings, tennis nets, etc. You cannot really predict what they will be, exactly, but we thought we had to make provision for this. There is a list which has been produced by the Department and which I can make available to the Honourable the Leader of the Opposition if he so wishes.

HON A J CANEPA:

Mr Chairman, we seem to be voting funds in anticipation. Presumably the earliest date on which this community use can be set in motion I imagine is in the new year. There is only three or four months left of this present financial year.

HON J L MOSS:

Mr Chairman, no, community use of the schools has already, in fact, commenced and there were certain items which the school already had in very poor shape which we felt had to be replaced.

Head 4 - Education was agreed to.

Head 5 - Electricity Undertaking was agreed to.

Head 6 - Environmental Health was agreed to.

Head 9 - General Division was agreed to.

Head 11 - House of Assembly was agreed to.

Head 23 - Tourism was agreed to.

Head 25 - Treasury

HON A J CANEPA:

Before we come to a new sub item could we not have some details on 28N Representation Overseas. How this estimate has been arrived at?

HON J BOSSANO:

The one element that we know for certain we have to meet is the one that I mentioned during Budget time and which was the payment to Mr Simonis. This was as a result of Mr Simonis's different role from that of Chairman of GSL. As I mentioned in the earlier part of the House, the opening of the Washington Office and the cost of that office plus the fee to Mr Stiglietz is currently under negotiation and therefore the figure that we have included is a figure which we consider to be a reasonable one given that we may have to make payments and that there is at present no vote from which payments can be made. It may well be that the actual cost from now till the end of the Financial Year may not come to as much as that or it may come to more than that. We are not sure, but basically we have to put a token figure in order to create a Subhead from which payment could be made. The Estimates for the next Financial Year will show a sum of money available to the Gibraltar Information Bureau from which the Bureau will have to make payments. Our thinking at the moment of how best the Bureau should be established, subject to any changes that might take place, is that the most recent advice we have received indicate that it will have to be as a Company, as a Limited Company owned by the Government, in order to maintain the overseas representation that the Government requires.

HON M K FEATHERSTONE:

Head 25 - Item 56. Which are the flats that are being refurbished?

HON MISS M I MONTEGRIFFO:

Mr Chairman, these are the nurses flats some of which have been found to be in a poor state.

HON M K FEATHERSTONE:

What are known as the Sisters' Quarters.

HON MISS M I MONTEGRIFFO:

Yes that is right. We felt that we should spend the money because it was more profitable for the Government to use them than have to house them in private accommodation.

HON M K FEATHERSTONE:

It is a considerable amount of money but we accept the explanation. Under Minor Maintenance does this include the eradication of cockroaches from Napier Ward?

HON MISS M I MONTEGRIFFO:

No, Mr Chairman, this does not.

HON M K FEATHERSTONE:

How is it being dealt with?

HON MISS M I MONTEGRIFFO:

That is being dealt by the Environmental Health, Mr Chairman.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I would like to propose a new Subhead 58 - Contribution to the Social Assistance Fund of flm.

HON A J CANEPA:

It is often said that it is very difficult to get fl,000 through the House but you can get flm quite easily. We are informed of the reasons behind this.

The New Subhead 58 was agreed to.

Head 25 - Treasury as amended was agreed to.

The Schedule - Part I

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I would like to move that Part I of the Schedule should be amended by deleting the figures "322,100" where they appear against Head 25 Treasury and "453,000" where they appear as the total, and substituting therefor the figures "1,322,000" and "1,453,000" respectively.

Mr Chairman put the question in the terms of the above amendment which was resolved in the affirmative and the Schedule - Part I, as amended, stood part of the Bill.

Part 2 - Improvement and Development Fund

Head 101 - Housing

HON LT COL E M BRITTO:

Mr Chairman, can we have some details of the £2m?

HON J L BALDACHINO:

We have decided to add another flm to Head 101 - Housing so that we do not find ourselves without sufficient funds and due to the lack of funds we will not be able to proceed with our housing programme.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Before we leave Housing, I would like to propose a New Subhead 8 in connection with the refurbishment of Government Housing. It is proposed to provide a sum of £85,000 in connection with the refurbishment of ten units at 2 Richardson's Passage.

The New Subhead 8 was agreed to.

Head 101 - Housing was agreed to.

Head 103 - Tourist Development Projects

HON P C MONTEGRIFFO:

Mr Chairman, I assume they are simply plans that have already been announced there is nothing new.

HON J E PILCHER:

Yes, Mr Chairman.

Head 103 - Tourist Development Projects was agreed to.

Head 104 - Miscellaneous Projects

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I do not have an amendment as such, it is more like a reorganisation of expenditure to propose here. As the House will see at the end of this particular Head is Subhead 32 which is described as Training Facilities - £75,000: Installation of facilities within the dockyard. This is something of a misnomer and the sum should be included under Subhead 4 - Government Offices. It will be the same figure of £75,000 Re-allocation of Government Offices.

HON P C MONTEGRIFFO:

Sir, perhaps we could have some explanation on what is being talked about. Is it the refurbishment of existing premises or buildings or something new which will form part of the reorganisation of Government accommodation. What is it specifically for?

HON J E PILCHER:

Mr Chairman, the training facilities were in fact provided in Stone Block No.1, which is slowly being emptied by GSL as part of its restructuring. The training facilities at the Construction Training Centre have been moved from the Landport Ditch area to GSL and this has released the Landport Ditch area. The cost of re-allocating these training facilities has been £75,000.

HON P C MONTEGRIFFO:

Mr Chairman, so it is simply the cost of the move and refurbishment.....

HON J E PILCHER:

No, it is not only the cost of the move, it is the cost of refurbishing the area so that it can now be used for training purposes. Before it was just an empty block. We have now partitioned it to allow for the different trades and we have also installed the equipment necessary to provide training facilities.

HON P C MONTEGRIFFO:

Mr Chairman, is it not a misnomer then to describe this as Office Accommodation?

HON CHIEF MINISTER:

The position is that we have moved the people from the Construction Training Centre previously at Landport Ditch to what was previously the GSL Training Centre in the Commercial Dockyard. The facilities created in the GSL Training Centre are capable of housing other activities than what is now there and what is now there may not stay there permanently, depending on what the future development of the Training and Employment Board is. Their permanent purpose is offices for Government. At the moment they are being used by the Training Centre but in the long term they may not be and therefore we thought it was misleading to give the impression that it was just for training and nothing else.

HON A J CANEPA:

Mr Chairman, I have two questions on this Head. Subhead 31 or Item 31 - Orange Bastion and Smith Dorrien Bridge repairs. Are these repairs that have been identified recently or are they long standing? Because I do not recall any mention being made by my previous colleague, the then Minister for Public Works, that these bridges required repairs.

HON J C PEREZ:

The Department tells me that they are long standing and that they were rejected on two occasions and they have urged me to.....

HON A J CANEPA:

By whom, the Minister?

HON J C PEREZ:

By yourselves or by the Financial and Development Secretary. I do not know. They have been rejected on two occasions. That is the information that has been given to me. They have said that given the amount of traffic on Line Wall Road they required repairing. The most dangerous one is in fact the one at Orange Bastion. Urgent repairs are needed and we have put in two this year. We may have to put more in the next year. I certainly was not aware that there were so many bridges in Gibraltar but it appears that under our roads there are several bridges and tunnels which need to be refurbished every so often.

HON A J CANEPA:

The other question, Sir, is in respect of the Item on Traffic Lights which we welcome. The then Minister for Traffic, my colleague Mr Featherstone, was working on a programme which involved the installation of Traffic Lights at a number of junctions. This is one of them and we wholeheartedly support this. I wonder whether the Minister could give some indication as to whether in next year's Estimates we might see provision being made for the junction at the bottom of Europa Road by the Queen's Cinema, which certainly requires the installation of traffic lights. What happens at this junction is that traffic coming from Rosia, round the Queen's Cinema, always has priority to traffic coming down Europa Road. There is a similar problem at the roundabout, at Casemates, where the traffic coming out of the Varyl Begg Estate and Waterport have priority at this junction to traffic coming along Queensway and heading north.

HON J C PEREZ:

Mr Chairman, these are two areas which we shall consider, but I think the Honourable Member should be aware that there is presently an overall study taking place of the whole of the traffic flow. There are some proposals being looked at to change the traffic flow and that will involve certain road works taking place including changes to bus stops and the flow of buses. Once we have a general picture of what it is going to look like, and I do not think those two areas are affected, we will have a clearer picture of what is required. Another thing of course is that the Traffic Committee no longer exists and everything now goes to the Traffic Commission. There are ex-officio Members of the Traffic Commission who used to compose the Traffic

Committee. Now everything has to pass through the Traffic Commission which meets regularly at least once a month and things seem to be going much smoother than what they were before because of this and I hope that substantial progress on traffic matters will be made. I am expecting to be in a position to give a comprehensive statement on traffic for the future as well as on parking by the middle of next year but not sooner. In any case when looking at the Estimates we will certainly look at the points raised by the Honourable Member.

HON M K FEATHERSTONE:

Are the works at the top of Casemates Hill actually the installation of the traffic lights now?

HON J C PEREZ:

No, the works at the top of Casemates are as a result of resurfacing the road between Casemates Hill and Smith Dorrien Bridge. Half the road is closed at the moment whilst half of the road is being resurfaced. Once this side is done the other half will be resurfaced.

HON M K FEATHERSTONE:

Do you think you will spend the £13,000 this year?

HON J C PEREZ:

I have been advised by my department that this amount was needed in this Financial Year and that the lights would be placed to coincide with the opening of the multi-storey car park which is expected to be opened before April.

Head 104 - Miscellaneous Projects was agreed to.

Head 105 - General Services

HON K B ANTHONY:

Mr Speaker, the refurbishment of the Refuse Incinerator, is this intend to be a long term solution to our problem or are we going to get a new incinerator sometime in the future?

HON J C PEREZ:

Mr Chairman, that question was already answered at Question Time. We are looking at various options but we have not yet taken any decisions. Once a decision is taken we will inform the Honourable Member. The £300,000 included in this Subhead was deleted from the draft estimates because we wanted to see whether there was another way in which we could deal with the matter rather than spend the money in the knowledge that the Incinerator was not in a very good state. We did not want to spend this money in case, as a result of the poor state of the Incinerator, it was going to be wasted. However two surveys have been carried

out, at a cost of about £4,000, to see whether the cost of £300,000 could be brought down considerably given that what we wanted was really temporary repairs, an intermediary thing, not a permanent solution. The results have shown that it is required that we spend £300,000 to extend the life of the Incinerator by eighteen months to two years. This does not mean that there are not going to be breakdowns. Breakdowns may occur even if we spend this money. These repairs are scheduled to take place at the beginning of the year and the estimated cost is £300,000. The department tells me that it is possible to bring down the cost somewhat, but we have not been able to get very precise figures, so the £300,000 is an estimated cost.

HON K B ANTHONY:

Thank you Mr Chairman. If the repairs are started at the beginning of the year, have you any idea of how long it will take because obviously rubbish disposal is a major problem in our community.

HON J C PEREZ:

It is expected to take about five to six weeks. During that time we expect to dispose of rubbish in the same way as we dispose of it when the Incinerator breaks down and we have informed Green Peace about this, so they are aware of it.

Head 105 - General Services was agreed to.

Head 107 - Telephone Service was agreed to.

Head 109 - Electricity Service

HON K B ANTHONY:

Mr Chairman, the three turbo charges are they for Sets one, two and three?

HON J C PEREZ:

No, Mr Chairman, they are not three turbo charges. It is the payment based over the years.

HON K B ANTHONY:

Are they for these sets?

HON J C PEREZ:

No, Set 3, which is being installed at the moment has these turbo charges fitted. It is presumed that the turbo charges will improve the performance of the machine and will reduce the amount of fuel used. Since Hawker Siddeley has a certain responsibility, because engine 2 is still under guarantee, they were prepared to meet part of the cost for bringing in turbo charges and fitting them to Engines 1 and 2 and we have got a programme over three years where the contribution of the Government will be

£150,000 and the contribution of Hawker Siddeley will be £100,000. They are committed to providing for Engine No.2 because it is under guarantee, but not for Engine No.1 and we have worked out a formula which phases in the cost over three years and we get the turbo charges for both engines.

HON K B ANTHONY:

Thank you very much Mr Speaker. No doubt we look forward to a reduction in electricity charges next year. Will the turbo charges be fitted in the very near future?

HON J C PEREZ:

Mr Chairman, the turbo charges will be fitted by Hawker Siddeley once they finish Engine No.3 and they are available in Gibraltar. I have not got a programme of work. As to the other comments made by the Honourable Member that we would have cheaper electricity, if the reduction in fuel is significant it will be reflected in the Fuel Cost Adjustment Formula and yes, we will have cheaper electricity.

Head 109 - Electricity Service was agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I have an addition to Part Two of the Schedule to propose in the form of a new Item, Head 110 - Crown Lands. If I may explain the purpose of the additional provision. Subhead 4 for which there is already £m provided in respect of Land Reclamation and it is now proposed to seek additional funds, an additional £2m, making a total provision of £3m for the year. As far as this particular Bill is concerned it will be £2m.

Head 110 - Crown Lands was agreed to.

The Schedule - Part II

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I would like to move that Part II of the Schedule should be amended by deleting the figures "1,072,000" where they appear against Head 101 Housing and substituting therefor the figures "1,157,000", by adding to the end of the "Head" column the expression "110 Crown Lands" and opposite that expression in the "Amount" column the figures "2,000,000", and by deleting the figures "1,758,400" where they appear as the total and substituting therefor the figures "3,843,400".

Mr Chairman put the question in the terms of the above amendment which was resolved in the affirmative and the Schedule - Part II, as amended, stood part of the Bill.

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

THE TRADE LICENSING (AMENDMENT) ORDINANCE, 1988

Clauses 1 to 8 were agreed to and stood part of the Bill.

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

THE TRAFFIC (AMENDMENT) (NO.2) ORDINANCE, 1988

Clauses 1 to 4 were agreed to and stood part of the Bill.

New Clause 5

HON ATTORNEY GENERAL:

I would like to move that a new Clause 5 should be added to the Bill as follows:

5. Section 96A(1) is amended by repealing the word 'registered' in the first place where it appears.

Mr Chairman put the question in the terms of the above amendment which was resolved in the affirmative and the new Clause 5 stood part of the Bill.

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

THE GAMING TAX (AMENDMENT) ORDINANCE, 1988

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 SAVINGS BANK (AMENDMENT) ORDINANCE, 1988

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

Clause 6

HON ATTORNEY GENERAL:

Mr Chairman, there should be a slight amendment to this Clause. It is a printer's error. It is the new Section 9A(2)(a) on page 306 and which reads "the balance of that account at any time or over any period or the aggregate balance of the account and the depositor's other accounts of the same description". Not of the description but of the same description.

Clause 6 as amended was agreed to and stood part of the Bill.

Clause 7

FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I would like to move that in Clause 7(b) the new subsection (1) of section 11 should be amended by the deletion of the words "as shall determine" and substituted

by the words "as shall be approved from time to time by the Governor".

Mr Chairman put the question in the terms of the above amendment which was resolved in the affirmative and Clause 7(b), as amended, stood part of the Bill.

Clause 8

FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I would like to move that in Clause 8 the new section 11C(b) should be amended by the deletion of the words "as he shall determine" and substituted by the words "as shall be approved from time to time by the Governor".

Mr Chairman put the question in the terms of the above amendment which was resolved in the affirmative and Clause 8, as amended, stood part of the Bill.

Clause 9 was agreed to and stood part of the Bill.

Clause 10

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I would like to move that in Clause 10 the new section 13(2)(b) should be amended by the addition at the end thereof the following words.

"provided that no such payment shall be made unless the assets of the Savings Bank will thereafter exceed the liabilities by not less than 10% of the liabilities to depositors or such other percentage as the Governor may decide from time to time".

Mr Chairman put the question in the terms of the above amendment which was resolved in the affirmative and stood part of the Bill.

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

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

THIRD READING

HON ATTORNEY GENERAL:

Mr Speaker, I have the honour to report that the Drug Trafficking Offences Bill, 1988; the Administration of Justice (Miscellaneous Provisions) Bill, 1988, with amendments; the Charging Orders Bill, 1988; the Fast Launches (Control) (Amendment) Bill, 1988; the Insurance (Motor Vehicles) (Third Party Risks) (Amendment) Bill, 1988; the Supplementary Appropriation (1984-85) Bill, 1988; the Supplementary Appropriation (1985-86) Bill, 1988; the Supplementary Appropriation (1988-89) (No.2) Bill, 1988, with amendments; the Trade Licensing (Amendment) Bill, 1988; the Traffic (Amendment) (No.2) Bill, 1988,

with amendments, the Gaming Tax (Amendment) Bill, 1988; and the Savings Bank (Amendment) Bill, 1988, 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 put the question and on a vote being taken on the Drug Trafficking Offences Bill, 1988; the Administration of Justice (Miscellaneous Provisions) Bill, 1988, with amendments; the Charging Orders Bill, 1988; the Fast Launches (Control) (Amendment) Bill, 1988; the Insurance (Motor Vehicles) (Third Party Risks) (Amendment) Bill, 1988; the Supplementary Appropriation (1984-85) Bill, 1988; the Supplementary Appropriation (1985-86) Bill, 1988; the Supplementary Appropriation (1988-89) (No.2) Bill, 1988, with amendments; the Trade Licensing (Amendment) Bill, 1988; the Traffic (Amendment) Bill, 1988, with amendments; the Gaming Tax (Amendment) Bill, 1988; and the Savings Bank (Amendment) Bill, 1988, with amendments, the question was resolved in the affirmative.

The Bills were read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I now have the honour to move that this House should adjourn to Tuesday 6th December, 1988 at 10.30 am.

Mr Speaker then put the question which was resolved in the affirmative and the House adjourned to Tuesday the 6th December, 1988 at 10.30 am.

The adjournment of the House to Tuesday the 6th December, 1988 at 10.30 am was taken at 7.15 pm on Tuesday the 29th November, 1988.

TUESDAY THE 6TH DECEMBER, 1988

The House resumed at 10.40 am.

PRESENT:

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

GOVERNMENT:

The Hon J Bossano - Chief Minister
The Hon J E Pilcher - Minister for GSL and Tourism
The Hon J L Baldachino - Minister for Housing
The Hon M A Feetham - Minister for Trade and Industry
The Hon J C Perez - Minister for Government Services
The Hon Miss M I Montegriffo - Minister for Medical Services
and Sport
The Hon R Mor - Minister for Labour and Social Security
The Hon J L Moss - Minister for Education, Culture and
Youth Affairs

The Hon E Thistlethwaite QC - Attorney General
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

The Hon A J Canepa - Leader of the Opposition
The Hon P C Montegriffo
The Hon M K Featherstone OBE
The Hon Dr R G Valarino
The Hon G Mascarenhas
The Hon Lt-Col E M Britto OBE, ED
The Hon K B Anthony

IN ATTENDANCE:

C M Coom Esq - Clerk of the House of Assembly

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 Landlord and Tenant (Amendment) Bill, 1988; the Income Tax (Amendment) (No.2) Bill, 1983; and the Public Health (Amendment) (No.2) Bill, 1988.

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

THE LANDLORD AND TENANT (AMENDMENT) ORDINANCE, 1988

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

Clause 2

HON A J CANEPA:

With regard to Clause 2 there has been no reaction from the Government benches to the points that we made during the Second Reading of the Bill. If the Government does not propose to react to any of the arguments that we put forward during the Second Reading of the Bill, then on Clause 2, we will abstain, we are not supporting it as it stands. I want to make that clear.

Mr Chairman then put the question 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 R Mor
The Hon J L Moss
The Hon Miss M I Montegriffo

The Hon J C Perez
The Hon J E Pilcher
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members abstained:

The Hon K B Anthony
The Hon Lt Col E M Britto
The Hon A J Canepa
The Hon M K Featherstone
The Hon G Mascarenhas
The Hon P C Montegriffo
The Hon Dr R G Valarino

Clause 2 stood part of the Bill.

New Clause 3

HON ATTORNEY GENERAL:

I would like to move that the Bill be amended by the addition of the following new Clause:

"3. The Landlord and Tenant Ordinance is further amended by inserting after section 79 the following new section:-

79A. It shall be a condition of every tenancy that the tenant shall, if so requested in writing by the landlord, deliver to the landlord within 15 days of such request or other greater period specified by the landlord a copy of the demand note addressed to the tenant by the Financial and Development Secretary pursuant to section 276 of the Public Health Ordinance and of the receipt or some other sufficient evidence of payment of the amount due and payable by the tenant".

Mr Chairman proposed the question on the terms of the above amendment.

HON P C MONTEGRIFFO:

Mr Chairman, let me say that although the introduction of notice itself is obviously welcome and since we have taken the line of abstaining on Clause 2, it would not be logically consistent to support this further amendment because we feel that greater thought to the whole matter should have been given. So we will be abstaining on this amendment as well.

HON CHIEF MINISTER:

Mr Chairman, with respect to the Hon Member opposite this has nothing to do with Clause 2. Clause 2 is about the forfeiture of leases where the person having the lease fails to comply with the conditions and this Clause is

in order to allow landlords to satisfy themselves that their tenants are paying the rates which we are introducing under the Public Health Ordinance and it has nothing at all to do with Clause 2.

HON P C MONTEGRIFFO:

I thank the Chief Minister for that. The point is that since we are opposing the Public Health (Amendment) Bill as well, and in order to have a logical stand, for consistencies sake we cannot really vote for this subsection.

Mr Chairman then put the question 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 R Mor
The Hon J L Moss
The Hon Miss M I Montegriffo
The Hon J C Perez
The Hon J E Pilcher
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members abstained:

The Hon K B Anthony
The Hon Lt Col E M Britto
The Hon A J Canepa
The Hon M K Featherstone
The Hon G Mascarenhas
The Hon P C Montegriffo
The Hon Dr R G Valarino

New Clause 3 stood part of the Bill.

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

THE INCOME TAX (AMENDMENT) ORDINANCE, 1988

Clause 1

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I beg to move that Clause 1 be amended by deleting the words "and shall be deemed to have come into operation on 1st October 1988". As I explained in the Second Reading speech, Mr Chairman, this is consequential on the proposal to deleting all three which I will also be moving when we get to that stage for the reasons that I have already given.

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

Clause 2

HON ATTORNEY GENERAL:

Mr Chairman, I wish to move that the Bill be amended by the deletion of the expression "(4)" and the substitution of the expression "(5)" and also that in the new subsection (6) to section 4 the word "may" should be deleted and be substituted by the word "shall".

Mr Speaker then put the question 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 L Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members voted against:

The Hon K B Anthony
The Hon Lt Col E M Britto
The Hon A J Canepa
The Hon M K Featherstone
The Hon G Mascarenhas
The Hon P C Montegriffo
The Hon Dr R G Valarino

The amendments were accordingly passed.

HON P C MONTEGRIFFO:

Mr Chairman, I beg to move that Clause 2 be amended by adding at the end of the new section 4(6) the following proviso:

"Except that such information shall be of a statistical nature and provided in such a form to preserve the confidentiality of individual taxpayers".

MR CHAIRMAN:

Do you wish to speak on behalf of the amendment?

HON P C MONTEGRIFFO:

Yes, Mr Chairman, as was indicated during the general debate although we are entirely satisfied that the Government is entitled to certain information for the purpose of formulating fiscal and economic policy, we felt strongly that the proposed subsection is much too wide and extensive

for the purpose for which it is ostensibly required. We will have no difficulty, and we have so indicated, with the amendment of the word 'may' by 'shall' which has just been approved because we have no difficulty in making that a mandatory situation. We however wish that the extent of the information in question be defined. So we want to introduce the amendment which I have just moved and which will ensure confidentiality. My intention is to ensure that by individual taxpayers we also include companies and if there is some concern with the use of the word 'individual' then I will delete 'individual' and simply put 'taxpayer'. I think that expression would be wide within the legislation to cover companies as well. Sir, the position in Jersey as we have been able to determine is not dissimilar to the type of amendment which we want to introduce and perhaps it will be useful if I could circulate, to the Government, a photocopy of the relevant section. The Jersey legislation, the equivalent is actually titled "power of control to disclose statistical information". It actually qualifies the information as "statistical" and states basically that notwithstanding anything contained in the general law, the Controller may disclose to the President of the Finance Committee, my understanding is that in Jersey this is largely equivalent to our Financial Secretary, such statistical information as he may require for the purpose of the preparation of the General Estimates of the Revenue of the States for any year or for any other purpose affecting the Revenue of the States. In other words, it is a fairly wide provision, it is for any purpose affecting the Revenue of the States, but it is qualified by the fact that it is statistical in nature and not anything else. It is really that type of reasoning, Sir, which I am suggesting to the Government that could be reflected in our own Ordinance. I have gone one step further, as will be obvious in my amendment, so that it is actually a reference to the preservation of confidentiality. Although in a sense it is implicit that when you say that information is statistical it is in fact confidential because statistical information is normally on a no name basis etc. Mr Chairman that really is the basis of our amendment and we would be quite happy to support the whole rationale of the Bill once the information was curtailed and once the very wide extent of the measure was circumvented.

Mr Speaker then proposed the question in the terms of the Hon P C Montegriffo's amendment.

HON CHIEF MINISTER:

Mr Chairman, the Government does not accept the amendment, and let me say that I do not agree with the Honourable Member's argument that he has just put, that what he proposes in his amendment, about preserving the confidentiality of individuals taxpayer because it is implicit in the fact that the information is of a statistical nature. In fact you can have information of

a statistical nature where you say "We want to have a list of all the construction companies that pay more than £100,000" that list would then contain the names of the people who are paying more than £100,000, or the companies are paying more than £100,000. Therefore it would identify the individual companies paying at that level. So the fact that the information is statistical does not mean that you cannot identify it. Whenever you see publications, Mr Chairman, in the United Kingdom of who are the highest paid Directors in the land, that is statistical information and certainly the individual is not just identified but normally put on the front page of money magazines, which I am sure the Honourable Member opposite is familiar with. So, in fact, it is not unusual for people to have their incomes published on the front pages of magazines in London or New York or whatever and that is sometimes also tabulated in a statistical form as to who are the biggest income earners or who are the most profitable companies and who are the biggest taxpayers in the land. The purpose of the amendment that the Government is bringing to the Ordinance is not in order to publish it on the front page of any newspaper it is in order for the Government to be able to carry out two important functions. Its own formulation of economic and fiscal policies and its role in ensuring that, in dealing with the decision making process of Government, we are able effectively to monitor that the collection of revenue is meeting the criteria that we lay down and to make sure that we can identify, if we need to identify, the people who are persistently not paying. That is a problem that has existed until now, and I do not see why the Government, for example, should have a situation where somebody who wants to acquire a Government lease or whatever and the Government has no information about whether that person or organisation owes the Government hundreds of thousands of pounds in Taxes, Rates, Water or anything else. If the Government can find out what is owed on Rates, Water, Electricity and Telephones why should it not be able to know, as a Government, what is owed in Taxes. Information can currently be obtained under the existing Ordinance, and the Government has already been provided by the Income Tax Department with a list of all those people who have kept their employee's PAYE and we have asked the Attorney General to take action against those companies and we have announced it publicly. It would seem to me that that would infringe the amendment produced by the Opposition on the confidentiality of the individual taxpayer and I am afraid that we see no need for it. The other argument which I saw the Honourable Member using in the press, although he has not used it here today, is the question of whether information as to taxation would be something that would give a competitive advantage to the Government's Joint Venture Companies as opposed to others. The information is going to be available to the Government, not to the Joint Venture Companies and in any case one worry that might concern individual businessmen would only arise if Members of the Government were themselves in business and in competition with others. That is not going to happen for as long as the GSLP is

in Government and since the chances of the Members opposite being in Government again are fairly remote, I do not think that we need this amendment to protect the people from the possibilities of their AACR Ministers who would use this information to undermine their competitors in their private businesses, so the Government sees no need for the amendment.

HON P C MONTEGRIFFO:

Mr Chairman, we do not want to talk about members private business interests or otherwise. That is not what we are trying to sensibly deal with this morning. The purpose for which the information is required is not questioned by the Opposition, in a general context, and that is something which I mentioned at the outset. I am a little concerned about what the Chief Minister has said because in explaining the reason why they want the information which according to the Bill was for the formulation of fiscal and economic policy, he has pointed out for example, that we will get to know who is paying tax, what elements of arrears there are, who is a persistent defaulter, etc. If that is the case, then I am even more worried, because that is not what I understood the amendment was for, that is a matter of enforcement and is therefore a matter for the Commissioner of Income Tax, at the direction of the Government no doubt, to press ahead, in conjunction with the Attorney General's Chambers. It is a matter which is non-political enforcement, a matter of administration, and we had assumed that the purpose of the Bill was simply information for the formulation of fiscal and economic policy. Sir, of course the Government is going to be in business, if information on competitors, in those areas where there are going to be Joint Venture Companies, is available to the Government then the Government, through the Ministers who will be chairing Joint Venture Companies, will have that information. Mr Pilcher will be chairing some companies and, I imagine, that Mr Feetham will also be chairing some companies, how can you have the same people wearing two different hats and not using the information they have obtained as Ministers. Clearly the information will be available to Government, to Council of Ministers, and will be in the hands of the Chairmen or Managing Directors of the Joint Venture Companies because Ministers will sit on these Boards and in some cases actually control the activities of those companies. If the Chief Minister takes the view in fact that it is not implicit in the definition of statistical, that confidentiality is preserved, then perhaps all the more reason for my having included that second limb in my amendment, where what I am trying to do is that if the Government legitimately wants to say "give us the list of all those construction companies which are paying more than £50,000 a year in tax". Then that information will be provided for on a no names basis, in other words, companies 1 to 10 then one would know the extent of the amount that is being paid, but without necessarily disclosing individually the affairs

of any particular company. Sir if I cannot have everything then I prefer having part of it something to protect the situation. Therefore if the Government is after statistical information, will they be prepared to delete the question of confidentiality, so that they may get their lists but that the information is statistical so you would not be able to have a situation on one particular company, the information that would be provided would be by industry or by sections of the economy. We do not think that the rationale of our amendments should be objectional at all. I am trying to present the position in Jersey because I think it is relevant to see how other places do things, not because we wish to follow slavishly, but because people elsewhere may have given thought to such matters and if they have gone down the road of specifically defining the type of information that is disclosed then that should be persuasive and should be taken into account particularly when one is doing away with fundamental principles like secrecy and confidentiality of information on tax. This is a major departure from the previous situation and if that is the case, I think, it is useful to look at the way other jurisdictions have gone about it. The Government's purpose is still protected by this amendment and I think the Government will still be able to get its information. We should therefore amend the Bill accordingly, Mr Chairman.

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

The Hon K B Anthony
The Hon Lt Col E M Britto
The Hon A J Canepa
The Hon M K Featherstone
The Hon G Mascarenhas
The Hon P C Montegriffo
The Hon Dr R G Valarino

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 L Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon E Thistlethwaite
The Hon B Traynor

The amendment was accordingly defeated.

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

Clause 3

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I wish to move that Clause 3 should not be proceeded with and should be deleted from the Bill.

Mr Chairman put the question which was resolved in the affirmative and Clause 3 was accordingly deleted.

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

THE PUBLIC HEALTH (AMENDMENT) (NO.2) BILL, 1988

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

Clause 2

HON ATTORNEY GENERAL:

Mr Chairman, I beg to move that the new section 272A(2) be deleted and the following new subsection substituted therefor:

"(2) Subsection (1) above shall have effect with regard to all rates which become due on or after the 1st April, 1988 and which remain unpaid".

Mr Chairman proposed the question in the terms of the Hon the Attorney General's amendment.

HON A J CANEPA:

Mr Chairman, this improves the position up to a point and the arrears are now limited to the 1st April 1988, so insofar as this amendment itself is concerned we will be abstaining but we are going to vote against the whole of the Clause because the principle of making the landlord responsible for rates which remain unpaid is one that we do not subscribe to.

Mr Chairman put the question 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 R Mor
The Hon J L Moss
The Hon Miss M I Montegriffo
The Hon J C Perez
The Hon J E Pilcher
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members voted against:

The Hon K B Anthony
The Hon Lt Col E M Britto
The Hon A J Canepa
The Hon M K Featherstone
The Hon G Mascarenhas
The Hon P C Montegriffo
The Hon Dr R G Valarino

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

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

Clause 4 was agreed to and stood part of the Bill.

Clause 5 was agreed to and stood part of the Bill.

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

HON ATTORNEY GENERAL:

Mr Chairman, I have the honour to report that the Landlord and Tenant (Amendment) Bill 1988; the Income Tax (Amendment) (No.2) Bill, 1988; and the Public Health (Amendment) (No.2) Bill 1988 have been considered in Committee and have been agreed to with amendments and I now move, Mr Chairman, that they be read a third time.

Mr Speaker then put the question and on a vote being taken on the Landlord and Tenant (Amendment) Bill, 1988, 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 L Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members abstained:

The Hon K B Anthony
The Hon Lt Col E M Britto
The Hon A J Canepa
The Hon M K Featherstone
The Hon G Mascarenhas
The Hon P C Montegriffo
The Hon Dr R G Valarino

On a vote being taken on the Income Tax (Amendment) (No.2) Bill, 1988; and the Public Health (Amendment) (No.2) Bill, 1988, the following Hon Members voted in favour:

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

The following Hon Members voted against:

The Hon K B Anthony
The Hon Lt Col E M Britto
The Hon A J Canepa
The Hon M K Featherstone
The Hon G Mascarenhas
The Hon P C Montegriffo
The Hon Dr R G Valarino

The Bills were read a third time and passed.

PRIVATE MEMBERS' MOTIONS

HON A J CANEPA:

Mr Speaker, I have the honour to move that:

"This House -

- (1) Declares that the three-year agreement reached in December 1985 on Spanish pensions did not commit either party to fixed percentage contributions during the period 1986-1988, or beyond.
- (2) Deplores the decision of the British Government to re-allocate for the payment of Spanish pensions ODA funds previously earmarked for development projects in Gibraltar after agreement between ODA and the Gibraltar Government.
- (3) Urges the British Government to refrain from making any further use for this purpose of the remaining funds out of the £6m set aside for development.
- (4) Considers that any arrangements entered into by the British and Gibraltar Governments on the question of Spanish pensions should safeguard the position of Gibraltar pensioners, contributors and taxpayers".

Mr Speaker, I gave notice of this motion on the 8th November and I did so and I so move the motion this morning in a positive spirit. Our intention was to be helpful at a stage when the negotiations were becoming delicate and to set the record straight, the historical record, straight in respect of what the 1986/1988 Agreement amounted to. Even though the Chief Minister in his statements on his return from that particular meeting with Mrs Lynda Chalker

did make it clear that he accepted the explanations which had been given here in this House when we were in Government in 1986 and which, in my absence, Sir Joshua Hassan then went on to make clear in a television interview. Mr Speaker, it has always been the fundamental policy of the AACR that Gibraltar could not afford to pay this very high cost of Spanish pensions and should not, in principle, be made to pay having regard to the fact that the problem was one created as a direct result of the hostile actions of the Franco regime in an attempt to bring the economy of Gibraltar to its knees and in an attempt to coerce the Gibraltarians into taking a different decision, to what they had consistently been taking, on their future and the way of life that they wished to pursue. The attitude that we have taken on this matter, in the past, has been against the background of the magnitude of the problem and to the extent not being known at the time, in the detail in which it is known today. We apprehended that a serious problem was going to arise and when I was Minister for Labour and Social Security in the 70s we knew that the day that Spain acceded to the Community serious problems were going to arise. As Minister responsible for this area, once I knew that Spain had made an application to join the EEC I wrote to the Chief Minister and acquainted him of the serious problems that could arise as a result of Spain joining the EEC. I know that the Chief Minister, through the proper channels, transmitted that anxiety on to London and my head of department, at the time, also pursued the matter in detail and kept the then Deputy Governor fully informed about the extent of the problem, as we saw it, and I have also reason to believe that communications were sent on to London about this. There was never the reaction to the matter that the problem perhaps merited, perhaps because the full extent and the magnitude of the problem, as I say, was not fully comprehended. During 1984/1985 when there were fairly intense negotiations on the matter it is clear that officials and/or Ministers in London did not see the matter, did not see the full extent of the problem, as all the indications would point they now do. I think in that sense the Joint Study Report has been a useful exercise because it has highlighted that the problem which will be with us well into the next century and whilst we used to say in 1984/1985 that this was a problem which would peek over a period of about fifteen years and therefore we were talking of a figure in excess of £100m, fifteen years at £7m or £8m a year would amount to £100m. We now know that the full extent of the problem is dramatically greater than that. We were adopting in 1984/1985 the position that, ultimately, it was Britain's responsibility to pay. In fact the Spanish Government also adopted that view because in Geneva in February 1985 during the Plenary Session of the UK/Spanish discussions about Gibraltar, the then Spanish Foreign Minister, Señor Fernando Moran, made statements to the effect that he fully accepted that Gibraltar did not have the resources to meet this commitment and that therefore he looked to Britain to do so. During the difficult negotiations when we were pointing out that we were not prepared to go beyond the

£4½m, which was the notional sum directly attributable to Spanish contributors, we took the line that if we defaulted, if on the 1st January 1986 and subsequently, we did not pay the Spanish pensions and legal action was taken against the Gibraltar Government either in the Supreme Court here in Gibraltar or ultimately before the European Court, it was Britain, as the Member State, who would be ultimately answerable. The three year agreement which was reached in December 1985, Sir, was reached in a situation where not as much information was available, as I say, about the extent of the commitment as is now the case. It seems clear from the discussions that we have had and the meetings that we have had with the Chief Minister, without going into details, that since the Joint Study Report or whilst the Joint Study Report was being drawn up and subsequently United Kingdom officials have been able to look at many more aspects of the matter, not just directly involving the Social Insurance Scheme and the Social Insurance Fund, but indeed in a much wider context, going through the whole route of Gibraltar's Social Security system in the depths that it is required and with the view of dealing with all the ramifications which membership of the EEC and the application of EEC Social Security Regulations to Gibraltar has, having regard to the very high level of foreign workers in Gibraltar. It is a pity that this exercise was not carried out soon after Spain's application in 1978 when perhaps corrective measures could have been taken at the time. I think it is necessary to confirm the historical record about the percentage contributions as they arose. In the run up to the Madrid meeting in December 1985 a situation of virtual deadlock in the negotiations was reached between the British Government and the Gibraltar Government. We had been offered by Mr Timothy Raison, he made a statement in the House of Commons, a one year agreement which Britain would pay £6m and we were expected to pay £1m out of the £4½m of the notional Spanish sub-fund. That was the position when we went to Madrid at the beginning of December 1985. That arrangement was not acceptable to us because we saw it purely as a device to let Britain off the hook so that pensions could be paid on the 1st January 1985 on Spain's accession. This was made clear in the joint Press Release, issued by the two Foreign Ministers that Spanish pensions would be paid. We made it clear to Sir Geoffrey Howe, because it had not been done in consultation with us, it must have emerged in the Bilateral Talks between the two Foreign Ministers, that our understanding of the position was that with a one year offer of £6m, Britain would have to make her own arrangements to pay the pensions because on that basis we would not be setting in motion the administrative arrangements, in Gibraltar, to pay the pensions. On our return from Madrid there was vigorous correspondence leading eventually, on the 16 December, I think that was the date, to an offer of a three year Agreement with Britain paying £16½m and £4½m being contributed from Gibraltar's Social Insurance Fund. I think that agreement was finally reached, on that basis, on the 22nd December, a case of brinkmanship which bares very close

comparisor with what we have seen recently when tomorrow, the 7th December, the date the money would otherwise run out and the present Chief Minister has been able to reach tentative agreement on a basis that will enable payment of Spanish pensions to continue. Throughout the negotiations there was no question of Gibraltar making a percentage contribution, indeed if that had been intended, then if prior to December 1985 all we had was an offer from the British Government of contributing to a one year agreement £6m as against Gibraltar putting £1m, then the percentages changed because £1m out of £7m is nearly 16% and in the event £4½m out of £21m represents a different percentage, closer to 22%. At no stage throughout the two years of discussions and negotiations was there any talk of a fixed percentage contribution. Either for the period in question and certainly not beyond. In fact we were at pains to point out that the tapering arrangement of Gibraltar's contribution were seen by us, as a device which helped us, in that the residue of the Spanish sub-fund would remain invested over a longer period and therefore more interest would accrue, and we would have resisted any attempt to fix a percentage contribution for that period or for the future. Now, Mr Speaker, at the time earlier in the summer, when it was announced that £2.8m of ODA money was going to be used for the continued payment of Spanish pensions given that the £21m have run out earlier this year, we voiced our objection to that arrangement, and we voiced that objection to that arrangement because we felt very passionately about the £6m which, in the event was inadequate, but about the struggle that we have had to get £6m of ODA money for projects which were essential for the infrastructure of Gibraltar. When Mr Timothy Raison came out to Gibraltar in 1984, we managed to convince him and he has so stated publicly that Gibraltar had made a case for continuing ODA aid for urgent infrastructural projects and it was a hard struggle to get these £6m. We felt that the sum was inadequate, we had made a good case for a great deal more than what we were given. Projects which we thought urgent and which ought to have met ODA's criteria which was essentially that they should be for projects of an infrastructural nature. The Honourable the Chief Minister gave indications at the time that perhaps ODA were dragging their feet and that they already had in mind the possibility that that money may have to be used for the payment of Spanish pensions. If that is the case, I think it was an act that fell short of good faith, to send economists and ODA officials out of Gibraltar to discuss with officials of the Gibraltar Government applications for projects, do the ground work for these applications, so that they could be considered by the Projects Committee in London, it was nothing short of bad faith to have acted in that manner. We condemned the action that the British Government had taken on the matter and the Chief Minister has on numerous occasions, since then, stated that the present Gibraltar Government were very unhappy about this but they were unable to stop the allocation of these funds for that purpose. We urged,

and this is reflected in our third paragraph, that the British Government should refrain from making any further use of the funds which are still available, £3m odd, for that purpose. We do not have a final answer apparently yet, we did not on Monday as to where the £700,000 that remains or that is required until the end of this year to continue payment of Spanish pensioners, was going to come from but there are indications that an effort is being made to ensure that they do not come from ODA funds. Therefore perhaps having given notice of the motion of the 8th November and the fuss that we had created on this matter earlier on, in the Autumn and during the summer, we hope that it may have been of some assistance to the Chief Minister in putting up some resistance and trying to convince Mrs Chalker that these funds should remain set aside for the purpose that they were envisaged in the first place. At least we are thankful that apparently there has been some measure of success. The fourth paragraph of this motion, Mr Speaker, then goes on to lay down the principles that we, from the Opposition, are mainly concerned about that require to be safeguarded and that is the position of Gibraltar pensioners, Gibraltar contributors and taxpayers. What we do not wish to see and the Agreement is not yet signed, the Agreement has to be finalised, the Agreement that will come into effect on the 1st January 1989 and what we wish to see, Mr Speaker, is an agreement that insofar as Gibraltar pensioners are concerned, ensures that the purchasing power of their present pensions remains intact, in other words, that pensions will not be decreased, will not be frozen, but will be increased in the future by some means or other directly or indirectly so that their present purchasing power remains intact. We see the difficulty that the Government has had and we support it, they are repealing the formula which has been regulating the level of pensions for the last twelve years or so, based on average earnings, and we realise that it may not be possible, in the future, to work to that principle. The benefits can be increased either in line with basic wages, in line with average earnings or in line with increases in the cost of living. If for the future the Government is able to devise a formula, an arrangement, whereby either by following any of those three roads, the purchasing power of pensions as on the 1st January 1989, of present Gibraltar pensioners can be safeguarded, we would be quite happy about that development. Insofar as contributors were concerned what we were anxious to avoid, Mr Speaker, and what we are still anxious to avoid naturally is a situation in which contributions will go up, in future, to take account of the Spanish commitment. During the three years of the 1986/1988 Agreement we were increasing pensions and we were increasing contributions every year, at the beginning of January, and we were at pains to ensure that the increases in the level of contributions was purely to meet the commitments of Gibraltar and other resident pensioners and not to meet the escalating commitment to Spanish pensioners everytime that the level of pensions was increased. Thirdly insofar as taxpayers are concerned, we are anxious to see a situation whereby if arrangements have to be made in the restructuring of the Social Security system that would mean a different source of revenue being

used to meet the commitments, and this was a device that was used in the past, because up to 1976, Mr Speaker, the level of pensions being paid out of the Social Insurance Fund was being supplemented by general revenue it is something that has been done in the past, if that is to happen then the residual commitment that is going to fall on Gibraltar taxpayers should be one purely to meet the obligations that we have to Gibraltar pensioners and other resident pensioners and not to those outside Gibraltar. So this is the spirit, Mr Speaker, of the motion which I am moving this morning. We are glad to see that the Government has been able to enter into arrangements which, by and large, appear to meet these requirements and as I have stated publicly we do not think that the task of meeting the principles in paragraph 4 of my motion regarding Gibraltar pensioners, contributors and taxpayers are going to be easy to devise and to implement and we will be monitoring the situation very carefully. We hope that the series of meetings which we have held with the Chief Minister on this matter will be a feature for the future whenever the Government feel that further legislative measures or administrative measures are required and if they can give us a background briefing that will enable us to understand the situation much better and to fulfill our functions as a responsible Opposition in the way that we would like to do in the best interests of Gibraltar. The road ahead Mr Speaker, is a difficult one, it is not going to be a smooth road and the expertise that we have on this side of the House is one that we will make available to the Government by questioning, by putting across points of view, by reacting to what they intend doing and I hope that the motion will be seen in this positive spirit and that the Government will be able to support it. Mr Speaker, I commend the motion to the House.

Mr Speaker then proposed the question in the terms of the motion moved by the Hon A J Canepa.

HON CHIEF MINISTER:

Mr Speaker, it is not the Government's intention to delete all the words after "This House", nor to convert this into a congratulatory motion of my expertise in negotiations which is the kind of fate that I have seen my motions suffer in the past when I have moved from that side. The Government agrees with the sentiments of the motion and in particular we have rejected, as the House knows and as the Honourable Leader of the Opposition has mentioned, the contention of Her Majesty's Government that there was an implicit commitment in the Agreement, entered into by the AACR that they would pay a percentage of the additional cost of the three year agreement that ends on the 31st of this month. The position, as far as the Government is concerned, and I told Mrs Chalker this across the table, was that if there were two versions on the nature of the Agreement done in 1985, and I was being told by Her Majesty's Government that I was bound by an agreement that

the Government of Gibraltar had entered into, notwithstanding the fact that in Opposition I had voted against it, then if that agreement was binding, it was only binding to the extent that the previous Government of Gibraltar had explained it in the House at the time, and the way they explained it in 1986 as a result of a direct question. Mr Speaker I do not want to go into the past but the Honourable Member opposite in moving the motion has made reference as to what had taken place in the past and therefore I think that if he is putting the record straight then I need to make sure that it is a balanced record. Let me say that in 1985, when the Agreement was done, for the three years, and to which Clause 1 of the motion refers, the Government at the time had no policy on how to deal with the situation if the money run out before the three years run out. I had put a specific question about this "What happens if the money does not last?" The answer I was given was "that if the money does not last, we will discuss it with the British Government at the time that that happens". That was said in 1986 and I said, "Is the commitment of the British Government that they will pay a proportion of the cost and therefore if the cost goes up, the British contribution goes up?" The answer was "No, it is not a question of the British Government paying a proportion, it is a question of the British Government paying a fixed sum of £16½m, and therefore if the cost is higher, the British contribution is still £16½m". That statement, which is on record in Hansard, was made during the debate we had in the House in January or February 1986. This is what enabled me to say to the British Government on this occasion well as far as I am concerned I was not in favour of the agreement at all in 1985, but if you tell me that I am bound by whatever has been signed by the previous Government, I am only bound to the extent that they understood what they were agreeing to and I choose to believe that the version of the Government of Gibraltar is the correct version and not the version of the United Kingdom Government. So paragraph 1, as far as we are concerned, is not simply a question that the House declares this now, the then Government, in 1986, informed the House that that was the case and if this House was to say anything different now, we would effectively be saying that the Chief Minister, in January 1986, deliberately misled the House by telling them something that was untrue. So paragraph 1, as far as we are concerned, reiterates the position, as was explained in 1986, and as explained now. It also of course does expose the fact that there was no fallback position which we could use when the money run out and I think as recently as the debate we had on this matter, prior to the dissolution of the House in December 1987, when in fact we raised "What is going to happen?" The Government was then involved in the discussions with Her Majesty's Government on the results of the Joint Study Report, which as the House knows we made public when we came in, and the Report as anybody who has read the report knows stated "that the Gibraltar economy could afford to meet the bill". That is what the Joint Study

said and which we understand, from what we have seen subsequently about the £16½m ODA grant in support of the Pension Fund, was made a condition of the grant. We did not know it at the time. In 1985, when we were told that the British Government had agreed to pay £16½m, we were not told in this House that they had made it a condition, they imposed a condition of the Government of Gibraltar, that in order to get the £16½m, the Government had to accept that there should be a Joint Study, with terms of reference which clearly pointed to Gibraltar's potential for meeting the Bill and the only change that was done to that proposal which came from the British side, by the Government of Gibraltar, the only attenuating element they were able to introduce, was that that was without prejudice to the position of either side. So we had a situation where the British Government said "I will give you the £16½m provided you agree to a Joint Study, with my experts basically running the show, to demonstrate that you can pay" and then the Gibraltar Government added "without prejudice to either side". Well I can tell the Honourable Member opposite, as a negotiator of fourteen years experience, that if you ever agree to a study that says "that it is to determine how much you can pay" you have defacto given up the principle that you should not pay. Because what you are now arguing is whether you pay 1%, 5% or 95% but not that you pay zero. This is why we rejected the Joint Study in 1986 and when we came into Government. We had a Joint Study which was already saying that we could pay the lot, we had a situation where the previous administration had already said they would pay for the people who had retired in 1969 and we had a Manifesto commitment saying that we would not pay a penny. Clearly that has made the negotiations tougher, more difficult than they would otherwise have been, and I recall my colleague, Mr Mor, saying from the Opposition at the time that if you have already announced what your ceiling is going to be in the negotiation, the ceiling becomes a floor, anybody knows that. You go into any negotiation either as a businessman or as a trade unionist or as anything else, and the thing you do before you enter into the negotiating room is to say the most that I will pay is £1m, that to the other side means that the least you will pay is £1m, because you have already given £1m away. There is no fight to get there. I am saying these things because, those are facts, of what happened and when Sir Joshua Hassan was interviewed, when the Leader of the Opposition was away, and he was asked in the interview about that specific point, his argument was that that was done by the AACR Government in order to appear reasonable and hoping that their reasonableness would be reciprocated by the British Government. Well, I believe, we live in a tough, nasty world where reasonableness gets you nowhere and it is better to dig in your heels and stand your ground and that produces better dealing. That has been the position that has been taken as regards making any contributions and therefore if the last paragraph, about protecting contributors and taxpayers, means protecting them from having to pay anything

at all towards meeting any bill beyond the £4m that has already been paid, then we have not budged one iota from that position, and therefore we have protected them not only from what the British Government wanted them to pay, but from what the previous Government was prepared to pay with local taxpayers and contributors money. Any reform of the Social Insurance Fund will be on the basis that future rights will have to be determined taking into account past contributions. I think if we had moved into changing the Regulations in 1985, before Spanish entry, we would have been able to handle the problem much more easily. I know that the Government of Gibraltar argued, as recently as December 1987, there is a motion of this House, Mr Speaker, carried by Government majority which says that the Rules could not be changed in 1985. The Rules could be changed in 1985, the rules have been changed in 1988 and they could therefore have been changed in 1985 that is obvious. I think the Government of Gibraltar has argued subsequently that if the Rules could have been changed, then the British Government should have advised them that they could have been changed, and certainly the British Government did not inform them and I have also used that argument with the British Government. I said "fair enough you can say the Government of Gibraltar did not take the initiative to do anything to the system to protect the Social Insurance Fund, but neither did you and the Government of Gibraltar is a small administration, it has small resources, and you have got many more experts than they have, and if their experts did not think of it, yours should have thought of it, because you have got an ultimate responsibility as a Member State". That is the argument that I have used in defending the position of the previous Government for not changing the rules at the time. Let me say that on this occasion all the running has been made by us. The Government of the United Kingdom has not come up with anything in terms of suggesting what could be done, other than the parallel fund, which was their response to the original idea of integrating the Social Insurance Fund of Gibraltar with the National Insurance Fund. Let me just for the sake of the record, since this is probably an occasion when we can say what has happened, to say that the original concept of looking at the nature of the problem was to say well independent of how big the bill is for the Social Insurance Fund of Gibraltar, and let me say that it is not just the bill that arises from pre-1969 pensioners, it is in the nature of a Social Insurance Fund like ours, with a very small contribution base, that you can only accurately quantify the future liabilities that you are facing if you have got a relatively stable contribution base and if you have got a closed economy. In the world of 1954, when the scheme was set up or in the world of 1969 when the frontier was closed, you were talking about a situation where the overwhelming majority of people entered into employment when they left school and left employment when they retired and spent their whole life contributing and you could almost predict to the hour and the day who was going to retire when. When you moved from that situation into a world where there is a unified market

and where there is free movement of labour and capital and where people are coming in and out of the Gibraltar economy, and contributing for very small periods, and acquiring rights, which are disproportionately high for their contributions, you are then creating a potential liability which is a time bomb that you are sitting on. We are in that situation with the Social Insurance Fund, independent on the Spanish liability, the Spanish liability exacerbates it enormously and brings it forward to today but if we forget that there is a Spanish liability and we look at the fund, we are looking at a situation where commuting workers, specialist workers, coming in and out of Gibraltar working for small periods can obtain an average of contribution over the years which will entitle them to a pension which is much higher than the people who contributed throughout their working lives. Effectively therefore the Fund, which has to be self-financing, provides an internal cross subsidy. It subsidises the pensions of migrant short-term workers by the contributions of long-term resident workers. Because you go into the scheme and you contribute when you join, when you leave school and you leave when you are sixty five and you pay your full contributions, but somebody comes in and out and if they contribute 25%, they finish up getting a 40% pension for a 25% contribution. Whatever the reasons that were there when this was done, one of the things that the team of experts that came out here to hold discussions with me on the Pension Fund, and were looking at ways in which we could reform the system, said to me "that no Pension Scheme anywhere in the world stays the same for twenty years". The reality of it is that in UK and in most places you expect to have to go into a deep structural change every ten years or so because the society which you are insuring, is itself changing, the demographic structure is changing. If you have a situation where you have a very young population, then you can afford to give very generous pensions and low contributions. If you have a situation where you have a very old population then you have the possibility of actually penalising working people in order to maintain retired people and you could finish up in theory with the situation where the people who are at work are having to pay a very high proportion of their incomes to maintain an increasing non-working retired population. It is a problem that is facing almost every western nation with declining birth rates and higher living standards and more people living beyond retirement age. We are not in that situation, because if we look at the structure of the contribution coming into the Fund, we do not have an excessive number in the elderly group, we are about average but of course the problem is that the contributors themselves are short-term employees who acquire rights well in excess of the contributions that they make. This is one of the main flaws in the scheme and essentially what we have is what I said, if the House will recall at Budget time Mr Speaker, I said "at the end of the day we may find that had we been able to take pre-emptive action, a number of years ago, the scheme might have been able

to survive with a different set of rules. But at this stage where we are already involved in paying out huge sums of money, for which we have no resources, the scheme may not survive" and that is a reality, the scheme will not survive, it will have to be replaced. In replacing that scheme we have to be conscious, not only that we have a clear political commitment, not to use Gibraltar Funds to meet the pre-1969 liability and that has been accepted by Her Majesty's Government. I do not necessarily agree with the Honourable Member opposite that they have accepted, that as a Member State they have to answer in Brussels, because that is not what they said to me that they have accepted. What they have accepted, as part of a package where the liability will be contained by the nature of the reforms, they are prepared to meet what is fundamental to the position of the Government of Gibraltar and that is that they foot the bill. As we will not move from that position and as far as I am concerned, on this as on every other issue whether we are talking about Brussels or anything else, the commitment that we have given our people during the election, in March, were not vote catching slogans, they were the things that we intend to do and we will stick to the letter of it. We have a situation where we are in a position to say to Members opposite that the direction in which we are going and the protective measures which we are introducing are the ones that we all want to seek. Certainly they will be kept fully informed, at every stage, there is no desire on the part of the Government for secrecy in this matter, but there is one fundamental element in this which cannot be ignored. We must not be put in the position where anybody can accuse us of discrimination, because if we are put in that position, then the entire edifice of what we are trying to build to protect ourselves collapses. For this reason we must measure our words very carefully so that they are not misquoted and misinterpreted and then misused by people who might want to challenge what we are doing, and this is fundamental to the understanding that we have reached with Her Majesty's Government, that has accepted the responsibility for defending the changes that we are going to undertake, at the level of the EEC or whatever they need to be defended should the occasion arise, but in order to make sure that they are defensible we must be seen to be acting in consonance with Community Law and which we intend to do. It is for this reason and no other, Mr Speaker, that I intend to move an amendment to the Motion deleting the last paragraph 4 and substituting for it a new paragraph 4 which makes sure that the wording is such that nobody could argue that we are doing anything which is in conflict with our community obligations. I am not saying that what the Opposition put there would necessarily be in conflict with community obligations but it is an area where the advice that we have is that it might be interpreted as proposing that and that is something that we do not want to risk. The amendment that we propose to move and which I have already given copies to Members opposite, as I say, is one which ensures that this House supports the view that the Government of Gibraltar must

comply with International Law. I do not think the Government can be asked by the House to break the law and we must not be asked by the House to do anything that might be interpreted, by anybody that may not wish us well that we are breaking the law. I am sure it was not the intention of the Opposition that that should be the case with their original amendment, but as I said this has been looked at by the experts, whose job it is to mount a defence on our behalf, should that be required and they see certain risks in the wording which need to be catered for. The position, Mr Speaker, is that we have agreed verbally an amendment, on a confidential basis, but it is not yet in written form and therefore there may be t's to cross and commas to put when we see what the written version looks like but we do not anticipate problems in actually finalising it. I therefore move that the new Clause 4 should read, Mr Speaker: "Considers that the arrangements entered into by the British and Gibraltar Governments, for the reform of the Social Insurance Fund, should safeguard the accrued rights of all pensioners and contributors on a non discriminatory basis and in accordance with Community Law". As I have said, Mr Speaker, this is because in the original motion which talks about Gibraltar pensioners, it is not clear and it is open to misinterpretation where Gibraltar pensioners could be Philipino contributors, of whom we have had several hundreds in the past and who have got some rights that we will need to investigate. As I have already said to Members of the Opposition and I think mentioned in public the nature of the process that needs to be followed to safeguard those rights requires first, very substantial technical work which will probably take more than one year to do, to establish exactly what those rights are. We do not have, in Gibraltar, the resources to do even that part of it, never mind paying the Spanish pensions, we do not even have the resources or the manpower or in terms of equipment to go through the records of every single person that paid, whatever amount the sum that they paid, since the scheme started in 1954 and establishing what they put in and what they have taken out. That which is really a mammoth task would manually take us till the year 2026. In fact the United Kingdom Government is going to provide the necessary technical support so that when we take the decisions on reform we take them with a clearcut picture in front of us of what the implications of the proposed changes will be. Then when we are in a position to see that ourselves, then that information, I will also make available to Members opposite so that they can see the full picture the same as us and then at the end of the day when they see the full picture, they can make up their minds whether they believe we are doing everything possible to protect all those that need protection or not. I commend the amendment to the House and the Government of course will be supporting the motion as amended.

Mr Speaker proposed the question as moved by the Honourable the Chief Minister.

HON A J CANEPA:

Mr Speaker, speaking purely on the amendment, it was not our intention, let me make it quite clear, in drafting paragraph 4 in the manner which we did to make a statement that the interests of Gibraltar pensioners should be protected in a manner that would leave us outside Community Law. That was not our intention. We were taking a narrower view of the matter than what the Government has taken and we accept that the Government has a wider responsibility, because if it is dealing with the British Government and it is negotiating an agreement with the British Government, that agreement must be capable of withstanding the test of Britain's international obligations and in particular, in the same way, as the Member State, we think that she is ultimately responsible, we accept that as Member State, she must be able to defend in the context of EEC Community Law any agreement that she enters into with the Government of Gibraltar and which affects EEC Members or Nationals of the EEC Members. So we certainly do not oppose the amendment, we are going to abstain on it because it is the Government's amendment and then when the motion finally comes back, amended, before the House we will have no difficulty with the motion as a whole.

Mr Speaker then put the question in the terms of the Hon the Chief Minister's amendment to the motion presented by the Hon A J Canepa 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 R Mor
The Hon J L Moss
The Hon Miss M I Montegriffo
The Hon J C Perez
The Hon J E Pilcher

The following Hon Members abstained:

The Hon K B Anthony
The Hon Lt Col E M Britto
The Hon A J Canepa
The Hon M K Featherstone
The Hon G Mascarenhas
The Hon P C Montegriffo
The Hon Dr R G Valarino

The following Hon Members were absent from the Chamber:

The Hon E Thistlethwaite
The Hon B Traynor

HON DR R G VALARINO:

Mr Speaker, with respect to the British Government's recent comments that there was a percentage linkage to the Agreement entered into by the British and Gibraltar Governments, I would like to remind the House that a few weeks ago Sir Joshua Hassan denied publicly that in his discussions with the British Government there had ever been any question at all of any percentage contributions or any percentage decisions at all. He said this publicly and clearly and I do not know where the British Government has got this percentage idea. It was certainly not from the then Chief Minister or from the then Government. Let me also remind the House of the motion, at the end of last year, and I shall quote the Chief Minister if I may "Gibraltar Government Ministers have made it clear to the British Government that whilst Gibraltar is prepared to meet its moral responsibility in full and has accordingly offered to contribute the total amount paid into the Social Insurance Fund by Spanish workers plus accrued interest, a total of £4.5m, their view is that the ultimate responsibility lies with the British Government.

MR SPEAKER:

Who said that?

HON DR R G VALARINO:

That was said by the then Chief Minister, the Honourable Adolfo Canepa. He said "that the ultimate responsibility lies with the British Government". He went on to add at the same time "that we reiterate our views that the Spanish Government should acknowledge its responsibility in the matter". The then Chief Minister also said "let me make it clear that whatever the technical advice, whatever the size of the commitment, we will not be prepared to pay" and I stress "we will not be prepared to pay or to have Gibraltar paying for the consequences of the hostile action taken by the Spanish Government culminating in the closure of the frontier, it would be the height of irony if not irresponsibility". So there had never been any percentage basis for these contributions and this has been denied by the Learned Sir Joshua Hassan publicly. I am very glad that the Government of the day had not sought to change in any way the motion presented by the Leader of the Opposition except for paragraph 4. With reference to the position of Gibraltar pensioners should be safeguarded and in my view the most important thing about this is that we should safeguard the position of our own people. I would also like to thank the Chief Minister for keeping the Opposition fully informed on the discussions that have taken place and I feel that whatever conclusions are arrived at today we must always have in mind that the prime importance is the well being of Gibraltar and of the Gibraltarians. This is paramount. Thank you Sir.

MR SPEAKER:

Are there any other contributors?

HON P C MONTEGRIFFO:

Mr Speaker, I want to concentrate simply on the future rather than the past, bearing in mind my involvement does not go back prior to this House, and simply put on record that clearly the Agreement arrived at with the British Government, as has been made public, involves a complete structuring of the Social Security arrangements in Gibraltar. The process, as explained by the Chief Minister, is delicate if I can use his words and almost to talk of a solution to the pension's issue, bearing in mind the road we have to go down in the next few years, may be even premature inasmuch as the solution is to be implemented rather than a solution having been arrived at. The reason why we have abstained on the amendment has I think been explained, Mr Speaker. Basically our concern has been or will continue to be, within the confines of Community Law, the way that Gibraltar pensioners are affected. We have more than just a slight degree of anxiety on how the Gibraltar position is going to be adequately protected in a non-discriminatory and community-proof fashion in the reform that is going to be undertaken. At this stage since we are bound by confidentiality and because of the nature of the restructuring, the people of Gibraltar will not get to know the details of the restructuring, at least in the long term situation, the problem is all the more acute because we have the risk of people misinterpreting what is going to be done without understanding motives, without appreciating why certain positions have to be taken. I want to lay stress, in my short contribution, that until the practical re-arrangements of Social Security benefits in general is more clearly seen as to how it is going to affect Gibraltar pensioners, exactly what type of benefits will replace present benefits, until that happens the views of the Opposition should be one of general reserve because, in my personal view, it is much too early in the day to talk about a solution to the pensions issue. It is really only a road on which we are embarked upon, which hopefully will lead us to that solution. I would therefore want to place on record my general anxiety and misgiving that the structure we have embarked upon is something we think very carefully about and we from the Opposition will be closely monitoring.

HON J C PEREZ:

Mr Speaker, just to say that I am glad that the Honourable Member opposite has realised the importance of the issue at stake, because from last Thursday night on television till today he must have realised that the pension situation is no hiccup. I recall listening to him on television saying that it was just a hiccup I can understand why the Honourable Member wants to look at the future and not at the past, because, of course, he was not there in the past

and does not want to get his fingers caught on anything that happened in the past. It is obvious that he would want to look at the future but I am glad that he realises now that the past has been no hiccup and that this has been a serious problem affecting Gibraltar and hanging over the heads of the previous Government. It was a serious problem which we inherited immediately we took office with no solution in the offing and which the Honourable the Chief Minister has been working on, practically full time, for the past seven months. It was as a result of his personal initiative in looking for solutions and proposing solutions to the British Government that has eventually broken the ice and produced a solution for Gibraltar and for the future of Gibraltar. I think this is something which must be placed on record in this debate. Thank you Mr Speaker.

HON LT COL E M BRITTO:

Mr Speaker, I too want to concentrate on the future rather than in the past and I want to dwell on one particular point. This is that it has now been established and, I think, agreed on by previous speakers that in the agreement that has been reached and in the events that have taken place the British liability for the Spanish Pensions problem has now been established. From that viewpoint I would like to take up a couple of points made by the Honourable the Chief Minister. One of them is that when he analysed the situation of the Social Insurance Fund in relation to the effect of migrant and short-term workers and the subsidy by the long-term workers and to highlight the point that he made about the difficulties that the Fund is experiencing. That and other points that he made "that at no stage was that foreseen or was brought up in the advice given by the British Government to previous Gibraltar Governments". Similarly, I would also reiterate another point that he made and that is that there will be in the future, United Kingdom Government technical support to carry out an analysis of the Fund and compare that to his comments on the Report of the Joint Study on the Spanish Pensions and the way that the original terms of reference had coloured the final Report. The point that I want to make, Mr Speaker, is that for the future we have had an indication, from the Chief Minister this morning, that the scheme as it stands and I think I am quoting him, "the scheme as it stands will not survive and may need to be either substantially reformed or replaced" and that we will be depending once again on British advice, in essence, to do this.

HON CHIEF MINISTER:

If I can correct that? We are not depending on British advice, Mr Speaker, what we are depending is on the computerisation of 20,000 files which cannot be processed manually and as a result of putting all that information into a computer and being able to analyse within a short

time scale the implications of different things. The policy of the future will however be determined by us, because all that the British Government is doing is picking up the bill for the Spanish pensioners. There will be no interference from the UK Government in what we put in its place.

HON LT COL E M BRITTO:

I thank the Chief Minister for that clarification. However, in essence what I am saying, is that from a situation that we have at the moment of total British liability we are now moving into a situation, in the future, of reform and of change for the Social Insurance Fund and the point which I think is essential to stress is that in making those changes it is essential that we avoid the possibility of a situation arising where the liability that has been clearly established as being Britain's is eliminated and instead we end up with the possibility of a liability falling on the Gibraltar Government. It is vitally important in Gibraltar's interest that any changes that are made safeguard the position so that there is no possibility of a similar situation arising in the future and Gibraltar being landed with the liability. Thank you Mr Speaker.

MR SPEAKER:

If there are no other contributors I will call on the Hon the Leader of the Opposition to reply.

HON A J CANEPA:

Mr Speaker, I only have two points that I want to deal with in exercising my right to reply. I think that Honourable Members opposite who were Members of the last House of Assembly and most certainly the Chief Minister himself knows that over the years I have taken, and I continue to take, a very close personal interest in matters to do with Social Insurance. My role within the team of Gibraltar negotiators back in 1984/85 which Sir Joshua Hassan, the Financial Secretary, the late Mr Joe Pitaluga and myself used to attend in London, my role within that team was a similar one to what the Chief Minister now has, in the sense that on the details, I was the leading negotiator if you like, naturally the overall responsibility, at the political level, was that of Sir Joshua Hassan but I used to get very much involved in the nitty gritty of the matter and that is why I preface what I am going to say in respect to two matters that were brought up by the Chief Minister. When he said "that there was no fallback position if money were to run out before the end of 1988". That is so, and my own position on that one was, and I certainly was not in splendid isolation, the rest of the Government agreed with me in that we would not pay. We would have had expected Britain to meet any shortfall and that is what we were prepared to go to town

on, had we had responsibility for having to deal with the matter. With regard to the Joint Study Report which has come up with various devices as to what can be done in Gibraltar, make pensions taxable, freeze them and so on. Well quite honestly to me it was all water off a duck's back. The position that I took was, you come up with anything you want because when the moment arrives we are going to dig our heels in, we are not going to pay, because we cannot. It was as simple as that. The Joint Study, the people working on the Joint Study, I think recognised that, in the sense not that they recognised what action I was going to take, no, what they said ultimately, it is a political decision. Whatever you come up with the matter was going to have to be fought out with the Foreign Office. Our position was the determination of the Gibraltar Government to deal with a difficult problem, not to lose our nerve and to be confident that Britain ultimately was going to have to bear the brunt of it. The other interesting point, made by the Chief Minister, is of his having been told by the experts "that no scheme stays the same for thirty years". Of course corrective measures are usually taken to meet the evolving situation but what did we do, in our case in Gibraltar, what we did was that twenty years after the start of the scheme, in the middle seventies, what we did was, to expand the scheme enormously and to improve it. We introduced the formula linking the level of Benefits to Average Earnings, we made the scheme universal, we made everybody insurable, which up to 1975 was not the case, and all those improvements I think, we had every expectation, every reasonable expectation, of being able to get away with them or being able to afford them by a modicum of increases in contributions except for one underline problem, in a closed frontier situation, of course. The problem was the Moroccan workers. The Moroccan workers presented a problem then and they could present a bigger problem in the future, if Morocco enters into Agreements with the EEC. This may happen because there are hundreds of thousands Moroccan workers throughout the Community. So this would have posed an additional problem for us, even if the frontier had remained closed, but we were working in a vacuum in Gibraltar, we were working in a microcosm and what we did, in the middle 1970s, with the support and encouragement of the Honourable Member opposite was something that we felt was required. We really wanted to do this for the benefit of our people. If workers were getting parity of wages with the United Kingdom, we wanted our pensioners to have a standard of living that was commensurate with the younger generation of workers. So it was done in good faith and as I say I think we probably would have got away with it but for these other historical factors, of Gibraltar having been opened up, exposed to Social Security Regulations of the EEC in a more dramatic way after the opening of the frontier. We are grateful for the line the Government has taken generally on this motion and we are happy to see that we are able to reach what amounts, Mr Speaker, to a consensus.

Mr Speaker then put the question and on a vote being taken the question was resolved in the affirmative and the Hon A J Canepa's motion, as amended, was accordingly passed and now read as follows:

"This House -

(1) Declares that the three-year agreement reached in December 1985 on Spanish pensions did not commit either party to fixed percentage contributions during the period 1986-1988, or beyond;

(2) Deplores the decision of the British Government to re-allocate for the payment of Spanish Pensions ODA funds previously earmarked for development projects in Gibraltar after agreement between ODA and the Gibraltar Government;

(3) Urges the British Government to refrain from making any further use for this purpose of the remaining funds out of the £6m set aside for development;

(4) Considers that the arrangements entered into by the British and Gibraltar Governments for the reform of the Social Insurance Fund should safeguard the accrued rights of all pensioners and contributors on a non-discriminatory basis and in accordance with community law".

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

HON A J CANEPA:

Mr Speaker, I have the honour to move that:

"This House -

Upholds the independence of the Civil Service in the carrying out of their functions as a pre-requisite for good Government and would view with concern any interference which such independence or with the constitutional provisions safeguarding the same".

I wonder, Mr Speaker, whether we might not, in dealing with this motion, revert to the more common experience over the years of motions from the Opposition benches namely that every word after "this House" would be deleted. We will see. Mr Speaker, let me say right at the outset of my contribution, and I would not have felt it necessary to stress this point but for the interpretation that was put on my motion in a certain newspaper, but for that I would not have introduced my contribution with the statement that I have no doubt whatsoever about the political impartiality and the integrity of the Civil Service and Civil Servants generally. I have no doubt that they have

always been above party politics, that they are above party politics and I venture to hope that they will always be allowed, in the future, to be above party politics. My motion is not intended to be a motion of censure on the Government, I do not particularly want to be controversial if I can help it. My objective is to bring out into the open, to give an airing to a matter which has been causing some concern in town, and in particular amongst members of the Civil Service, and to invite the Government to take note. The Government may then wish to act accordingly, just as the Chief Minister felt it necessary to close down Government offices for an afternoon in order to call in Civil Servants and to clarify certain matters, in particular those related to the setting up of Joint Venture companies and to the restructuring of the Civil Service. I do not know to what extent, Mr Speaker, all Honourable Members are aware of what the Constitutional position is with respect to the Public Service Commission, the body which by and large has certain duties and functions to perform in the appointment and promotion of Civil Servants and perhaps it might be useful for the record if I were to quote briefly the relevant sections of the Constitution. The Public Service Commission, Sir, is set up under Section 72 of the Gibraltar Constitution. The other sections of the Constitution which deal with the Public Service Commission are Sections 73 and 74. Section 72 formally sets up the Public Service Commission. Section 73 deals with the role which the Public Service Commission has to perform, by and large being that of advising the Governor on certain matters effectively the service and Section 74 deals with the performance of functions of the Public Service Commission. I think that Section 73(1) is particularly relevant and it reads as follows: "The Governor acting in his discretion may refer to the Public Service Commission for their advice any question that relates to the appointment, promotion, transfer or termination of appointment, dismissal or other disciplinary control of public officers, and any other question that, in his opinion, affects the public service". Section 74(4) makes it clear that "In the exercise of their functions under this Constitution, the Public Service Commission shall not be subject to the direction or control of any other person or authority". So in a nutshell, Mr Speaker, their role is to advise the Governor and by and large they do that in respect of matters to do with the promotion of Civil Servants. Occasionally disciplinary matters may be referred to them but they are few and far between. In the exercise of their general functions over the years, the business of the Public Service Commission by and large has been to consider applications for promotion within the Civil Service and to deal with those applications. However appointments and promotions are made by the Governor on the advice of the Public Service Commission. The Public Service refers the matter, through the Deputy Governor to the Governor for a decision. It could be said that the Public Service Commission exists and has existed over the years to ensure that there are no, what is commonly termed jobs for the boys, so Ministers

are not involved in these matters, I think it would be undesirable if they were to be involved, if they were to meddle in appointments. The procedures and the conditions of the Civil Service in Gibraltar are modelled on that of the United Kingdom. We do not have the situation in Gibraltar as in the United States where public servants change with the political administration, the President, Governors of States, Senators, they all bring in their own political advisers and appointees. We have the situation such as in the United Kingdom that with the change of Government, Civil Servants remain in office and they are committed to serve the Government of the day with total impartiality. Such has been the position in the past and I have no doubt that it will remain and continue. My personal experience, in sixteen years in Government, Mr Speaker, was that when vacancies occurred they were automatically filled as a result of the initiative, the procedures followed by the administration. Indeed Ministers, never got to know about promotions other than when we heard about them in the street. The only exception that I can remember in all my years was to have been consulted by the Establishment Officer to ensure the acceptability of the person appointed to be my own Personal Secretary. Other than that, over all the years in the Department of Labour and Social Security and numerous other departments which I was the political head, I just got to know about appointments in the street, there was no semblance of consultation or what have you. In the case of a Personal Secretary for very peculiar reasons, because naturally the person has got to be someone who is going to be working very closely with the Minister I was consulted, it was not even so much a promotion it could in fact be termed more a transfer. It is only the Chief Minister, Mr Speaker, who is consulted by the Governor where appointments are made to the post of Head of Department or their equivalent. What one would term the Senior Grades. Then the Governor as a matter of course consults the Chief Minister on the advice that he has received from the PSC. What the Governor is doing in this case is effectively giving the Chief Minister the right to veto an appointment at that level. That has been the practice in the past and I am sure it so remains. What has however caused some disquiet in recent months, Mr Speaker, what has caused some concern amongst the public and also within the Service, is that there have been some instances of post that should have been filled but have not been filled, there has allegedly been a case of a direct appointment and which led to six senior Civil Servants feeling it necessary that they should go to see the Deputy Governor, to complain to him about the matter, the Deputy Governor who is to all intents and purposes the Head of the Civil Service. It is also said that there has been a case where the Public Service Commission selected an officer for promotion to Senior Executive Officer, but the post went to somebody else who had not even applied. There has also been talk that some weeks ago a number of applicants for vacancies as Clerical Assistants were interviewed, were wait listed, two vacancies were filled,

but in the event they were not taken from the short list but from outside the list. Mr Speaker there would appear to be cases of appointments not being referred to the Public Service Commission and which should have been referred to them and of their recommendations not having been accepted on at least one instance. I am not going to go into any great detail, Mr Speaker, on these matters in order not to cause embarrassment, in order to try to keep the discussion on the rails and they are matters that we like others, hear about in the street. We have however gone public in the case of Mr Peter Cumming because quite frankly what happened to Mr Cumming was something totally without precedent, certainly in my experience, and it seemed to us that it was almost incredible that in this day and age what happened to him could happen to any Government employee, moreso given the readiness of Trade Unions to come to the help of their individual Members in such matters. We have also been very concerned that the Gibraltar Health Authority has been brought back within the ambit of the Civil Service and we cannot but wonder what the real reason for this course of action is. We accepted the recommendations of the Medical Review Team totally, on the setting up of the Health Authority and all along when in Opposition, the statements made by the GSLP on the matter, on the setting up of the Health Authority, on the recommendation of the Medical Review Team seemed to indicate that they also supported the recommendations. Why now the change? I find it difficult to believe, Mr Speaker, that it just has to do with the Public Service pensions and I find it difficult to accept that the Pensions Ordinance cannot be amended in a suitable manner to safeguard the position of those civil servants who have taken up employment with the Authority. There has also been an instance involving the Health Authority where the Matron felt it necessary to state in a memorandum to certain members of the staff that certain instructions had in fact come directly from the Chief Minister. The position of the Chief Minister is one where he is regarded as the Minister for the Civil Service. He has an important function to perform in ensuring the independence of the Civil Service when carrying out these functions. This special position and relationship with the Civil Service is not intended to give the Chief Minister an opportunity to behave or to act in an opposite sense. It is one where he is there to ensure that that is the case and is there to appeal to, if necessary, by the representative Associations on any matter in that they feel they have reached a deadlock and they would like to see whether the political arm can exercise their good offices in order to avoid the deadlock. We have no doubt, Mr Sepaker, that Government upholds the principles that we are enunciating. They have certainly said nothing in Opposition to give any indication to the contrary. The Honourable Mr Bossano, during the time he was Branch Officer of the TGWU and the ACTSS was in fact in a unique position, in some respects, as a very close observer of the administration at work. He has therefore been able to see over the years the working of these

principles in practice. What we are really doing, Mr Speaker, in conclusion, in bringing this motion to the House is nothing more, nothing less than bringing these matters to the attention of the Chief Minister and his Government. Maybe they are aware of the matters that we have raised, but in case they are not aware, we thought that we should bring them to their notice. It is not easy, and I speak from practical experience, to spend many hours working in Government Departments and in Government offices and at the same time to have the finger fully in the pulse. You need to be in the street, you need to do what the Honourable Mr Bossano used to do when he was Branch Officer be able to walk around, to have the time and to be stopped by people and listen to what they have to tell you without the pressure of having to attend numerous meetings and know that there are people waiting for you and that you are going to be late. Because it is not easy to perform both roles, to be a Government Minister and to look after the constituency interest, which as Members of the House we all have to look after and we thought it opportune to bring this motion to the House. I hope that the Government will be able to view the motion and perhaps even hope that they will support it in the spirit in which I have moved it and I hope that they will also be able to reply in the same low key manner. Mr Speaker, I commend the motion to the House.

Mr Speaker then proposed the question in the terms of the motion moved by the Hon the Leader of the Opposition.

HON CHIEF MINISTER:

I do intend to amend the motion, Mr Speaker, but not by removing all the words, but by removing any misconception which certainly I am sure the Honourable Members opposite will have no problem in supporting the amendment, because they are consistent with what the Honourable Member has said. So what I will do is move the amendment and then I will just answer the points made by the Honourable Member. I propose that the motion should be amended by inserting the words "the loyalty and" after the words "upholds the", so that it would read, "upholds the loyalty and independence of the Civil Service" and then by also inserting the words "implementing the policies determined by the democratically elected Government" after the words "of their functions" in the second line. So that the motion will then read "Upholds the loyalty and independence of the Civil Service in carrying out their functions, implementing their policies determined by the democratically elected Government" and the motion will then continue as originally moved. I am doing that Mr Speaker, because the protection to which the Civil Service is entitled is of course a protection so that it carries out its functions, that is to carry out the policies that are determined by the elected Government and which have got the support of the electorate. I think one thing that we need to cure once and for all is the idea that the Civil Service is independent in the

sense that it has an independent line of its own and can determine its own policies. Certainly that is not something that is acceptable to us. I recall on many occasions, in Opposition, questioning the Government on things and the Government would say that it was the other side of the House or the other side of the Government which was responsible and there were two sides. There was the administrative "Civil Service Governor side," deciding certain things, and the politicians deciding other things. As far as we are concerned, the Civil Service is employed from public funds to serve the public and what we have to do, in protecting taxpayers in Gibraltar, is to make sure that the people are getting or that they are entitled to get what is in fact reflected in the policies that they supported in the Election. I do not know what it is the Honourable Member was trying to make me aware of because he made a number of passing references to things but he said he did not want to be specific so as not to embarrass anybody. Let me say he certainly does not embarrass us by anything he wants to make public. It may be that he does not want to embarrass the people who come to him with stories which may be true or may not be true. He has raised the question of the sending out of a circular and which I have already answered. He has already raised it previously and I have already given him the explanation "that the Matron sent out a circular because in fact as a consequence of the Report that they accepted, when they were in Government, we created ten posts of Senior Enrolled Nurses and we as a Government were not prepared to pay people and not have them do the duties that go with the pay". The Matron may not agree but we are responsible for footing the bill of those ten jobs and as far as we were concerned, as a Government, it was our policy that they should be required to do the job of a Staff Nurse if they are being paid the pay of a Staff Nurse. It is as simple as that. Any Civil Servant or any Head of Department, as far as we are concerned, as a Government, is there to give us advice and to tell us what they think professionally which is what they are paid to do, what they think is the right way or not the right way to proceed to achieve objectives which we lay down. What they are not there for is to tell us what the objective should be and it is a nonsense for the Honourable Member to say that the Civil Service has served all the Governments in the sixteen years loyally because it has been the same Government in the sixteen years. The test of the loyalty is now, for the first time since 1972, and I can assure the Honourable Member that there were serious reservations in 1969 to 1972 about some of the policies that were being implemented or not being implemented at the time. I remember this from the other side of the House. I was in contact with people who were in Government and I knew of the internal problems that they were having in some areas and I can tell the Honourable Member opposite that I have had more than one Senior Civil Servant, who has told me in the last sixteen years that they would pack their bags and go rather than serve under a GSLP

Administration. So let us not kid ourselves, Gibraltar is very small and we all know each other and you do not need to parade up and down Main Street to find out what is going on. I do not know where in town there is disquiet or in which corner of the bureaucracy, there are people being upset. As far as I am concerned, the Public Service Commission, as the Honourable Member has quoted, is there to give advice. He has, in fact, read Section 73(1) which says "the Governor at his discretion may refer matters to the Public Service Commission". So presumably, if the Governor does not refer it to the Public Service Commission, because the Governor in the full knowledge of what the policy of the elected Government is, does not think it is necessary. The Civil Service is being asked to accept very fundamental changes, in attitudes, in the way that it is organised and in the way it has to serve the public. I think we all need to be reminded that we are employed to serve, as Ministers and as Civil Servants, and it is the taxpayer that is the ultimate employer and that has to be satisfied. What we cannot have, and what we will not have as a Government, is a situation where the policies that we promised people, Mr Speaker, do not get implemented because individuals within the hierarchy do not agree with those policies, for all the best reasons in the world, not because they are AACR, not because they do not like us, simply because they do not know better. Now, they might have felt they knew better before, when there were part-time Ministers, and they felt they were there all the time, but we are there all the time now and we have got sixteen years of experience of failure to deliver results. Therefore we are now making sure that results are delivered and we are making sure that whether we are talking about selecting Administrative Assistants and I do not know how AAs were selected before, but we certainly told the Personnel Manager that there were certain criteria in selecting people for jobs which has nothing to do with their party affiliations, let me say, and the Honourable Member may feel that the Public Service Commission has existed all these years to make sure that there are no jobs for the boys, but I do not know where he went for his walks in the last sixteen years, but I can tell him that everybody that I ever spoke to in sixteen years knew who was going to get the job before it was even advertised. So I do not know how that was managed. Today we have laid down certain criteria and one of the criterias we set, in terms of recruitment, is that we have to balance not just the qualifications and the skills of the applicant, but the social needs of the applicant. We think it is a nonsense for example to have a situation where you have a Labour Department, where private sector employers are expected to open vacancies and the Government does not open its vacancies in its own Labour Department. The Government advertised the vacancy in the local press. We have stopped that, if we do not have any confidence in our own Labour Department, how do we tell employers that they should do it. We should open the vacancies in the Government in the Labour Department, and before we start encouraging people to leave other jobs to come to the Government, let us find out who is unemployed and see

whether we can help the people who are unemployed by taking them into Government. Therefore we look at the needs of the individual, we look at the fact that we may be paying somebody supplementary benefits and therefore he may not be the ideal employee, from the point of view of the Departmental Manager but from the point of view of the Government looking at its overall responsibility, we think that socially and even economically it might be better to employ somebody that is considered unemployable by others, who a Head of Department might not want, because it means more headaches and more work for him, than to employ somebody who is already employed somewhere else and who does not need that particular job and who has no difficulty in finding work and who leaves his other employment to come to the Government. So we have introduced certain criteria which we consider to be consistent with a responsibility, not just to man the Public Service efficiently, but also to have a role in society and that is not new. The previous Government for many years had a non-public, but defacto policy, of sheltered employment and people, we all know, have been taken into Government, who strictly speaking if they were going to be interviewed and treated totally objectively on their ability, would not have got the job, but the Government has recognised that they have a handicap, or they have this problem or the other problem and therefore this has always been going on. Mr Speaker, let me therefore say that there is no need for disquiet and that the move from the Health Service back to the Government has no sinister connotations, it is a very simple one. Like many other things, when we came in we found a situation in existence which has not been properly thought out. I have already explained it, Mr Speaker. We took office on the 25 March, the Health Authority, in law, was created on the 31 March, people had already been told, in writing, they were being transferred with all their rights to the Health Authority and there was no legal power to pay them in April. Nobody had thought of it. Under the Financial Procedures Ordinance what happens is that if you have them moved with the new Budget, the Financial Secretary has got the authority to carry on paying for three months under the Public Finance (Control and Audit) Ordinance, but it can only carry on paying for three months, the people that were already being paid on the 31 March in the Civil Service. Since these people stopped being in the Civil Service on the 31 March, they could not be paid under the discretionary powers of the Public Finance Ordinance and they could not be paid by the Health Authority because the Health Authority had no money because we had not yet passed the Budget. What we therefore had to do was to stretch the rules by making an advance to the Health Authority so that the Health Authority could pay its employees and then repay us back when we brought the Appropriation Bill to the House and we gave the Treasury subsidy to the Health Authority. That was the first problem and after that we found that there were serious difficulties which Honourable Members know about as I have

explained it to them in the House and outside the House, serious difficulties about protecting pension rights and we could not argue, they are going to be treated as Civil Servants for pension purposes because they receive a subsidy. I have already told them that and I have already told them why, because one could argue that Mount Alvernia receives a subsidy, so why should they not be treated as Civil Servants. GBC receives a subsidy, so why should they not be treated the same. Therefore when we looked at all the ramifications, we said "we have inherited a system that has been rushed very quickly, the law was passed in December and the Health Authority was created three months later and what we are not going to do is have an ad-hoc decision, where in order to solve one problem, we take short-term measures and then we find ourselves with ten problems where we had one before", which is something that has happened to Members opposite over the years and the Leader of the Opposition knows quite well that I am stating the truth. Short-term ad-hoc decisions and then the problem surfaces when you least expect it and really floors you. So we thought right the only sensible thing we can do is to go back to square one. We will maintain the independence of the Health Authority in terms of their being able to run their own show and spend their own money, but effectively, we maintain the promise given by the previous Government that everybody who is in the Health Authority will continue to be in the Civil Service. Then that created a problem that between the 31 March and that decision a number of people had been promoted, and had been taken into the Service who were not selected by the Public Service Commission. We then had to find a solution to that problem. The arbitrary cases that the Honourable Member is quoting about people being promoted are the people that they promoted and that they put in at Grade F, in the Hospital when they were in Government and the opposition that we have had when six people came to complain to us was that those six people came to complain to us, that the people that the AACR had made Grade F, had gone up too fast and that they were not senior enough and now they were coming back into the Civil Service with the Grade F that they had achieved in the Health Authority. It is not that we were trying to get jobs for the boys, I do not know whose boys they are but I do not think they are my boys, in Grade F. What we had was a situation to which we had to find a solution and we talked it over with the people concerned, we talked it over with their Union and when we had that meeting where I asked everybody to come, and I agreed this with the GGCA, it was in fact because within the Service, one thing we have found out, I am not saying that this is deliberately promoted by the Leader of the Opposition or by Members opposite, because I do not think it is, but we have found out that there are people who voted for them and who are well known, open supporters of theirs within the Service, and who stir up whenever they can stir up, Mr Speaker. We all know it and we know who they are. We have not sacked them, we have not victimised them, we have not disciplined them, but we know who they

are and therefore when we get a feedback, as we do, that people are being deliberately scared, by being told "well now that Joe Bossano is in he is going to get rid of all the Civil Servants, that he is going to take away your pensions from you, that he is going to make you all work more", well fine we told the Union that we would like to meet the Service face to face and we would explain our ideas and our policies to them, because we believe that by frank talking across the table, whether it is to a group of workers or Civil Servants or Heads of Departments or anybody else, that is the only way in which to get to the truth. We have no problems in defending the philosophy, with the additional amendments that I have put, and certainly nothing that I have said, as far as I am concerned, is inconsistent with the intention of the motion as explained by the Leader of the Opposition. We want the Civil Service to be independent but at the end of the day the policies of the Government of Gibraltar will be decided by the elected Government and not by the Civil Service.

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

HON A J CANEPA:

Mr Speaker, just one point in the amendment. In omitting the word "in" before "implementing", what the motion is doing is limiting the functions of the Civil Service to those of implementing the policies determined by the democratically elected Government. Does not the Honourable the Chief Minister accept that they have got other functions beyond that, for instance, enforcement of the law? The law is there and unless it is amended continuously by the Government, who reflects its policies, it is there, they have got functions as enforcement officers. That is a job which a Civil Service has to do. There are other branches of the Civil Service which in fact are independent such as the Judiciary, there are people employed in the Judiciary who are not subject to the policies of the democratically elected Government, they are subject ultimately to the Courts. So I think it is taking too narrow a view, in saying "the carrying out of their functions, implementing the policies determined by the elected..." I would suggest that there is a need for the word "in", so that the amendment would then read "carrying out of their functions in implementing the policies determined by the democratically elected Government" because there are other functions which have nothing to do with this House. I would therefore move, Mr Speaker, if

Honourable Members opposite are agreeable, that the Chief Minister's amendment be further amended by adding the words "and in" before the word "implementing". There is just one other point, Mr Speaker, that the Honourable the Chief Minister made reference to and that was the problems which the 1969 to 1972 IWPB Government had. I was a fairly close observer of the political scene at the time, even though I was not a member of this House and it was about half way through that term of office that I decided to take the plunge. When I came into Government in 1972, I was able to learn a little bit about the difficulties that one encounters and they may be the same kind of problems to which the Honourable the Chief Minister has made reference to. There were however other problems and they were as a consequence of the implementation of a new Constitution. A new Constitution that created a system of dual responsibilities, what were termed as defined domestic matters and matters that were not of a defined nature. It was in that territory that was not of a defined nature, where perhaps Senior Civil Servants who were in situ took a particular view as to how the Constitution applied. When we came into Government in 1972, we had a residue of those problems and over the years we were able to overcome them and some of those Members who were then in the Opposition pointed out that we seemed to be getting away with things that they had not been able to achieve. It was the working of the Constitution, the way that it evolved, in my view, more than anything else which created difficulties for them. Having said that, the only other point I want to make, Mr Speaker, is that I think the exercise has been a useful one and we have ventilated certain matters and they are there for the record.

Mr Speaker then put the question in the terms of the Hon the Chief Minister's amendment and the Hon A J Canepa's further amendment which was resolved in the affirmative and the amendments were accordingly passed.

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

"This House -

Upholds the loyalty and the independence of the Civil Service in the carrying out of their functions and in implementing the policies determined by the democratically elected Government as a prerequisite for good Government and would view with concern any interference with such independence or with the constitutional provisions safeguarding the same."

The question was resolved in the affirmative and the Hon A J Canepa's 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 before I propose the adjournment, I think it is the custom and practice when we have a meeting in December to wish yourself, Members opposite and indeed the people of Gibraltar the seasons greetings. I think we have always done that even when we have had a heated debate as the final item on the Agenda. Since this one has been less heated than normal, it is appropriate that in moving the adjournment of the House sine die to wish all the best to our fellow Members in this House, to yourself and also to the people of Gibraltar.

HON A J CANEPA:

I would just like to reciprocate those sentiments, Mr Speaker, to Honourable Members opposite, to the Clerk, to yourself, to the staff of the House and if we do not have you here next Christmas, Mr Speaker, we will be thinking of you.

MR SPEAKER:

Well gentlemen since I have not received notice of any matters to be raised in the adjournment, I will now put the question, but before doing so, may I reciprocate and thank you all for your good wishes and may I at the same time also wish a very merry Christmas and prosperous New Year to our Hansard staff, to the media who always sit with us and to Gibraltar in general.

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

The adjournment of the House sine die was taken at 1.25 pm on Tuesday the 6th December, 1988.