

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

9TH NOVEMBER, 1989

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Seventh Meeting of the First Session of the Sixth House of Assembly held in the Assembly Chamber on Thursday 9th November, 1989, at 10.30 am.

PRESENT:

Mr Speaker (In the Chair)
(The Hon Major R J Peliza OBE, ED)

GOVERNMENT:

The Hon J Bossano - Chief Minister
The Hon J E Pilcher - Minister for GSL and Tourism
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 K W Harris - Attorney-General
The Hon J H Bautista - Financial and Development Secretary

OPPOSITION:

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

The Hon P C Montegriffo

IN ATTENDANCE:

C M Coom Esq - Clerk of the House of Assembly

ABSENT:

The Hon J L Baldachino (who was ill)

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 31st July, 1989, having been previously circulated, were taken as read and confirmed.

ANNOUNCEMENTS

MR SPEAKER:

I'd would like to make two short announcements. First of all, I think, to welcome the Hon Ken Harris to the House in his new appointment as Attorney-General. We have known Ken for some time now and I think we all wish him a happy and effective performance in the House.

HON ATTORNEY-GENERAL:

Thank you very much, Mr Speaker, for your kind remarks. I do not anticipate being as vociferous as the Members on either side of the House in this particular building but I hope I can play something more than a passive part and contribute usefully to the proceedings of this House. I will certainly endeavour at all times to do so. Thank you, Mr Speaker.

MR SPEAKER:

The next announcement is regarding the Hon Mr Peter Montegriffo. He has informed me that he no longer takes the whip of the GLP/AACR and that he wants to be considered as an independent Member.

DOCUMENTS LAID

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

- (1) The Tourist Survey Report, 1988.
- (2) The Chairman's Report and Accounts of the Gibraltar Museum for the year ended 31st March, 1989.

Ordered to lie.

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

The Employment Survey Report, October 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.9 of 1988/89).
- (2) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.10 of 1988/89).
- (3) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.3 of 1989/90).
- (4) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.4 of 1989/90).
- (5) Statement of Improvement and Development Fund Re-Allocations approved by the Financial and Development Secretary (No.5 of 1988/89).
- (6) Statement of Supplementary Estimates No.2 of 1989/90.

Ordered to lie.

MR SPEAKER:

Perhaps at this stage I should announce that the Hon Mr Baldachino is ill and therefore is unable to attend the meeting today and that in his absence the Hon Mr Feetham, Minister for Trade and Industry, will do his best to answer the questions. May I add that if any Member is not satisfied with the answer given, the matter can either be pursued by letter or, if necessary, if not fully answered, the question could be asked at the next meeting again.

ANSWERS TO QUESTIONS

The House recessed at 1.00 pm.

The House resumed at 3.35 pm.

Answers to Questions continued.

BILLS

FIRST AND SECOND READINGS

THE EMPLOYMENT (AMENDMENT) (NO. 2) ORDINANCE, 1989

HON R MOR:

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

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, this is simply a consequential amendment as a result of a Bill I, previously brought to the House. Due to an oversight there were parts of the Ordinance which still refer to sections which have been renumbered and this Bill is just intended to correct this. Sir, I commend the Bill to the House.

MR SPEAKER:

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

There being no debate 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 PENSIONS (WIDOWS AND ORPHANS) (AMENDMENT) ORDINANCE, 1989

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Pensions (Widows and Orphans) Ordinance be read a first time.

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

SECOND READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, the basic idea of this Bill is to lead to the winding-down or, should I say, winding-up of the present Widows and Orphans Scheme. The Bill is

really self-explanatory and as Members will have seen, it does two things. Firstly, Clause 2, prohibits entry into the existing Scheme of persons who joined the Government Service after the effective date of the proposed Ordinance which, as will have been seen, is the 26th October, 1989. There is no special significance in that date, Mr Speaker, it merely happens to be the date on which the Bill was published. Clause 3, entitles any existing Government servant participating in the Scheme to opt out of it, if he or she wishes, and to obtain a refund of contributions which he or she has made during the period of his or her participation in the Scheme. The word is 'refund', Mr Speaker, and not 'refused' which you may have noticed inadvertently appears in the published Bill. This is merely a slight printer's error which I do not think the House need worry about because if the Bill is approved and enacted, the entire explanatory memorandum will disappear. Mr Speaker, can I add, that the Government has instructed me to prepare and present this Bill in response to a request from the Trade Unions, who feel that it is in the interest of their respective members to alter the existing law. The Government is confident that many of those eligible to contract out of the existing Scheme will elect to do so. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

Mr Speaker, the Hon the Attorney-General said this morning in response to a welcome that he received on being appointed substantive Attorney-General, that he would be somewhat passive. I wish he would have been rather more active in moving the Second Reading of this Bill because he has really said very, very little and what is being done is a major step. A Scheme that has been in force for many decades and which is an integral part of the terms and conditions under which the Government employed its non-industrial, is being effectively wound up and the only reason that has been given is that it has been at the request of certain trade unions and that the Government has no difficulty in agreeing to that. I would have thought that that is really not a sufficient explanation of why, in fact, the Government considers that it is not necessary to have such a Scheme. The onus is now going to be on public officers employed by the Government to make provision for their widows and orphans and I say, Mr Speaker, that given my intimate knowledge, over a number of years in the field of pensions, and knowing people's attitudes both during the time when I

was a Minister and during the time when I was active in the Gibraltar Teachers' Association, I doubt whether as many persons, as many Government employees, will make provision for their widows and orphans as we would like to see. I think in practice many will not and therefore their widows and orphans could become and are likely to become a liability on public or social assistance in the future. Invariably, Mr Speaker, there are persons who do not think ahead, who imagine that it is not going to happen to them and that, in fact, no serious problems of hardship are going to be caused in the event of their dying before the natural order of things. We are not going to oppose the legislation because if the unions have raised the matter themselves and they seem to be generally agreed, who are we in the Opposition to do so and in any case it does not matter. But we do not support the measure and we will therefore abstain on the Second Reading of this Bill and time alone, I think, will tell whether in fact it is not a mistake to abolish the Scheme. Perhaps interim arrangements could have been introduced over a period of a year or so allowing for some flexibility so that people could decide during that interim period one way or the other but instead what is effectively happening is that the Scheme is being abolished. I think that people get a good return for their money. They contribute 1½% of their salary, I am not sure whether in return for that sort of contribution they would be able, in any case, to obtain that type of cover in the private sector, a life insurance scheme, that would be totally commensurate with what the government has been giving over the years. Of course, the 1½% contribution that they make is tax deductible and therefore in real terms that has reduced the level of contribution. I knew, having regard to the question that my Hon colleague, Dr Valarino, had made in the House in June, that there was a move within certain quarters, particularly a group of employees who apparently were being non-industrialised, their jobs were being non-industrialised, for them to be allowed to opt out but I had no inkling, until I saw this Bill, that there was a general move afoot within the trade unions in Gibraltar and which the Government was agreeable, to wind up the Scheme entirely.

HON CHIEF MINISTER:

Mr Speaker, the situation is quite simple. We do not feel that as an employer we should impose conditions on our employees which are ostensibly for their own good but which they do not want and therefore the situation is that it was raised by the non-industrial unions in SACC. The argument that the Hon Member has put seems to forget one very important element. The position under the Widows and Orphans Pensions Scheme is that it applies to salaried staff, it does not apply to weekly paid staff and it never has done. In all the year that the Hon Member was in Government, which was sixteen years, if he thought this

was such a good thing then I am surprised that he did not seek to extend it to all the weekly-paid workers whose widows, presumably, were even more vulnerable than that of the highly paid managers. But it is the people in the higher salaries who are the people who are protected and who say they do not want to be protected and the people at the bottom are not protected anyway and have never been protected. This is why since we had already agreed to a union claim coming from all the white collar unions saying through SACC that they did not want to continue with WOPS we thought "Well, if the people who have it do not want it, why should we force it on the people who do not have it". This is why when they were non-industrialised in a number of areas we told them: "Look, you do not have to join the Scheme because, in fact, we are going to give the option to those already in it to leave it". The legislation ends the requirement for people to join WOPS when they get promoted and become non-industrialised and the bulk of non-industrial recruitment in the Government is from within the Service. There are very few jobs where the vacancies are filled from outside because those jobs seem to be jobs which require specialist qualifications, things like teaching or a few other jobs where you do not normally get internal applicants but the bulk of the non-industrial jobs in the Gibraltar Government are advertised internally as the Hon Members knows and are filled internally and are filled quite frequently from the ranks of the industrialists who have never had WOPS so it did not matter what happened to their widows until they got promoted. We had to take a policy decision on whether we should say 'yes' or 'no' to what the Staff Associations were asking for and we could not, frankly, produce a good enough argument simply on the basis of saying, as I think the Hon Member is saying, that it is better for them to be in if they insist that in their judgement it is not better for them to have it. Who are we, Mr Speaker, to impose our criteria of what is good or bad for them when they are old enough to know for themselves what it is that they want. It is they who are paying for it and they do not want to continue paying for it and, in fact, the system that we have is that we are recognising the rights of those in the Service and we will know by the numbers that apply really, to what extent the Staff Associations are accurately reflecting what the majority want or not by whether we get a majority of people wanting to opt out or whether we get a minority wanting to opt out. This is accepting representations from the Staff Associations, through SACC, saying that they do not wish the Scheme to continue. They believe that they are not getting good value for their money and we have not done an exercise, comparatively speaking, to show whether what is provided for the 1½% is good value or not good value. We have simply, in analysing the claims, said: "Look, it is not that they are asking the Government to pay them more, it is just that they are saying they want to make their own provisions for their widows and their orphans in the case of death of the breadwinner

and that is already the case for the vast majority of people in Gibraltar". That is to say, within the Government we are talking about a situation where we have 3,600 employees of whom 2,000 are white collar workers and who are in WOPS and 1,600 who are manual workers and who are not in WOPS and it is the 2,000 who are in who want out and we cannot say 'no'.

HON DR R G VALARINO:

Mr Speaker, as you know we will be abstaining on the Second Reading of the Bill. The new Attorney-General, and I congratulate him again on his post, may not be acquainted with question No.136 of 1989 which I had previously put and therefore I feel that I should ask if it is in his judgement correct that 4(a) should read "the 1st day of June 1989". Perhaps once he has read that particular question and its answer he could tell us if the date I have quoted is the right or the date inserted. The indication was that previously people had been employed as from that date and were not paying WOPS at the time and therefore in many ways it would seem far more legal, it would seem, to comply with the law if we went to the "1st day of June 1989" to deal with the actual law rather than to the "26th day of October 1989" and retrospective back to when they were employed. I leave the matter entirely up to the Attorney-General. I do not know if he has the full question with him and if he has any qualms on the matter and he feels that I am right. Perhaps, Mr Speaker, we could have an answer at Committee Stage. If necessary, perhaps, the Committee Stage and Third Reading could be left for another meeting. With regard to what the Hon the Chief Minister has said, this is in many ways comparable to the social security system that we have in Gibraltar and if social security were not to be compulsory then many people would not pay their contributions. Thank you, Sir.

HON LT-COL E M BRITTO:

Mr Speaker, I would like to develop one of the arguments put forward by my Hon Friend. We have taken on board the arguments raised by the Hon the Chief Minister about representations from the unions and the fact that a certain number of people do not want to belong to the Scheme but we feel that it is perhaps unnecessary to axe the whole Scheme at this stage without assessing what the real position is. It seems to us that there is a very easy way of doing it without limiting the Government's options and that is to implement, at this stage, that part of the Bill which gives the present people within the Scheme the chance to opt out but not to automatically disqualify new entries. In other words, new entrants into Government Service should be given the option of whether to enter the Scheme or not. It would achieve the same objective and nobody would be forced to be in the Scheme against

their wishes and then after a given period of time, for example a year or eighteen months or whatever is considered suitable, in the light of the experience gained and in the light of what the people actually do would prove one way or the other whether people want it or do not want it.....

HON CHIEF MINISTER:

If the Hon Member will give way, Mr Speaker, otherwise I cannot answer the point. The position is, Mr Speaker, that the people who are at the moment industrials cannot join WOPS. We have not had any representations from the people who cannot join that they want to join. What we have had was complaints from the people that had been promoted that they were being obliged to join. That has been the history of this not just now but for as long as I can remember, people who had never had to pay always complained about having to join the Scheme and pay. They were told that they had no choice because it was a compulsory scheme. When we find that not only do we have the people who are being forced to join not wanting to join but the people who are in the Scheme wanting to opt out, then obviously what you cannot do is run a Widows and Orphans Pension Scheme for maybe a minority of people. Because if we go back over the last eighteen months from the evidence that we have we know that all the people who have joined in the last eighteen months would not have joined if they had been given a choice. So we stopped forcing people to join and the people that we stopped forcing to join did not say "we want to join, give us a chance to come in". So we already have the kind of evidence to which the Hon Member is referring. We have had this evidence for eighteen months, Mr Speaker.

HON LT-COL E M BRITTO:

Fair enough, Mr Speaker, if the evidence is already there it is achieving what I was suggesting. I accept that, Mr Speaker.

HON P C MONTEGRIFFO:

Mr Speaker, as far as I see the position, it is clear. I do not see why people should be forced to contribute to something when they feel they can make more adequate provision in the market for the people that they care for. I see no difficulty with this Bill and I will be voting in favour.

HON J C PEREZ:

Mr Speaker, one point I should mention is that when the Scheme was actually introduced there were no Life Insurance Policies in the market and now there are and I think this has influenced the non-industrial unions to ask for the

option to opt out of the Scheme. They think that they can make better provision through Life Insurance Policies with the added tax advantages that they get out of it.

MR SPEAKER:

Does any other Hon Member wish to speak? I will then call on the Mover to reply.

HON ATTORNEY-GENERAL:

Mr Speaker, can I first of all, thank the Hon Member Dr Valarino for his kind remarks, I greatly appreciate that. Can I say also, Mr Speaker, that it is not for me to suggest to the Government what the effective date of an Ordinance should be. My task, as I see it, is to implement Government's policy by drafting the appropriate legislation when I am requested to do that. If I am asked to do anything which I feel is not lawful then I will jolly well say so. If it is lawful however it is not for me to argue whether it is or it should be this thing or the other. That is for the Chief Minister and his fellow Ministers to determine. Can I say also, Mr Speaker, that as a contract officer of the Gibraltar Government and someone who has never been eligible to participate in the WOPS Scheme that I am very delighted that I have always been in the position, virtually all of my professional life, to make my own retirement arrangements with private insurance companies in the sector.

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

The Hon J Bossano
The Hon 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 K W Harris
The Hon J H Bautista
The Hon P C Montegriffo

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 Dr R G Valarino

The following Hon Member was absent from the Chamber:

The Hon J L Baldachino

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 PENSIONS (INCREASE) (AMENDMENT) ORDINANCE, 1989

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Pensions (Increase) Ordinance be read a first time.

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

SECOND READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a small Bill as Members of the House have seen which, in my view, requires very little explanation. As the House is aware, Government policy is to restructure the Civil Service and deploy staff to maximise the use of resources wherever Government considers it is expedient and appropriate so to do. This, ultimately means, Sir, that some positions in the previous structure become obsolete. The Bill provides a financial incentive to a person to leave Government Service on abolition of the office or post which he or she holds. Accordingly, it is necessary to add to section 3 of the Pensions (Increase) Ordinance which deals with the qualifying conditions for an increased pension, a new paragraph in subsection 2. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

Mr Speaker, we have no serious objection, in principle, to supporting this Bill because we are aware of the fact that there are a number of circumstances, other than when an officer retires at normal pensionable age, let us say 60, and becomes entitled to annual cost of living increases, we are aware that there are a number of circumstances, for instance, retirement on medical grounds where there is provision for the pension to be increased every year and it does seem to us that, in principle, it is fair that if someone is retired on abolition of office he should not be penalised by having the pension frozen until the age of 60. But we would like to have a little bit more information than what the Attorney-General has given. How many persons are likely to be affected immediately as a result of this? Have there been any instances that have come up recently which have therefore necessitated this amendment to the Ordinance? Also does the Government have any indication, having regard to the plans for restructuring which it has, of how many persons are likely to be affected, let us say, within the next twelve months or so? So we really would like to know are there persons immediately affected by the provisions of this or likely to be affected over the next year or so?

HON J C PEREZ:

Mr Speaker, taking into account the points that the Leader of the Opposition has raised. It is not a question that there is a targeted plan of posts that the Government has in its little black book and which are going to be affected within the next year or so. There are, as a result of the restructures that have already taken place, some people who are awaiting this legislation and which one could say have been unfairly penalised already and who would benefit of it automatically. I think the idea behind this legislation is basically as a result of those groups which have already been affected and who have used an argument which has convinced the Government that it is wrong to penalise them for the Government's plans but it is not that we have, as part of our restructuring policy, a number of posts targeted and that we are doing it to implement the plan. As part of the implementation of the plan there have been some people caught by this and they have made these representations and we have accepted those representations and they will be automatically affected by the provisions of the Bill.

HON P C MONTEGRIFFO:

Mr Speaker, whilst reserving comment on the general restructure of the Civil Service and the manner in which it is being undertaken, I see the Bill as a sensible and fair provision for people who are affected in this way. My only query arises from something that the Hon Minister has just mentioned and which is to what extent the Bill is designed to have retrospective effect. Perhaps the Attorney-General will be able to clarify for me whether there is a problem at all. However, if there are people who have been affected as a result of having left employment in the circumstances mentioned, then it will obviously be quite wrong for them to lose out whereas people who would subsequently be retired would not. The Bill states "has been retired" and I think that the matter should be put beyond doubt and clarified to make sure that we do not treat people unfairly or unequally.

MR SPEAKER:

If no other Hon Member wishes to speak I will call on the Mover to reply.

HON ATTORNEY-GENERAL:

Thank you, Mr Speaker. I have taken note of what the Hon Members have said and particularly what the Hon Mr Montegriffo has said and I will take instructions with a view to preparing, if possible, amendments to the Bill at Committee Stage.

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 the adjourned meeting of the House.

THE PENSIONS (AMENDMENT) ORDINANCE, 1989

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Pensions Ordinance be read a first time.

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

SECOND READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the Bill be now read a second time. Again, Mr Speaker, this is not a complicated Bill and as Members will have seen, it consists of only three clauses. The purpose behind Clause 2 is to expedite the procedure, in applicable cases, by substituting the necessity to obtain the requisite permission locally from His Excellency the Governor rather than from the Secretary of State in London. Clause 3 relates to the additional pension which a person with at least ten years service is eligible to receive on being retired on medical grounds. As Members will also note, section 5 of the Pensions Ordinance considered in conjunction with the relevant Pensions Regulations, provide that a person in such circumstances is entitled to be treated as having twenty years service in Government for the purposes of an enhanced or increased pension. Mr Speaker, there have been a number of cases where former Government employees have been retired on medical grounds and have in some instances made a rather remarkably quick recovery thereafter and entered into employment apparently as demanding as their previous Government employment from which they were retired as being unfit. I am sure that Members will understand, without further explanation from me, as to why Government considers that such persons who are fortunate enough to recover from their illness and which led to their retirement, should have no further need of the additional benefit arising out of their original incapacity to continue in gainful employment. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

Mr Speaker, we support this Bill, indeed, I will go further and say we welcome it. I say that because I recall a decision that we took in Council of Ministers in 1987, I think it was, that did precisely what is being done here by this Bill, namely, that the law should be changed so that people who retire on medical grounds with less than twenty years service but more than ten, instead of automatically having the difference between their actual number of years service made up to twenty, should only become entitled to a pension based on the actual number of years of service. We decided this because we were getting a spate of cases of people taking that sort of early retirement on medical grounds with slightly more than ten years and having, under a very generous scheme, the pension made up to twenty and subsequently we also discovered, as the Attorney-General has said, that they

made a remarkable recovery. In many cases they could not see their way to take up alternative employment within the Government but they were able to leave the service, make an extraordinary recovery and take up, perhaps, more onerous employment in the private sector than what we were offering them. We welcome this and I think it is a pity that the legislation has not come earlier. The reason is perhaps because of the problem which the second clause is seeking to eradicate and which is that the matter had to go to the Secretary of State and either the Administration here sat on it or the Administration there sat on it because I do not think that the Secretary of State himself used to come in to the FCO every morning and say: "What have you got for me from Gibraltar in respect of people wanting to take early retirement?" I do not think that that was the problem and therefore the legislation, which ought to have seen the light of day a couple of years ago, did not do so. So we welcome it and we support it because we know that it is going to stop the abuse that there is in certain areas of Government employment.

HON LT-COL E M BRITTO:

Mr Speaker, there is only one additional point to what my Hon colleague has said and that is referring specifically to subsection (3)(c) of section 3. It seems to us that the object of the Bill could be defeated if someone subsequently to being invalidated out of the service takes on employment which is slightly inferior in either status or responsibility or emoluments and that would defeat the whole object of what is trying to be achieved here. Secondly, that the difficulty of establishing the exactitude of things like status and responsibility probably cannot be underestimated. I think it might be worth looking at that wording a little bit closer in order to strengthen it, possibly by inserting 'or' in between to read "status or responsibility or emoluments", or even "substantially inferior". But I leave that to the Hon and Learned Attorney-General who is obviously much more expert than I am.

HON P C MONTEGRIFFO:

Mr Speaker, I agree with everything that has been said but I wonder whether the Bill goes far enough inasmuch as I think it is, and perhaps I have not understood the Bill totally, and if so the Attorney-General will correct me, but I think it discriminates against the person who takes up employment as opposed to the person who then takes up self employed activities and I think that that is a problem that, in fact, does occur where somebody who retires from Government service in the circumstances that the House is considering, actually then set themselves up as a consultant in something or other or does private

work because he has acquired that expertise in Government, he would still be eligible to his full pension but a poor fellow who perhaps then does what everybody else has been doing and obtains employment is going to get hit. I think that if the Government were to accept that that conceptually is right, then thought could be given to broadening it so that self employed people are also caught by what this is designed to do.

HON DR R G VALARINO:

Mr Speaker, a minute change for the Attorney-General to deal with, 12A(2) should read "A person" and not "A peson".

MR SPEAKER:

If no other Hon Member wishes to speak I will call on the Mover to reply.

HON ATTORNEY-GENERAL:

Mr Speaker, I am beginning to wonder if the Government printers can spell. Can I, first of all, apologise to the Hon Members on the other side of the House for not having drafted the Bill earlier but I was only appointed substantively to my present post six days ago and I have done it as fast as I possibly could. I do not think, in response to the points the Hon Mr Montegriffo has raised, that the Bill is discriminatory in the sense of contravening section 14 of the Constitution which contains the most applicable discrimination provisions which apply in our Gibraltar Laws but I am always very amenable, Mr Speaker, to any proposals which will tighten legislation and save the enthusiasm frequently shown by the lawyers in private practice in Gibraltar to suggest it is ambiguous in some way. With that objective in mind I most certainly will take instructions from Government with a view to effecting any amendments considered necessary at the Committee Stage. I am very pleased indeed that I have got something right insofar as the Hon Members of the Opposition are concerned in the sense that they are supportive of the Bill and I do not feel there is anything further I need add.

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 the adjourned meeting of the House.

THE CRIMINAL PROCEDURE (AMENDMENT) (NO.2) ORDINANCE, 1989

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Criminal Procedure Ordinance be read a first time.

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

SECOND READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, can I begin by saying that when I first came to Gibraltar five years ago I was most surprised that the provisions which this Bill seeks to implement into our laws did not then exist. The power to defer sentence in criminal cases has existed in the Courts of England and Wales since 1973 and, regrettably, I have to say, the former Attorney-General was not amenable to the proposal I made soon after my arrival in Gibraltar to enact the provisions I now seek to do. I am happy to say, however, that following consultation with the President of the Court of Appeal, the Chief Justice and the Stipendiary Magistrate, they very much support the Bill. The Bill does effect, Mr Speaker, an important and in my view, as I have said, rather of an overdue amendment to the Criminal Procedure Ordinance. I have personally always felt that Judges and Magistrates dealing with criminal cases should have as much flexibility as possible in matters of sentencing. This Bill, if approved and enacted, will enable the Criminal Courts to defer for a maximum period of six months the passing of sentence upon an offender instead of having to sentence him immediately on conviction. The Bill also provides, however, that if the offender on whom sentence is deferred is convicted of another criminal offence within the period of deferment, then the Court does not have to wait until the period of deferment expires but can then proceed to sentence on both offences. That is, Mr Speaker, of course, the offence in respect of which sentence was deferred in the first place and the further offence he has committed. I would suggest, Mr Speaker, that the type of case in which deferment of sentence is probably most appropriate is in the case of a first time offender who between the commission of the offence and conviction by the Court as expressed and shown remorse and who has indicated his willingness to take positive steps to resolve any problems existing in his life which may have contributed to the commission of the offence and the Court feels he should be given a chance to prove that he intends to do what he says. The Bill has the support, Mr Speaker,

as I mentioned already, of the members of the judiciary in Gibraltar and the new power the Court will be given is, of course, without prejudice to any of the Courts' existing powers in relation to the type of sentence which cannot be imposed. Mr Speaker, at the Opening of the Legal Year Ceremony, just about five weeks ago, in my address to the Supreme Court I indicated then that I hoped to have an early opportunity of introducing these provisions to this House for enactment. I am delighted that I have been able to have that opportunity and it is my pleasure to commend this Bill to the House.

MR SPEAKER:

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

HON M K FEATHERSTONE:

Yes, Sir, we support this Bill. It follows the practice in the United Kingdom and it does give a little joy to the convicted person that where a sentence is deferred it will mean unless he really blots his copybook in the meantime, when sentence is passed it will not incur a prison sentence. I have this from a high legal authority. I think that it is very reasonable to give a person convicted the opportunity, during the period of deferment, to do his best to make amends and I am sure that the person convicted in most circumstances will take this into account. Where he does not and where he commits another offence then he only brings any extra sentence on himself. We support the Bill.

MR SPEAKER:

If no other Hon Member wishes to speak I will call on the Mover to reply.

HON ATTORNEY-GENERAL:

Thank you, Mr Speaker. I confirm that what the Hon Mr Featherstone has said is absolutely correct, that an offender upon whom sentence is deferred can certainly expect not to receive a custodial sentence if he behaves himself and complies with any conditions implied or expressed which the Court attaches at the time it defers the sentence. It also does another thing, Mr Speaker, the Magistrates' Court when passing sentence has power, in appropriate cases, where it feels its powers of punishment are insufficient to commit a person convicted of a criminal offence to the Supreme Court for sentence. But if the Magistrates' Court in accepting jurisdiction to deal with the matter in the first place then after hearing the defendant or his counsel in mitigation, feels

it is an appropriate case in which to defer a sentence then after the deferment period has expired the Court has to decide then the appropriate sentence to impose. There is a case authority in the UK to establish the point that the Court then cannot commit the defendant for sentence, it must sentence him within its own sphere of authority.

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 the adjourned meeting of the House.

THE DRUG TRAFFICKING OFFENCES (AMENDMENT) ORDINANCE, 1989

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Drug Trafficking Offences Ordinance, 1988 be read a first time.

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

SECOND READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a Bill to effect important amendments to the Drug Trafficking Offences Ordinance of 1988. Members will recall that the Bill which lead to the enactment of the Ordinance which it is now proposed to amend, was introduced into this House on the 16th November, 1988, almost a year ago, Mr Speaker. It went through its remaining Stages on the 29th November, 1988, and was subsequently brought into operation on the 1st May of this year by Legal Notice No.32 of 1989. The Ordinance provides for financial investigations to be carried out in relation to persons suspected of having engaged in drug trafficking and for the confiscation of any traceable money or other assets acquired from drug trafficking. The Ordinance was modelled when the former Attorney-General drafted it, upon the UK Drug Trafficking Offences Act of 1986 which has recently been complemented or perhaps, Mr Speaker, I should say supplemented in some of its provisions by the Criminal Justice Act of 1988 in the United Kingdom. This Bill if approved and enacted by this Honourable House, will enlarge the Courts' powers

to make restraint and charging orders in sections 9 and 10 of the Ordinance. Under section 11, Sir, the Courts' power to make charging orders in relation to land and other securities is proposed to be extended. And there are amendments also to section 14 which deals with the application of the proceeds of realisation and a minor amendment to section 18 which deals with the winding up of companies holding realisable property. Clause 9 of the Bill, Mr Speaker, introduces a new Section 18A into the Ordinance and this contains provision relevant to insolvency practitioners dealing with property which is subject to a restraint Order and is provisionally additional to the Courts' powers under existing legislation, for example, the Bankruptcy Ordinance. Clause 10 amends the Courts' powers to award compensation to persons acquitted or pardoned by His Excellency the Governor who have suffered financially by reason of having been prosecuted. Clause 11 extends the scope of the powers of the Governor in relation to enforcement of external orders and their registration. Mr Speaker, can I present the Bill on the basis that it is a further instrument to be used in Gibraltar's participation in the international fight against trafficking in drugs and the large financial rewards it clearly brings to those who engage in such unlawful enterprise. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON M K FEATHERSTONE:

Yes, Sir, we support this Bill, in principle, since it tightens the regulations under which a person who is dealing in drugs can have his property taken into consideration and confiscated, etc and we consider this to be a good thing. We give it our full support.

MR SPEAKER:

If no other Member wishes to speak I will call on the Mover to reply.

HON ATTORNEY-GENERAL:

Mr Speaker, again can I say how very pleased I am to hear that the Bill is supported by the Hon Members of the Opposition and in view of that I do not feel it is necessary for me to add anything further.

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 the adjourned meeting of the House.

THE BORROWING POWERS (1988-1992) (AMENDMENT) ORDINANCE, 1989

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Borrowing Powers (1988-1992) Ordinance, 1988 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 FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. The Bill, Mr Speaker, seeks to raise the ceiling of Government borrowing from its present level of £50m to £100m. It also seeks to remove the existing limit on the time for borrowing which is no longer a justifiable constraint. The Government requires this flexibility to tap funds at short notice for its investment programme in furtherance of its restructure of the economy. The additional borrowing capacity, coupled with the removal of the time limit on the exercise of those powers, will also facilitate the re-financing of costly loans by cheaper borrowing. Mr Speaker, the new ceiling of £100m does not necessarily mean that the public debt will permanently operate at that level. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON G MASCANREHAS:

Mr Speaker, the Opposition will be abstaining on this Bill because, quite frankly, after listening to the Hon Financial and Development Secretary we have not been given a sufficient explanation as to why the borrowing powers of the Government need to be doubled from £50m to £100m.

In the first place it goes well beyond the lifespan of the present Government and I do not agree with the Hon Financial Secretary when he says that this should not mean a doubling of the public debt. Of course it will. What will be the price of Gibraltar's public debt? It will, in effect, be doubled and he has failed to mention what projects or what investments. We need to know, we need to have a few more details from the Government side before we, the Opposition, can make a considered analysis of the situation. It is therefore our intention to abstain. Mr Speaker, I sincerely hope that if there is to be any other intervention on the side of the political Government and they explain the matter then perhaps our position might be changed.

HON P C MONTEGRIFFO:

Mr Speaker, I concur with the view expressed by my Hon Friend. The worry that I express is that I do not understand why there was a projection, only fourteen months ago, of a certain borrowing capacity and why that projection has now been revised so significantly. I think if I had heard from Members opposite what has caused that, then it might change my view but what this amounts to is really a blank cheque, for another £50m, without really any explanation as to why the extra funds have been deemed to be necessary over and above what was voted for only several months ago, Sir. So I will also be abstaining unless I hear some other explanation.

HON CHIEF MINISTER:

Mr Speaker, the decision to raise the borrowing limits of the Government arise out of the upgrading of the forecast level of investment from the Improvement and Development Fund which I gave in this year's Budget. The Hon Member will remember that in the first year I said we would go from the £4m that had been spent in 1987/88 to £8m in 1988/89 and then £12m, £14m, £16m and £20m. That was the projection that we had made for the four years making a total expenditure in infrastructure of £56m in four years. In April this year, in fact, I increased that forecast from £56m to £70m and we have, as Members know, moved this year not from £8m to £12m but from £8m to £22m. The policy of the Government is that the money that we raise from long-term capital has to be for long-term investment and this is why on the recurrent budget we are taking the deficits by reducing the Consolidated Fund rather than by using borrowing to produce a wiping out of the gap between expenditure and income. The view of the Government and in fact, last year and this year, was that rather than this somewhat antiquated system of having to establish a ceiling, we should use a ratio and say "The level of national debt we consider to be, say, 35% or 40% of GNP" and therefore that would give us a rolling ceiling in the sense that

the bigger the economy the bigger the borrowing we could support. I think because the actual calculations in Gibraltar of GNP today are no different from what they were in the past and involve a fairly large amount of balancing items, the reality of it is that the calculation is not rigid enough to be able to put in the law because it is not well enough defined. The advice we had before from UK, and after discussing it with the former Financial and Development Secretary and the former Attorney-General, was that you cannot just say "35% of GNP" without really establishing how you get to the GNP and the way we get to the GNP is the way that has been done, and which I am sure the Leader of the Opposition is well aware the way the Statistics Office have done it for many years, is that there are a number of elements in it which are very accurate because they are based on things like imports and Government and Ministry of Defence employment and then there are other things about which there is quite a big question mark. Things like Tourist Expenditure which involves surveys of a few hundred people in the Coach Park. Our system of GNP calculation is therefore not sufficiently rigid for us to be able to link to the National Debt. Therefore we had to make a professional assessment and taking advice of where it was reasonable to target the National Debt in relation to the current Estimates of GNP and the projected growth of GNP and this figure is considered to be a figure that is compatible with the sort of conservative criteria that I have mentioned of 35% to 40%. There are many other Members of the European Community that have internal debt ratios of 70% and 80% and I think in most places, in fact, most nations do not worry particularly about their internal debt, what they tend to worry about is their foreign debt because their foreign debt impacts on foreign exchange earnings. Obviously we are talking about sterling debt predominantly. We have looked recently at the possibility of debt denominated in other currencies as has been done in the past but really with the uncertainty about sterling and whether it is going to join the EMS or not join the EMS, what we could save on interest charges we could expose ourselves to a very large exchange risk and on the whole we are unlikely to even dip our toe in that area. We certainly would not want to take foreign debt on other than as a minute proportion of the total, if at all, and on balance we feel that the present international exchange rates situation is not conducive to taking an exposure of foreign exchange risk of this nature. So, essentially, what we are doing is we are saying that we want to have the authority to increase the outstanding debt at any given time up to £100m and we are removing the year "1992" because, frankly, it is not logical to have a situation where you say "Gibraltar may have a National Debt up to £100m but if it does not need to borrow the money before 1992 then it cannot borrow it afterwards". I am not quite sure why the Loans Empowering Ordinance in the past has had a date by which you had to borrow or you lost your

borrowing powers and nobody seems to be able to explain to me why it was there. There might have been a very good reason in some remote past which nobody has a record of any longer and it has simply been carried on into every subsequent Loans Empowering Ordinance. Simply because that was the way it used to be done. We have, however, looked at the matter and technically it seems an unnecessary inhibiting factor because, in fact, the logic of the situation is that if you are able to increase your borrowing powers provided you borrow before 1992 then the logical thing to do would be to say: "Then we will borrow before 1992 because if we do not borrow before 1992 we will not be able to borrow after 1992", even though from a purely domestic balancing position of the I&D Fund and the capital expenditure programme the loans might not need to be drawn. Most of the recently negotiated loans, in fact, have been on the basis of a revolving facility. For example, if we have a situation, as recently happened, when some of the money from the sale of the reclaimed land came in and we can actually reduce our debt by repaying the money of the revolving facility then if we have too high a level of liquidity, because there is no point really in paying interest charges if you are not using the money. But we feel that £50m as a ceiling is not enough in the context of the level of expenditure that we are planning over the next 24 months.

HON A J CANEPA:

Mr Speaker, we cannot entirely support this measure so we will be abstaining. We consider that the level of borrowing that the Government has in mind is very much based on an act of faith and if the Government's economic policies are successful then Gibraltar will have no difficulty in facing up to the commitments that are being undertaken as a result of the borrowing powers which the Government is obtaining. But if anything goes wrong either with the domestic policies for the economy which the Government is implementing or if anything goes wrong in the field of external affairs then Gibraltar could be landed in a very serious financial situation and we cannot support that because we do not entirely agree with Government policy and we cannot have a situation in which were that to happen the finger would be pointed at us in that by voting with the Government we were supporting what they had done. We would also then have to take a large share of the blame for having supported the proposal. One thing is to have a National Debt of £20m or £30m or £40m or £50m, but we are now talking of a very considerable sum, far in excess of anything that has ever been envisaged in the past and it is really, as I say, very much based on an act of faith. They are able to make the act of faith but we are less confident in their abilities because we are not creatures of the same faith and therefore we have to abstain. We are more sceptical, Mr Speaker.

HON P C MONTEGRIFFO:

Mr Speaker, may I just say that I understand and accept the reasoning of the Chief Minister but I think the matter is not quite as simple as whether it is an act of faith or otherwise. I think it is a question of what Gibraltar's requirements are going to be in the next two or three years. I think the matter is sufficiently complex and important.....

MR SPEAKER:

I must call you to order. You can only speak once.

HON M A FEETHAM:

We are not at Committee Stage.

MR SPEAKER:

The Hon Member may speak at the Committee Stage.

HON P C MONTEGRIFFO:

I will then speak at the Committee Stage, Mr Speaker.

MR SPEAKER:

If no other Member wishes to speak I will call on the Mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I have very little to add to what the Hon Chief Minister has said because I think he has answered most of the questions. Indeed, the question of financial management and borrowing is a quasi fiscal and political matter and not just purely an accounting one or a financial one. The Government has decided, in its wisdom, to borrow for investment and enhance Gibraltar's infrastructure, in other words, it is looking forward to the future with its Development Programme rather than simply carrying on perpetuating the straightjacket policies we had in the Gibraltar economy in the past where we only depended on certain revenues together with aid and support from HMG. Gibraltar can be carried forward in the same way as any well-run commercial entity which has to borrow. Borrowing does not necessarily mean you are going to go bankrupt. The comparison between bankruptcy.....

HON CHIEF MINISTER:

Then why are we bringing the Bankruptcy (Amendment) Bill to the House?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, the comparison with an individual situation in bankruptcy has its fault but I doubt whether Gibraltar will ever become bankrupt. All we are talking about at the moment is really whether or not we are able to meet the servicing cost. This is the crucial element, Mr Speaker, because ultimately the right arbiters of the situation are those that lend the money. They are the ones who will look at the Government and see whether its policies are sound and there are prospects of returns and this is what the Government has borne in mind and is doing. Thank you, Mr Speaker.

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

The Hon J Bossano
The Hon 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 K W Harris
The Hon J H Bautista

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 Dr R G Valarino
The Hon P C Montegriffo

The following Hon Member was absent from the Chamber:

The Hon J L Baldachino

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.

MR SPEAKER:

I think this is an opportune time to recess until tomorrow morning at 10.30.

The House recessed at 7.00 pm.

FRIDAY THE 10TH NOVEMBER, 1989

The House resumed at 10.40 am.

THE BANKRUPTCY (AMENDMENT) ORDINANCE, 1989

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill deals with what in the Financial Services Industry are termed 'Asset Protection Trusts'. These are Trusts which are set up by professional people such as lawyers, doctors and accountants for the protection of their wealth against claims in later years, say, for negligence. The market analysis shows that there is a significant demand for such Trusts especially from the USA. Other Common Law Finance Centres, such as the Isle of Man, Guernsey and Bermuda, are already servicing these demands. Gibraltar is likewise well-placed to provide a home for such Trusts which would open the door to further growth in the Finance Centre, particularly in the legal, accounting and banking sectors. There is, however, a barrier which has first to be overcome if this business is to be attracted to Gibraltar and that is an Elizabethan Act of 1571 called "The Fraudulent Conveyances Act" which still applies here. This Act provides that every conveyance of property made

with the possible intention to defraud creditors is voidable at the instance of any person thereby prejudiced. It is the effect or result of such a disposition which determines whether it is subject to potential avoidance under the Act irrespective of the actual intentions of the settler. Thus the Act impinges and is seen to work against the creation of bona fide Trusts by persons who would wish to dispose of their wealth or property to others without any intent to defraud. Mr Speaker, the Bill therefore aims at attracting Asset Protection Trust business to Gibraltar by amending the law so that the assets of such Trusts are protected from potential avoidance as a result of the Elizabethan Act. The measure is only being introduced in relation to non-resident individuals and is further qualified by the conditions that the settler must not be insolvent at the date of the disposition nor become insolvent in consequence thereof. These conditions are considered to be sufficient to ensure the genuineness of such Trusts. The measure will not prevent the continued application of the Elizabethan Act in other cases. For instance, if the settler had notice of a claim and made the disposition with intent to avoid meeting his obligations under the claim. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

Mr Speaker, the Opposition will be supporting the Bill.

HON P C MONTEGRIFFO:

Mr Speaker, the Bill as it stands is one which I will support but I am aware of differences of opinion within the industry of the method that has been used in actually saving the effect which we are all seeking to ensure our legislation can provide. Without wanting to pre-empt what view the Government may take on some of those representations which are pending, can I say at this stage that one issue which I think is valid and which I would like to identify myself with, at this initial stage, is the restriction, Mr Speaker, that the Bill should only apply to non-resident Trusts. There has been the view expressed that if it is proper for somebody to be able to protect his wealth in a bona fide way against the claim which he cannot anticipate today, is there any real justification for limiting that provision simply to people outside Gibraltar? Why should it only be created for a non-resident and deprive people here of that ability. I think that is a valid representation and it would not

affect the market that Gibraltar is seeking to attract at all and would give people in Gibraltar that sort of possibility as well. One other point I would like to make, Sir, is that I would ask the Government to consider that in considering possible amendments to the Bill as it is drafted, I would not like to see legislation being presented which basically throws the whole question of whether a Trust should be made void on the idea of intention which would have to be subsequently proved in a rather difficult way. Let me explain myself, Mr Speaker. The present Bill as it stands which I like because it is quite definitive in the steps that have to be undertaken before a Court could say: "That Trust is void". The Bill is very clear. If you are solvent, if you have no intention of defrauding, etc you are in. If you have notice of a claim then you would be deemed to be defrauding somebody. If you have not got actual notice then you are not defrauding anybody. The rules are clear and I think could be used by Gibraltar's industry with a measure of safety. There is an argument that instead of using that sort of clear criteria, one could draft a Bill which would simply leave the whole question of intention in vague terms. For example, the question of notice would be excluded from the Bill so that even if you were to have notice of a claim it could be argued subsequently that you were aware of facts which you thought could give rise to a claim at a later stage. I prefer certainty in an area like this because at the end of the day you have got to ensure the investor of the safeguard that Gibraltar is introducing in this legislation so I would ask the Government to consider the value of certainty in the legislation if it is minded to make amendments to the Bill as it presently stands. I am prepared to elaborate in little more detail the type of thing I am talking about. It is a little technical, Mr Speaker, but that is a point which I think should be made. The Bill as it stands certainly has my support and I declare an interest only inasmuch as I know there are clients of the firm for which I work who are, together with other people, anxiously awaiting the passage of this legislation.

MR SPEAKER:

If no other Hon Member wishes to speak I will ask the Mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Thank you, Mr Speaker. I thank Members opposite for their support to the Bill and especially the Hon Mr Montegriffo's contribution. We did and are aware of the differences of opinion. There have been representations made which will be considered between now and the Committee Stage. I agree, and I am sure my colleagues do, with the point

raised by the Hon Member on certainty and this is what the words "notice of the events" which is included in the Bill is expressly intended to convey. There must be certainty of knowledge that there is a claim. Thank you, Mr Speaker.

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 the adjourned meeting of the House.

THE INCOME TAX (AMENDMENT) (NO. 3) ORDINANCE, 1989

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 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 explanation here for the purpose of the Bill is a simple one and I draw on the Explanatory Memorandum which is that the purpose of the Bill is to effect consequential amendments necessitated by but omitted from the Income Tax (Amendment) (No.2) Ordinance, 1989. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

Mr Speaker, if I had any doubt as to how the Opposition should vote I have two notes here. One, the fact that this is consequential to a Bill that we have voted against previously, and secondly, after the explanation we have finally decided because in the absence of any explanation our decision is going to have to be that we are going to vote against the Bill because it is inadequate. It

is not just good enough to refer Hon Members to the Explanatory Memorandum. There is very little in it. There is nothing, in principle, in the Explanatory Memorandum simply "To effect consequential amendments", so what? What is the import of these consequential amendments, Mr Speaker? As I say, this is consequential to a piece of legislation that we did not support when it came to the House. This is the second Bill, Mr Speaker, on the Agenda where legislation that should have been included on a previous occasion and was not and is now being brought to the House. If it happens once, one can perhaps think that it is an unfortunate oversight, a human error, something that happens to everybody but for it to happen a second time from eight or nine Bills that have been presented it inevitably makes one wonder whether legislation is not being somewhat rushed. Whether it is not being properly prepared and therefore all the implications that need to be carefully considered are really being taken into account. A one off is a one off, but twice in the same meeting can only lead one to suspect that that is the case. I must also be critical of the way that the Government has been presenting and moving the Second Reading of Bills on this occasion. It is invariably being done almost entirely by officials, so much for taking political responsibility and if the reason is that the legislation is of a technical or quasi technical nature then the official concerned should give a more satisfactory explanation so that we can understand the import of the Ordinance. I think that they have a role in trying to assist the Opposition in understanding what the legislation that is being brought to the House is about if we are going to be objective in our consideration of the legislation. Otherwise in the absence of a better explanation I think we will just have to vote against all the legislation.

HON CHIEF MINISTER:

I am astonished, Mr Speaker, by the reaction of the Hon Member opposite. There is no policy involved in this Bill. The technical explanation is self evident. If the Member gets the previous legislation and looks at the fact that a number has been left out or a word has been left out then what does he expect us to do? To go into a debate because somebody has left a number out of the last law? Of course we are pushing laws harder than ever before. If we did not do so we would do what the Hon Member did in sixteen years and which was nothing' The reality of it is that we are making demands on the Attorney-General's Chambers and on the Law Draftsman because we want to get things done and if in getting things done somebody leaves out a comma or a full stop then we come back with an amending legislation two months later saying: "We forgot to put a comma in line 2 and the explanation is that it is consequential on the original one" because if the original one says 'delete section 37' you cannot have

in another clause a reference to section 37 which no longer exists. So if section 37 exists one hundred times in the Ordinance and we have eliminated it ninety-nine times and we have discovered that we left it behind once, we come back and we say: "Look, the last time we voted to eliminate it ninety-nine times and somebody forgot that it was also included in the back page. We have now discovered it and for the sake of clarity and logic we are now eliminating it in the final clause because we are making reference to a clause that no longer exists". The Member opposite can vote against it because he voted against it being eliminated the first ninety-nine times and logically he should vote against it being eliminated the one hundredth time but what he cannot do is say that we are hiding behind officials or not giving logical explanations or that it is a technical matter. It is not a technical matter. It is a matter of simple English which somebody capable of doing the eleven-plus should be able to understand. I advise him to get the original one and read the Explanatory Memorandum and he will be able to discover this for himself without any help from us.

HON LT-COL E M BRITTO:

The eleven-plus went out before he became a Member of the House.

HON CHIEF MINISTER:

I know, Mr Speaker, but he was still a school teacher at the time so he will know what I am talking about.

HON LT-COL E M BRITTO:

Mr Speaker, the Hon the Chief Minister has used his usual tactic of reducing things to the ridiculous. We are not talking about removing a comma or introducing a semi-colon. We are talking about a matter of principle and we are talking about, for example, clause 2 where there is a change of words "for rules made hereunder" which was the basic objection we had to the original legislation and the provisions of the section. And that is what we are talking about, principle, and not the removal of a comma. A lot of us undertook the eleven-plus as well, Mr Speaker.

HON J C PEREZ:

Mr Speaker, I am afraid we come back to the same thing. If the Hon Members opposite had done their homework they would have checked out what the amendments are in relation to the Ordinance. They would have known that what the Hon the Chief Minister has said is true. The Hon Member however goes on arguing about words again without checking

what those words mean in relation to the original Ordinance that was passed in this House. That is what they should do rather than make an issue of something very simple like that.

HON LT-COL E M BRITTO:

If the Hon Member will give way. I think it goes further than that, Mr Speaker. There is a responsibility for the Mover of the Bill to give a detailed explanation of what is being done and that is what has not been done.

HON J C PEREZ:

Mr Speaker, there is no detailed explanation necessary. I do not know how they do their homework but certainly when we were in Opposition we used to get amendments to Bills and relate to the original Bill to see what the amendment was about and not depend on the Explanatory Memorandum. There is no detailed explanation necessary, nor are we like the Hon Mr Canepa said, hiding behind officials. If you look at the record of what happened yesterday where Hon Members did not participate and the Opposition agreed to support the Bills. When a point was made by the Opposition which we disagreed with then the political Government has stood up and replied. So there is no truth in what the Hon Members are saying. They are, quite frankly, stirring things up, Mr Speaker.

HON P C MONTEGRIFFO:

Mr Speaker, I will be voting against this Bill for the reason that it really follows from a former piece of legislation which we voted against at the time when I was sitting with my colleagues. I think it is important to understand that the amendment falls within that part of the Income Tax (Amendment) (No.2) Ordinance which gives the Government power without coming to this House to fix tax rates for different classes of individuals.

MR SPEAKER:

We cannot revive the whole matter again. You must concentrate on the amendment.

HON P C MONTEGRIFFO:

Mr Speaker, I am talking about the amendments included in the Bill.

MR SPEAKER:

You cannot revive something that has gone through the House already, otherwise I will have to rule you out of order. That is the rule.

HON P C MONTEGRIFFO:

Mr Speaker, I am talking to the amendment but to the amendment.....

MR SPEAKER:

Then stick to the amendment and do not start going into the general Ordinance.

HON P C MONTEGRIFFO:

Mr Speaker, the amendment actually talks about the piece of legislation which was brought to the House previously.

MR SPEAKER:

No, the amendment talks about the amendment and you have got to follow the amendment if you want to speak.

HON P C MONTEGRIFFO:

Well, Mr Speaker, the point in any event is that the amendment seeks to amend something which we voted against. There were other parts which we did not vote against at the time but because of the reasons I have explained and which obviously the Government is not going to change its mind on. I will be voting against.

MR SPEAKER:

If no other Member wishes to speak I will ask the Mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Thank you, Mr Speaker. I do not think there is much I can say to enlarge on what the Government side has already explained to the House. The amendments are very simple and I wish to reiterate that. I thought, if anyone had sinned it had been myself for trying to save everyone's time in explaining what should be obvious to everyone. But if it is wished I can add a few words. Basically, that in clause 2 all we are doing is just adding the words "Rules made under" instead of where the section 6 says "the provisions of section 37(b)" now that those provisions

will be reflected in Rules rather than in the body of the Ordinance. The second clause is a simple one, rather than say "rate specified in section 37(b)" again arising because of the omission of section 37(b) from the body of the Ordinance, it is now the prescribed rate. And the final one is that there was an omission and this is the omission referred to in the Explanatory Memorandum that we have to introduce a stand and rate of tax. It is already inside the body of the Ordinance and rather than have it inside the body of the Ordinance and the band rates outside in rules, we are also adding the standard rates into the rules. Sir, I commend the Bill to the House.

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

The Hon 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 K W Harris
The Hon J H Bautista

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 Dr R G Valarino
The Hon P C Montegriffo

The following Hon Member was absent from the Chamber:

The Hon J L Baldachino

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 FINANCIAL SERVICES COMMISSION ORDINANCE, 1989

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to establish the Financial Services Commission 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 FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. The rapid acceleration of Gibraltar as a Finance Centre renders a radical change in the administrative machinery which the Government provides in the support of the industry. Casting back our minds ten years ago when there was little talk, if any, of Gibraltar as a Finance Centre, who could have predicted then that Financial Services could one day be the mainstay of the economy. Mr Speaker, for credibility and acceptance the Finance Centre must be seen to be effectively administered, moreso in the case of legislation which purports to control or supervise with wide powers of intervention of financial activities. The body charged with those responsibilities must likewise be seen to be properly structured, staffed and financed for effectiveness and autonomy. There is equally another important aspect in the supportive role given to the Centre, that of steering its path along further orderly development and improvement which requires a more active part to be played by those best in a position to know what occurs in the industry itself and in the Financial Services role generally. That aspect, Mr Speaker, is vital to our survival as a Finance Centre. We have to mobilise and draw on whatever expertise is available locally especially when it comes to analysing prospective European community legislation and giving effect to it. There is no doubt that the Single Market in 1992 will bring with it increased activity within the Community for greater harmonisation on laws and administrative practices in the area of Financial Services. This may prove to be quite a formidable task. The Commission will take on board all the administrative and supportive functions I have referred to. It will be a body corporate with perpetual succession capable of suing and being sued in its corporate name. Its duties and functions have been set out in Clause 6 of the Bill. The Commission would provide advise and assistance to the Government and recommend on the regulation of financial business and the introduction of legislation appertaining to the Finance Centre. It will be headed by a Commissioner

as Chairman, and it will have six other members, all of whom will need to have previous knowledge and experience of financial business. Three of them will be a lawyer, a bank manager and an accountant. The Commissioner will be expected to refer to the Commission all matters coming to his notice or attention which fall to be dealt with by the Commission and any matters of policy or principle arising in the course of the exercise by him of any function vested on him along. Originally, and as the Bill was drafted, it was thought that the Commission should regulate its own proceedings including how it would deal with applications but as a result of representations made, the relevant provisions in Clause 6 will be amended during Committee Stage to expressly provide that applications will only fall to be dealt with by the full-time executives of the Commission. A member of the Commission having any personal or indirect interest in any matter coming before the Commission will have to declare his interest on each and every occasion the matter comes up and will not take part in the proceedings of the Commission in relation to such a matter, this is in Clause 10. No personal liability, however, will attach to a member of the Commission in respect of anything done or omitted to be done in good faith in the exercise of his functions. The Commission will be empowered, inter alia, to acquire and hold property and to employ staff for the proper discharge of its functions and in case of need to delegate any of its functions to other persons, including a Government Department or authority. Steps will be taken to trawl for a suitably qualified person for appointment as Commissioner. Once he is in place he will be consulted as to the persons who are to be appointed as members of the Commission and as to the structure and staffing of the Commission itself. To ensure autonomy and permanency, the Commission will be financed independently of the Government, having the power to raise fees and charges. Initially the Government will, of course, provide whatever support, financial or otherwise, that the Commission may need to get off the ground. The Commission will be required to keep proper accounts which will be audited and submitted to the Minister for Trade and Industry together with a written Report of its operations. A copy of the Report and of the audited accounts will be laid before the House. An eye will be kept on the Commission's income and expenditure by the Financial and Development Secretary. This will, amongst other things, ensure that the Commission always remains solvent, if need be by means of a subvention from public funds which would, of course, have to be voted by the House. This is provided for in Clause 13(1)(b). The Commission, on the other hand, will be exempt from income tax and all taxes, duties, and rates levied by the Government. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

Mr Speaker, in November, 1986, in reply to a letter from the Bank of England, an official of the Department of Trade and Industry in the United Kingdom on behalf of the Secretary of State for Trade and Industry, replying to the Bank's letter made reference to the situation, as we saw it in Gibraltar, in respect of businesses being controlled in Gibraltar. I am referring to the Report on Barlow Clowes by Sir Godfrey Le Quesne. A Report to the Secretary of State for Trade and Industry and I would like to quote a sentence from that reply by way of introduction. He said: "I have no concrete reason to worry about Barlow Clowes offshore expansion although one naturally tends to look askance at businesses controlled from Gibraltar and harbour unworthy thoughts about the real motives in moving there". I would submit that in this sentence alone there is a whole justification for the legislation which the Government is bringing to the House today. So we on this side of the House, in broad general terms, are very much in favour of this legislation. It is clear from this reply that I have quoted that in certain quarters we have been held in absolute contempt and that that attitude underlines the overriding need for tight and all-embracing legislation to be put on the Statute Book. We therefore support in particular the duties which the Commission to be set up under this Bill, the duties which are going to be given to the Commission as set out in clause 6 of the Bill. We think, though, that there are amendments that could be brought in at Committee Stage which will strengthen the legislation further. It is part and parcel, or it has been in the past, of the practice of many pieces of legislation, for instance, to do with the Companies Ordinance to include in the legislation the concept of a fit and proper person. We on this side of the House do not think that it is just good enough, Mr Speaker, that a person be appointed a member of the Commission. I think that a great deal of care has to be taken and in the body of the Ordinance the concept of a fit and proper person should be introduced and therefore we would commend to the Government that they should give consideration to that aspect of the matter and amend the appropriate clause to require that it be a 'fit and proper person'. And the same thing, of course, but to an even greater extent, applies to the Commissioner himself. It is vitally important that the legislation should require that the Commissioner be a 'fit and proper person'. Likewise, Mr Speaker, in clause 12 of the Bill where functions are delegated, as the clause stands at the moment, 'the Commissioner may delegate the discharge of any of the Commission's functions to any person'. Again,

we do not think that that is good enough. We think that it should be 'to any fit and proper person'. This is an important aspect of the matter, Sir. The Hon Mover of the Bill made reference in his address to the requirement for a member of the Commission to declare an interest and therefore take no further part in the proceedings of that meeting. This is clause 10, Mr Speaker, the requirement is 'and any matter coming before the Commission where a member has a direct or indirect personal or pecuniary interest, he shall on each and every occasion on which the matter comes before the Commission, declare his interest and thereafter take no further part in the proceedings in relation to such matter and shall not vote on any such matter'. Again we think, whilst we support naturally the intent behind this, we think that it should be taken a step further. We do not think that the person concerned should just declare the interest, not take part in the proceedings, not vote, but sit back and remain there present whilst the matter is being discussed. We think that there should be a requirement for him to withdraw from the meeting whilst the matter in which he has such an interest is being discussed. Again materially it may not appear to be terribly important but presentationally I think it goes to the root of the matter that he should not be aware either of what are the considerations which the other members of the Commission are taking into account in arriving at their decision. We notice, Mr Speaker, and perhaps the Hon Mover when he exercises his right to reply, could go into a little bit more detail then or perhaps in Committee whether that would be acceptable, if he just indicates to us that it will be explained more fully in Committee, because we notice that the Commission seem to have powers to set their own remuneration and we would like to have details about what is envisaged. The Commission has got powers under section 7(c), pay expenses properly incurred by the Commission. We would like to know a little bit more about this. We wonder whether it is a case of setting remuneration for themselves taking account of loss of earnings because of their involvement as members of the Commission and, if so, what would be envisaged in return for what work and what yardstick will be used. Perhaps we can have clarification on that. It seems to us, Mr Speaker, that the fact that the Commission is going to be able to employ persons indicates that what is being created is a separate arm of Government and that this Commission, for instance, is not going to operate as the Development and Planning Commission does. Perhaps we could have some more details about what is envisaged in that respect, in that if it will be an employing agent of Government. And likewise about the fact that section 7(a) empowers the Commission to have property. "They may purchase, lease or otherwise acquire and dispose of any such property no longer required for such purposes". Again, could we have some more details about that aspect of the

matter. My colleague Colonel Britto who now has shadow responsibility for commerce will probably be going into more detail than I will. At this juncture I am speaking on behalf of my colleagues. We support the legislation in broad terms and in Committee we will also be considering the matter in much greater detail. Thank you, Mr Speaker.

HON LT-COL E M BRITTO:

Mr Speaker, I will try to avoid any overlap on matters on which my colleague has already dealt with but some might be unavoidable. We on this side of the House fully agree and support the opening comments from the Hon the Financial and Development Secretary on the essence of this legislation, not only being watertight, not only inspiring confidence and credibility but being seen in circles, in and outside Gibraltar to have and to inspire this confidence and credibility. Therefore I stress from the beginning that what we are saying and what we will say both on this Bill and on the subsequent Bill, should be taken in the constructive vein in which it is intended because we, as has already been said, support this legislation and what we are trying to do is to reinforce so that the final product is as strong and as watertight as possible in the interests of Gibraltar in general and the credibility of the Finance Centre in particular. With that in mind, I respectfully submit, Mr Speaker, that what we have in front of us at the moment in the present Bill and the Bill that will follow this one, the Financial Services Ordinance, is not the completed product in the normal sense that a Bill usually comes to the House, it is still at the framework and planning stage and a fair degree of work still needs to be done to it in order to achieve the objectives which have already been expressed on both sides of the House. I will avoid going into detail because this obviously can be done at Committee Stage but I will just give three examples of what is meant. The Hon Financial and Development Secretary mentioned, in fact, that the Commissioner is nominated as the Chairman and this is an example of three things that I want to highlight: contradictions, repetitions and omissions. In between clauses 3 and 5, we have in one of them the Commissioner being named as the Chairman, fine. In the subsequent clause we have powers given to the Commission to nominate one of their own members to substitute the Commissioner in his absence during the course of a meeting which seems totally logical and perfectly fair. But then in the third clause we have a situation where the Commissioner is named as being part of the quorum of the meeting. In other words, the meeting cannot be held if the Commissioner is not present, so if the meeting cannot be held because the Commissioner is not present, there is not any need to nominate a Chairman to substitute the Commissioner. We come on to other repetitions and I will highlight, in particular, the immunity of the Commissioner

and members of the Commission, which has already been mentioned by the Hon the Mover of the motion, Mr Speaker, there are three different sections, two in this legislation and one in the subsequent Bill, which deal with the matter of the exclusion of personal liability of the Commissioner and Commission members and, in some cases, their employers. And all three, depending which way you look at it, either have different versions of almost the same thing or the same version of different things but there is a certain amount of duplication. In fact, I will go one further because if one looks at section 18, we feel that possibly there the wording of the section goes a bit too far, and the section reads: "No personal liability shall attach to any member of the Commission in respect of anything done or omitted to be done in good faith under the provisions of this or any other Ordinance", and I stress "or any other Ordinance". I submit, Mr Speaker, or at least it has been put to me, that if a lawyer or an accountant or a bank manager, for that instance, acting as a member of the Commission contravenes the law outside the provisions of this Ordinance, in any other Ordinance, it could be said that he is not liable because he is protected, as the Commissioner, against the laws of Gibraltar. I put it, Mr Speaker, that that clause needs further examination. Furthermore, Mr Speaker, we do not think that Commission members or the Commissioner should be given blanket exclusion or blanket immunity against acts of negligence and against criminal acts and because of the different wording of the three clauses it would appear that in some they could do and in some they do not. As I am saying, I put it to the Members opposite to study what I am saying. Thirdly, on omissions, as has already been mentioned, we feel that just as in the comparable case of a liquidator under section 167(3) of the Companies Ordinance, it has to be a fit and proper person and we feel, as has been pointed out by my colleague, that the words "fit and proper person" should appear in those places in the Bill where it has already been pointed out. Coming on to the Commission and the Commission members themselves, expounding on what has already been said, we would like to see possibly at the Committee Stage explanations, or more indication of the duties of the Commissioner. We feel that maybe it should be legislated that the Commissioner should be independent of all financial institutions locally. That there should be no direct connection with any trading entity be it a bank or whatever. We would also appreciate some indication of whether the Commissioner is intended to be a full-time employee or whether his duties can be part-time and, presumably in the case of members of the Commission one takes it that they will be part-time. The level of remuneration, if any, has already been mentioned and the responsibility for setting this level and one takes it that when the Hon Mover of the motion says that the Commission is exempt from income tax, he is referring

to the Commission itself and not to the Commissioner or to the Commission members. But, again, we would appreciate clarification of that point. On the question of disclosure of interests in section 10, I support what has already been said by my Hon colleague. I would take it slightly further that as in the case in Channel Islands legislation such declarations of interest that are made should be recorded in the proceedings of the Commission and not simply just made verbally. Obviously I support the contention that the person who declares an interest should not only not take part, which can imply staying in the room, but it should be declared that he should be absent from any further proceedings dealing with the subject or question. Finally, Mr Speaker, on the question of Accounts in section 15, we feel that the time-scale envisaged in the Bill needs to be tightened slightly because as it stands at the moment, conceivably the time between the year end and the time between which the Accounts are formally laid on the table in this House could, in theory, drag on, if not forever, but certainly for a long time. I will explain what I mean by that. In section 15, subsection (1), it is said that 'the Accounts must be prepared within three months of the year end'. No time limit is set for the conclusion of the auditing of those Accounts. In Section 15, subsection (5) it is specified that three months after the end of the audit an annual report must be submitted by the Commission to the Minister for Trade and Industry and then the onus is on the Minister to lay the accounts and the report "as soon as practicable" before this House. The point I am making, Mr Speaker, is that there is no link between the preparation of the Accounts and the end of the audit period, so the Accounts could be prepared and the audit could take one month or three months or six months or nine months or a year but there is no legal obligation for the audit to be finished and it is only then, when the audit is finished, that there is a legal obligation of three months for the Report to be prepared. That is the first point. The second point is that we feel that the words "as soon as practicable" are not entirely acceptable on their own, that it should be "as soon as practicable and not later than" whatever it is, a month or three months, "from the date of the conclusion of the audit" or "the conclusion of the Report being submitted" or alternatively that it should be as in other pieces of legislation, it should be "at the next meeting of the House". But we think that "as soon as practicable" as we had earlier on in the proceedings at Question Time concerning the Hon the Minister for Medical Services, this could be interpreted to be whenever, and we feel that that should be tightened slightly. In conclusion, Mr Speaker, as has already been said, the Opposition will be supporting the Bill and we hope that the Government will take into account our comments on possible amendments and I would request that if possible, as has been done

with this legislation which has been circulated earlier than normal and thereby has given us on this side of the House, much more time to prepare and hopefully to make a more valid contribution towards this legislation, that similarly notice of the amendments could be given with due time to avoid duplication at the Committee Stage and to allow us to prepare for the task. But as I said at the beginning we will be supporting the Government in bringing forward what is a much needed piece of legislation. Thank you, Mr Speaker.

HON ATTORNEY-GENERAL:

Mr Speaker, can I take up three points which have been raised by the Hon Leader of the Opposition and the Hon Colonel Britto. Firstly, Mr Speaker, the suggestion that the powers of the Governor to appoint a person should be extended to oblige him to appoint 'a fit and proper person'. With respect to those views, Mr Speaker, I do not think it is necessary to include the words "fit and proper". It is an implied obligation in law that anyone who is bound by Statute to appoint a person to a particular post has an obligation to ensure that anyone whom he appoints to fill that post is a fit and proper person. It is a matter for his discretion and his opinion, of course, Mr Speaker, whether the person whom he appoints is fit and proper and duly qualified to discharge the duties of the post to which he is appointed. Let me give you an example, Mr Speaker, if I may. Section 71, subsection (1) of the Constitution of Gibraltar empowers His Excellency the Governor to constitute whatever public offices he considers fit and appropriate and there is a mandatory obligation placed upon him to constitute the offices of Attorney-General, Financial and Development Secretary, Principal Auditor and Commissioner of Police. The Constitution itself which is our supreme law in Gibraltar, Mr Speaker, does not include the words "fit and proper" in that subsection which obliges the Governor to create those offices. And the reason is clear, Mr Speaker, and I suggest it is because the Governor is entrusted to ensure that the person whom he appoints to fill those offices is, indeed, in his considered view, of course, a fit and proper person. I suggest, Mr Speaker, it is appropriate to give the same latitude and afford the Governor the same privilege in his appointment of the requisite persons under the provisions of this Ordinance. If that be accepted then in my respectful view it is not necessary to include the words "fit and proper". If I can turn next, Mr Speaker, to the legal aspects arising from clause 10 of the Bill which was touched upon both by the Hon Mr Canepa and the Hon Colonel Britto, I go along with what they have said and Clause 10 of the Bill, Mr Speaker, as you will have seen, deals with disclosure of interests and it includes the words "thereafter take no further part in the proceedings". I recall

well, Mr Speaker, a case in 1985 which reached the Gibraltar Supreme Court in Judicial Review Proceedings involving a decision taken by a Statutory Body in Gibraltar which membership included a local lawyer whose client was involved in a particular matter which came before the Body that day. He quite properly declared that he had an interest as the applicants in the proceedings were his clients but instead of withdrawing from the room entirely he merely sat at the end of the table and remained in the room whilst the application was considered and dealt with. In Judicial Review Proceedings alleging a breach of natural justice in those proceedings, the applicant for Judicial Review was not successful but the Supreme Court did make it clear that there had been almost, I think, "perilously close" were the words the then Learned Chief Justice used which had arisen from a mere presence of the member having an interest in the room where the proceedings took place. I think that certainly is what is worrying the Hon Leader of the Opposition and what he is suggesting in the amendments he proposes should be made to clause 10 of the Bill. I agree with him, Mr Speaker, and I will certainly discuss this with the Hon Chief Minister and the members of his Government with a view as to what amendment, I advise, is appropriate to make to clause 10 of the Bill to cater for that. My personal policy in dealing with legislation, Mr Speaker, is now, and will continue to be, let us be absolutely safe now rather than run any risk of being sorry later on. I do respectfully support the views of the Hon Members of the Opposition that each and every aspect of this Bill should be made as watertight as possible. Can I turn finally, Mr Speaker, to clause 18 and the points raised by the Hon Colonel Britto on that. That is the clause giving, perhaps immunity is too strong a word, but removing any question of personal liability attaching to members. This clause, Mr Speaker, has nothing to do with criminal liability which the Hon Member seems to think. It deals with civil liability only and the clear clue to that, Mr Speaker, is gained by looking at the inclusion of the words "good faith". What it deals with, Mr Speaker, is protection to members of the Commission against possible mistakes they make, negligence in other words, has nothing whatever to do with criminal liability. The commission of a criminal offence, Mr Speaker, is I think you will be well aware, involves very basically two things. It involves the guilty intent, the dishonest intent and, of course, the performance of the dishonest act and therefore if a member of the Commission does something dishonestly and he intends to do what he does dishonestly, then he cannot avail himself of the protection sought to be given by clause 18 of the Bill. If on the other hand he makes an honest mistake if he is careless but he does not intend to do it and what he does is in good faith but nevertheless because it is a mistake somebody suffers financial loss, then normally the member of the

Commission would be answerable for that financial loss and would have to compensate the person who had suffered loss thereby but clause 18 protects him from any civil liability arising out of such a potential action.

HON P C MONTEGRIFFO:

Mr Speaker, in broad terms I wholly welcome the legislation which has been like a difficult birth since I was hoping it was going to come to the House earlier. However I realise it has had to wait for people's input in order that the final product could get as close as possible to what Gibraltar requires. Having said that, I support the Bill in broad terms. There are however a few matters that I would like to raise since this Bill will not go through its Third Reading at this session but at the adjourned meeting. So maybe in favour of a more open debate between now and the other Stages, those with an interest will be able to get involved in considering the matter further. I would like to make a few points that I would invite Members opposite into account. I have still some reservations, Mr Speaker, about the concept that is involved in the way the Commission has been structured. My understanding, Mr Speaker, and I will be corrected by Members opposite if I have got this wrong, is that the Commission will have the members from the industry which have been referred to here, ie a lawyer, an accountant and a banker and then below the Commission there will be the professional employees who will actually do the day-to-day regulating of the different Financial Services and which will be charged with the task of processing applications and granting licences. The role, therefore, of the part-time commissioners, for want of a better word, at this stage to me appears a little nebulous. Nebulous because we do not know to what extent there is going to be a delegation of the functions of the Commission, as defined in the Ordinance, to the committees or to the professional staff at the third level of the Commission, so to speak. I am however concerned about the fact that the concept of having part-time commissioners is almost a form of self-regulation and that, if the Commission is ultimately charged as a corporate body with the responsibility of policing the Finance Centre, if there is a problem in any particular case of recommending what action should be taken, really the concept of having the full-time Commissioner and six part-time commissioners is a form of self-regulation. We are really introducing in Gibraltar a form of self-regulation for the industry and although I am the first to acknowledge the enormous contribution that professionals in the industry, jointly, can make in advising Government what is best for the industry, I am anxious about whether in a place of Gibraltar's size and bearing in mind our closeness and the inevitable conflicts of interests that could arise even without there being a direct interest,

ie because somebody has a person directly affected, whether the concept of self-regulation which really is what, as I understand it, this Bill is introducing, is the best thing. I would be entirely happy with incorporating some form of advisory body from the industry which had its specific role of advising Government, that is one thing, but unless we know to what extent the Commission's overall duties are going to be delegated to the professionals underneath, ie the officials underneath, at this stage, it appears that the Commission itself with those part-time commissioners will have overall responsibility for supervision, regulation etc, and it is only delegation that removes them of that responsibility. I am not entirely convinced but I am open to persuasion, that that is the best system for a place of our size. I wonder whether it is not possible, Mr Speaker, that the actual Commission should be made up not of the full-time Commissioner and the part-time commissioners, but the full-time Commissioner and those officials who in their respective capacities are going to have responsibility for the different areas of the finance industry, for banking, for insurance, for collective investment schemes, etc. Why not have the collective body of those individuals with a Commissioner at the top, constitute the Commission as a body, the Commission as an entity to regulate matters on a macro scale, if there is a big problem or something that requires a global approach. In the individual areas, obviously each official will have responsibility within insurance or banking or whatever. As I say, I am open to persuasion, but I would feel happier with the concept of people who are at arm's length of the industry, having that sort of role rather than people within the industry itself. As the Bill now stands and subject to more clarification of the degree of delegation, being involved in what could be supervision of a problem, self-regulation if there is some instant that refers to Gibraltar and even although there are provisions that say 'I may have a direct interest', everybody has an interest in a place of Gibraltar's size, virtually. If there is a banking problem in one of the big banks the other banks stand to gain because there is a loss of business and I am suggesting that Gibraltar is perhaps too small for that type of structure. Even in the UK where the Financial Services Act introduced a system of self-regulation, there have been a lot of difficulties because it is not easy to police oneself and the City is an enormous area where the possibilities of conflict should be reduced. I think that in the UK a lot of thinking now is geared towards the view that maybe there has been an element of a mistake in relying too much on self-regulation. In a place like Gibraltar we do not need that. I am not saying we need more bodies but I think if we restructured the players involved in all this, we could end up with an input from the Financial Services side for the actual industry. But at the same time not involve them in the natural formal

role of supervision which involves an element of self-regulation. As I say, Mr Speaker, I am open to persuasion but that is my gut feeling. The second point, Sir, is one of a broad nature and I do not know if there is a solution to it and, again, I stand to be corrected if I have misunderstood the position. My understanding is that the activities which the Commission is seeking to regulate including banking, insurance are non-defined domestic matters and I am concerned only to the extent to which Gibraltar and the Government is making itself responsible in terms of the Gibraltar Government, for activities which are not clearly within the compass of defined domestic matters. I note that it is the Governor who appoints the Commissioner and although the Governor appoints certain individuals because constitutionally those individuals have a split loyalty, so to speak, they are answerable to different masters, in the case of the Financial Services Commission to whom is the Commissioner answerable? I note with pleasure and I am glad to see that under the provisions of the Bill the Commissioner is charged with making a Report to the Minister for Trade and Industry in relation to the Commission's activities at the end of every year. So in one sense I see, as I would like it to be the case, the Commissioner responsible to the Government, responsible to the Minister who then has an overall responsibility for policy. But the Governor's appointment of the Commissioner in the first place, Mr Speaker, raises a question mark for me. Is it just a quirk in that that is the way that legislation is drafted even although there appears to be no constitutional reason why such a new appointment should be made by the Governor other than the fact that it is clearly not defined domestic matters? I would much prefer to see the Minister for Trade and Industry after taking consultation with the Governor, appointing a Commissioner. That is what I think proper regulation of this industry by Gibraltar means. That we take our own responsibilities, we take our decisions and we stand by them. If the clause were to be amended to say that the Governor makes the appointment on the recommendation of the Minister for Trade and Industry then fair enough, I could accept that if that is the formal way things have to be done. But I see very much of this being a question of responsibility without control. If something were to go wrong, despite the immunity, the one that would be with a problem would be Gibraltar, ie the Gibraltar Government and the people of Gibraltar. However the actual appointment is made by His Excellency, presumably exercising his own independent discretion, ultimately or is he going to be open to the advice that Ministers will give? I think if at this stage we are now imposing a proper system of regulation for which Gibraltar is going to be responsible then I would like to see the Government clearly having the reins of appointing a Commissioner and that Commissioner being responsible to the Government and be answerable to the Government and not have this rather nebulous situation

in which I think we will otherwise find ourselves in. The important thing of the Commission obviously will then be the actual staffing and how the Government intends to put flesh to the basic framework. At this stage our voting for the Bill is an act of faith that the Government will provide the adequate trained staff to make the Commission work well. I know I do not have to remind Members of the Government that the moment that this piece of legislation is enacted and therefore Gibraltar is purporting to regulate which we have not really purported to do before, if something goes wrong then notwithstanding all the immunities in the world we have a problem because we are telling the outside world that we have a system which regulates that industry and if it goes wrong therefore they are going to come knocking at our door saying 'You assumed the responsibility'. So it is a responsibility which we want to assume but one which has to be backed with the proper staffing and the proper resources. At this point I would like to make sure that that commitment is there and that we will not have a dangerous situation of having accepted the responsibility without being able to discharge it. There is the question as well of the exemption from taxes which I want to raise briefly, Mr Speaker. The Commission, as far as I understand it, and I would like the Government to confirm, will hopefully be largely funded from the private sector and nobody has a greater interest in this than the industry itself and therefore it is only proper, in my view, that it is not the taxpayer that should foot the bill, although there is provision for borrowing from the Government, but the industry and in that respect I would be interested to know why there should be a complete exemption from taxes as far as the Commission is concerned? The Government may wish to feel that, alright the Commission will not pay income tax, since it is not a profit making institution, but say the Commission acquires property, it leases property, why should not the Commission pay rates to the Government? As far as I am concerned, let the industry pay for a Commission and let that Commission be run, if not as a profit making institution, then as an institution which has to be commercially solvent and let it pay its way. Let its employees pay PAYE, let it pay its rates, etc. Therefore the present clause that says 'the Commission shall be exempt from income tax and all taxes, duties and rates levied by the Government'. I leave it for the Government's judgement whether it wants to exclude income tax. But I think other duties, if the Commission acquires a lease and has to pay stamp duty on that lease then why should not the Commission pay stamp duty on that lease to Government? Why should it not pay rates on its property? I think that there is no reason why we should subsidise the industry anymore than any other? GSL has to pay rates and everything else, presumably, as a commercial entity. Why should the industry through its policing machinery not also have that responsibility? Mr Speaker, my final point is that under

this Commission Bill, as in the case of the Financial Services Bill that will follow, Rules will have to be published to give flesh to the basic framework which the legislation is providing. Can I have a commitment from the Government that although those Rules may be published in the Gazette, by way of subsidiary legislation, that there will be a close level of consultation with Members on this side of the House and also with the industry generally? Because, Mr Speaker, I think the Government will accept that the actual nitty gritty of how things are going to operate is not really in the Ordinance but is in the Rules which are going to follow. And because of the importance of getting it right, could there be a commitment that before Rules are published and we find them appearing in our Gazette when we pick it up on a Thursday morning, that there is an element of open consultation with other Members of the House and with sectors in Gibraltar that can provide an input. Subject to clarification on those points, Mr Speaker, I will be supporting the Bill.

HON M A FEETHAM:

Mr Speaker, I would like to take up some of the points that the last speaker has put to this side of the House. First of all, I think it is necessary to understand the philosophy of the Government in setting up the Financial Services Commission. Financial Services in Gibraltar is the growth market in the economy and it is not simply a question of the impact of transaction of Financial Services, it is also a vehicle for increased development in property, increased development of skills for the people of Gibraltar and increased wealth for the economy. It is clear that if this is going to be one of the mainstays of the economy then what we have to do is to ensure that we have a reputable framework of legislation in place that will attract the right people to Gibraltar to do those services. So that the small investor, the person who has saved money all his life and wants to put it into a pension fund to get his retirement pension, that that investment as much as the investment of a major corporate company is protected against dishonest people. If we are going to be serious about this in terms of marketing Gibraltar as a Financial Centre, then we have to take the responsibility that that entails. It is no good talking in hypothetical terms. The thing is we have to get to grips with the problem if that is the course that we want to take. Therefore we have to measure our suit by the sort of cloth that we have available to do so. I am a firm believer, as a Gibraltarian, in the integrity and the potential of the Gibraltarian to do a job that needs to be done in the best interests of Gibraltar. So I stand from that premise and in Financial Services then, I am

a firm believer that the professionals in the field in Gibraltar have to be put in a position of taking responsibility and being allowed to expand their potential in that area. My own and the Government's view is that since Financial Services is primarily a product of the private sector then it should be the private sector that should have the major say in financing, running and policing the Financial Services Sector in Gibraltar. It is the Government's task to ensure that it has in place the proper legislation and the proper framework to protect the public interest. Therefore we approached this problem, when we were faced with the situation of looking at Financial Services legislation, how we were going to introduce to Gibraltar the competent authority that would ensure that Financial Services in Gibraltar was carried out in a fit and proper manner. We examined then how best we could introduce the system of regulation that the Hon Mr Montegriffo was referring to and which I feel he never really opted for any particular method because he kept on contradicting himself to a point. Therefore let me explain as I saw the situation.

HON P C MONTEGRIFFO:

If the Hon Member will give way.

HON M A FEETHAM:

No, I am not going to give way because it puts me off and therefore I do not think it is correct. When we examined what form of self-regulation we should introduce, taking into account that we felt, as a matter of policy, that the professionals in the private sector ought to get themselves involved, we looked at the possibility firstly, of having a self-regulation system within the industry itself, ie a system which is applicable in the UK today, for example, the SIB situation where associations themselves vet people that want to participate in Financial Services. Clearly, that situation is out in Gibraltar primarily because at the moment we have a small Financial Sector and the different component parts of Financial Services in Gibraltar are not self-regulatory anyway. They are small associations and we really could not take that course of action. The next one was whether, in effect, we should introduce a system whereby Government itself, by appointing individuals with the Executive Officers introducing regulations, but that, I am afraid, went against the spirit of what we believe is the right course to

take and that is that the Financial Sector itself ought to be more involved. Therefore we examined all the other Financial Sectors that compete with Gibraltar, that we intend to compete with, and we felt that at the end of the day that the setting up of the Financial Services Commission as portrayed in this Bill was the right way to go about it. The essence of it is, and it is obviously subject to comments that will convince us to change, but this is what the House is for and there is plenty of time at Committee Stage to look at it but we are convinced that if we need to change we will change because what we are looking at is, and both sides are clear in their support for this Bill, so it is a question of what is best for Gibraltar. So at the end of the day if amendments have to be made, we will do so. Because at the end of the day what is it that we are doing? We are giving responsibility to the private sector for its own policing, in terms of the Commission, that we are setting up and they are participating in it. And in the areas of conflicting interests, of course, members would stand off. But the professional input, and Gibraltar is a small place that has a wealth of knowledge and potential that needs to be drawn into the development of the economy of Gibraltar, and it is important therefore in examining financial institutions, that want to come to Gibraltar and in looking at new legislation and in looking at promoting Gibraltar, that we have the best people in Gibraltar working alongside people who are appointed by the Government to promote the Financial Sector in Gibraltar. Therefore we believe in drawing from that wealth of knowledge and experience and therefore what we have said is that we are appointing members of the legal profession in Gibraltar and others into the Commission for the benefit of their advice and for the benefit of formulating policies for Financial Services, working alongside executive people who will be full-time paid unattached from any financial institution in Gibraltar. This answers the point made by the Hon Mr Britto. The Commissioner will be full-time and unattached from any interest in Gibraltar. Of course, the other executive persons like the banking supervisor, the insurance supervisor and others are, of course, completely independent as well. We feel that that is the right balance to strike in a situation where Gibraltar is a small financial centre and needs really to take off. We may want to in future, and that is always a possibility, that in future once we have put all our efforts together in pushing forward the financial sector, we may wish to change the structure at a later date to meet the demands of existing growth. At the moment we all need to get together to get the thing going effectively. That is what we believe should be done. But, of course, I take the point about responsibility. If we want to have a Financial Sector in Gibraltar the Government, at the end of the day, directly or indirectly, is responsible because people will always ask responsibility from the Government and these things are clearly defined in the way that we are proceeding with the

Services legislation that we are putting into effect. Another point put by the Hon Mr Montegriffo was the question of non-defined domestic matters and its conflict with the role of the Commission in terms, for example, the question of banks. My answer to that is very simple. If Gibraltar were to wait for somebody to pursue policies under the non-defined domestic position that the Constitution defines, I tell you that nothing would ever get done in Gibraltar. We are on our own to all practical terms and it is up to the Government of Gibraltar to push its policies forward and for others to follow us. So the Governor in many respects has a constitutional position in Gibraltar which is respected and defended by the Government of the day but at the end of the day, the Governor also has to understand that Gibraltar will have to look after its own livelihood and maintain its own economy. Therefore it is really a technical issue that the Hon Member was really discussing because even today we continue to receive banking applications and we continue to progress with our Financial Services. As the Hon Member is fully aware, since quite a lot of applications from Banks come from his particular Chambers. Other points raised by Members opposite were the question of Barlow Clowes and it is unfortunate, of course, that the 1976 letter which the Hon Leader of the Opposition mentioned, a long time before we came into office, that the DTI did not take much more note of this and discussed and consulted far more determinedly with Executive Members of the Government at the time. However, the whole essence of this, of course, is that what we are trying to do is to prevent those things from happening. But let us be quite clear and members of the legal profession on the other side will agree with me that no matter what we do, no matter how much legislation we put into place, there is no guarantee that at the end of the day that something which should not do go through. However, it is important that we be seen to be doing this, and to introduce a system that will prevent these things from happening as far as it is possible. In that the Government will take its responsibility like everything else. Let me say as well that I am proud and I am very pleased because, in fact, it has taken a very short time for the Financial Services and the Financial Services Commission legislation to be brought to the House since. It was something that had been talked about for years by the previous administration and I think I have to pay credit, and this that is why perhaps I am so much defending the participation of the professions of Gibraltar, to getting this off the ground. Because when we set up the Working Party with people in the professions in Gibraltar, I can tell you that it would not have been possible in the short time that we have dealt with this matter, a matter of five months, in getting two important legislations which have been waiting there for years, if it had not been for the efforts of the present Financial and Development Secretary and of the Working Party drawn up from members of the profession.

They have spent a lot of their time in assisting me and ensuring that these two bits of legislation come to the House. It is something, Mr Speaker, that I wish should be recorded. I am very pleased with the support that I and the Government has received in this respect. With regard to staff resources, let me say that the Financial Services Commission will be self-supporting like everything else and it will not be an arm of the Government. It will be an independent body working to the policies and to the guidelines as empowered to them by the present legislation. The Commission will decide the staff resources that it will require to carry out its function in the best interest of Gibraltar. Therefore they will be responsible for staff resources and will be responsible for the revenue raising measures. Of course there is a transitional period between that actually happening whilst the Commission is set up. The Government will assist the Commission during the transitional period.

HON P C MONTEGRIFFO:

If the Hon Member will give way, Mr Speaker. Can I clarify this question of self-regulation because I think they were talking a question of structure. I know the professionals have been very involved, and I would also like to extend the praise to them as well, because they are the people who are pushing this since it is in their interest, as much as anybody else, however if I could clarify the point. As I understand it the Commission itself, the whole body which includes the part-time commissioners, is that body and those people are going to be principally charged with doing everything which the law now says the Commission will be responsible for, Regulations, Supervision the lot? Where will the power, Mr Speaker, for some of those functions be specifically delegated? The day-to-day supervision of Banking will be the Banking Supervisor, the day-to-day supervision of Insurance will be the Insurance Supervisor. My only worry is that unless the specific delegation of every single item of a regulatory matter is laid down, there is a danger of the part-time commissioners, in the Commission at the top of the structure, have a residual regulatory function. The Minister has not really actually said that he looks towards the professionals for that sort of day-to-day regulatory function but that he looks towards them to provide the sort of input in terms of promoting Gibraltar and in terms of advising the Government on what legislation is required and on advising Government what direction is proper. Could then that not be done therefore by having a Commission which would not include these part-time professionals but which would include the officials in a global capacity and then actually delegating out to a specific Advisory Committee or a specific Advisory Group which would include the professionals, those specific duties and those specific functions.....

MR SPEAKER:

I am sorry I have to stop you there but all those things can be gone into at Committee Stage. We cannot go into Committee now. You can discuss all those points and you can talk more than once at Committee Stage.

HON M A FEETHAM:

Mr Speaker, if I could answer that point. In fact, we gave some thought to that possibility initially. The only problem was that we could not go into so much detail because we would be taking up too much of the House's time. However, the proposals that the Hon Member is putting over were considered but the conclusion that we reached was that we were going, in many respects, to be duplicating the work and of there not being proper coordination in the information and in the decision process. Therefore we discarded that because the last thing that we wanted in a small place like Gibraltar, and which is something that can be seen all round, is a massive duplication of bureaucracy. That was one of the things that we wanted to prevent and that is why we did not go into a two separate type of organisation as the Member opposite has said.

MR SPEAKER:

I must say we are talking on the general principles and merits of the Bill and we have already gone into too much detail. This we can do at the Committee Stage. It is much more practical to do it then than now. If any other Member wishes to speak.

HON G MASCARENHAS:

Mr Speaker, the Opposition already welcomed this long overdue legislation but there is a point that I would like to highlight once again. The Hon Mr Michael Feetham has said in his contribution and it is an important factor, and is something that we must not kid ourselves about. This legislation will not cure any future scandals. I think that it is important that a message goes out from this House and that we are not curing anything that might happen in the future. Just take, for example, what has now exploded in the United Kingdom. With all the legislation that they have there, the Blue Arrow situation exploded last night. Where there is money and big money is involved let us be clear about one thing, that people will use any little loophole and try and use it. As I say, we welcome this legislation, it was long overdue but it is important to know that we are not curing all the evils in the world.

MR SPEAKER:

If no other Member wishes to speak I will call on the mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Thank you, Mr Speaker. I am grateful for the very constructive and very welcome support which has come for this Bill from the other side of the House. Just one or two points. Certainly notice of amendments will be given. In fact, at the conclusion of dealing with this Bill amendments are already in the pipeline as a result of other valid contributions and comments which have come into us during the time that the Bill has been for consultation. These will be circulated to Hon Members. There are two points I would like to dwell on very briefly and that is the question of the accounts. I am afraid that whatever you put down in the legislation to control the submission of accounts reality catches up and at the end of the day it is always as soon as practicable. Whatever date we set down for the submission of accounts it has always to be prolonged and delayed. It will not act as any spur to anyone to produce and deliver. If in reality a person is not able to do his functions or do, let us say, in this case the Auditor is not able to perform his functions within a specified time, then it might be considered that we are imposing a constraint on the Auditor in doing his work, putting him under pressure to deliver something which he might need time to reflect on. I am afraid that on that one I do not share the views coming from the other side.

HON LT-COL E M BRITTO:

If the Hon Member will give way. I think I may not have been clear or the Hon the Financial and Development Secretary has not quite understood the point. The "as soon as practicable" does not apply to the Auditor, it applies to the Minister because the way I understand the Bill. "The Minister for Trade and Industry shall lay a copy of the report and the audited accounts on the table of the House as soon as practicable". The way I see it there are two distinctions in that paragraph. One is that there is no time limit on the conclusion of the audit and I suggested that there should be. I take the point the Hon Member is making but I still think that there ought to be, even if it is a generous time limit. There should be some indication. But even if there is no time limit on the conclusion of the audit the Bill then goes on to say that "within three months of the end of the audit". So by that stage the audit has been concluded and there are no constraints being placed on the Auditor. What it says is "within three months of the conclusion of the audit" then the report shall be submitted to the Minister and it is only then that the Minister has the obligation to lay it before the House. The point I am making is that the

Minister should be obliged to lay it before the House, at the next meeting of the House and not merely "as soon as practicable" which could be forever.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I thank the Hon Member for that clarification. I had taken it on board. There is another aspect which is not very obvious and that is that it is not just a question of the accounts. The reference to the Accounts includes the report on the functions of the Commission during the year and this has also to be considered by the Minister and as a result of that consideration there might be changes to implement and discussions to pursue and therefore we are not thinking just about a situation where you.....

MR SPEAKER:

Could I intervene again. All those details can be gone into at the Committee Stage. The Member is not going to be satisfied and he will want to stand up and reply to you. It will be better at Committee Stage because if there is a difference of view it can be settled then.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Thank you, Mr Speaker. I therefore 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 the adjourned meeting of the House.

THE FINANCIAL SERVICES ORDINANCE, 1989

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to regulate the carrying on of investment business and certain other activities, including the promotion, establishment and operation of collective investment schemes and the establishment and operation of investment exchanges and clearing houses 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 FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, the words I have just said are not merely paying lip service to Parliamentary parlance or tradition. They truly reflect my own sentiments. The measure being introduced to the House is of transcendental importance to Gibraltar's future and success as a Financial Centre. Through it, by it and with it, all investment business carried on in or from within Gibraltar will be regulated. Equally so, a number of other related activities which it is also desirable should come under the ambit of supervision. Although it is true to say that many of the provisions contained in the Bill and also found in legislation enacted elsewhere - notably the Financial Services Act of the United Kingdom - the Bill and the Regulations which are to follow, have been elaborated with great care to ensure that we meet our obligations to investors and to the international community generally, without over-regulation. This is absolutely vital if we are to compete successfully as a Financial Centre. Equally vital, is that the controls over the strystry should be second to none so that the industry itself is likewise second to none and thus recognised abroad, particularly by other supervisory authorities in countries where Gibraltar Financial Services firms may care to operate. Account has also been taken of the basic right of establishment there already is in European Community arrangements for those providing Financial Services. Indeed, the legislation is already geared to cater for the removal of barriers to trade in the Single Market that will come about in 1992. Mr Speaker, for credibility, acceptance, and effectiveness, the legislation has to be administered and enforced by a properly organised and funded independent body having wide powers. This will be the Commission. The Financial Services Bill is principally an enabling measure which sets out the parameters for the Regulations being made. The Financial services Industry is a complex industry encompassing a number of difference disciplines, each of which requires special separate attention. Accordingly the Regulations may also be expected to be complex for they will focus more finely on the various aspects of activities within the various disciplines. Examples are conduct of business; handling of clients monies; the contents of advertisements; the maintenance of proper records and cold calling. But I hasten to add, in a manner which should only make reasonable demands on resources for compliance, without detriment to the effectiveness of the intended controls or the services provided, by those affected. Fortunately, many of these disciplines have much in common and this allows for a standardised set of Regulations. These are almost ready and expected to be certainly so before the commencement of the Ordinance. Whilst on the subject of Regulations, I would like to

mention, Mr Speaker, that those appertaining to collective investment schemes, that is, to unit trusts; open-ended investment companies etc, will pronounce on the constitution and conduct of such schemes, their formation documents and the powers and duties of their operators, trustees and custodians. They will also give effect to EEC Directive 85/611/EEC of 20th December, 1985, which harmonises the laws, etc in Member States relating to undertakings for collective investment in transferable securities - in the trade referred to as UCITS. These Regulations will also make it possible for those sections in the Companies (Amendment) Ordinance, 1987 which relate to open-ended investment companies to come into operation, thus permitting the formation of such companies in Gibraltar. Mr Speaker, the Bill is divided into different parts for ease of digestion. It has a rather lengthy and exhaustive explanatory memorandum which spares the House from having to listen to a long-winded exposition of its provisions clause by clause. There are, however, certain aspects of the Bill which merit special mention. I will deal with these as briefly as I can. The basic tenet of the legislation is that no person may carry on any of the regulated activities, in or from within Gibraltar, except under and in accordance with a licence or, in certain cases, recognition, granted by the Auditority charged with its administration. A person who contravenes this will commit a serious offence. A clear concept of the scope of the legislation is paramount. Hence for this purpose "investments", "investment business" and "controlled activities" are exhaustively defined in Schedules 1, 2 and 3 of the Bill, pages 212 to 220. Investment business will basically comprise

(i) dealing or arranging deals in investments;

(ii) managing or giving investment advice; or

(iii) establishing, promoting, operating or winding-up a collective investment scheme, including acting as trustee of such a scheme. A "collective investment scheme" is the terminology used to describe a unit trust, an open-ended investment company, or an offshore fund in which persons participate but do not have control over the day-to-day management of the property involved.

The activities initially being controlled and referred to as "controlled activities" are:

(i) company management, ie providing managerial services for profit or reward, whereby a person is a drector for, or a shareholder of, a company or when the control over the assets of the company is vested in a management company;

(ii) professional trusteeship: holding out as a professional trustee for profit or reward; and

(iii) insurance broking: carrying on any business which takes or uses the title of "insurance broker" or "insurance agent".

Few people will be exempt from the licensing requirements. For instance, banks, building societies, insurance companies, lawyers and accountants carrying on any investment management activities will require a licence. The list of exempted persons is found in Schedule 4 on pages 220 to 222. Those listed in Part 1 of the Schedule are mostly officials in their official capacity. However, Part II of the Schedule deals exclusively with EEC nationals, thereby paving the way, as earlier mentioned to their recognition, subject to their satisfying the prescribed requirements. Recognition is also given in Part III of the Bill to collective investment schemes constituted in Member States which market their products in Gibraltar in an acceptable manner. Other overseas schemes will only be recognised if, broadly speaking, they meet the same criteria as for local schemes. Investment Exchanges and Clearing Houses may be recognised under Part IV provided they meet the requirements which will be prescribed by regulation. A very important feature of the legislation are the powers of intervention, in Part V, which will enable the Authority to obtain information and give directions to prohibit a licensee from entering into transactions, soliciting business or disposing of or dealing with specified property or assets. Such powers will only, of course, be capable of being exercised on certain justifiable grounds. Such as when there are grounds for cancellation or suspension of a licence. The Authority will also be able to apply to the Supreme Court for the removal of the manager, trustee or custodian of a collective investment scheme, or for the appointment of a person to wind up such a scheme. It will have the power to appoint investigators to look into the affairs of a person suspected of carrying on activities either in contravention of the legislation or in a manner prejudicial to the public, to investors or to Gibraltar's reputation as a Financial Centre. The investigation may extend to the affairs of the operator, trustee or custodian of an authorised or recognised collective investment scheme. There will, of course, be the right to make representations and appeal against the decisions of the Authority. This is provided for in Clauses 46 and 47 of the Bill under Part VI, Miscellaneous and Supplementary. Clause 55 in this Part will empower the Governor to make Regulations for the purposes of carrying the Ordinance into effect and enabling the Authority to prescribe Rules. Such Regulations may, inter alia - (a) provide for a fund to be established to compensate investors for loss arising from the inability of a licensee to meet any claims in respect of civil liability incurred by him in the course of carrying out his licensed business or activity; (b) prescribe the fees payable to the Authority; and (c) provide for the winding up, or other dissolution, of persons carrying on or applying for

a licence. Clause 61 introduces savings and transitional provisions so that persons who immediately before the enactment of the Ordinance are carrying on investment business or a controlled activity, may continue in business while their application, if made within two months of the coming into force of the Ordinance, is determined. Mr Speaker, a Bill of this nature, has to be published well in advance of its presentation to the House in order to allow for comment and improvement. That has been the case with this Bill which was published on the 21st July. Valuable comments have been received from various quarters - in regard to which I would like to voice the Government's appreciation. As a result of this consultative process there are a number of changes and improvements to the Bill which, together with those originating in-house, I propose to circulate to the House after this contribution so that there may be ample time for them to be considered before moved in Committee Stage. Finally, Mr Speaker, I wish to thank publicly, all those who have helped with the preparation of the Bill. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

Mr Speaker, I am glad to see Moreso having regard to the concluding remarks of the Financial and Development Secretary regarding the date of publication of the Bill and the actual date of its introduction in the House for First and Second Reading and what has happened in between in the sense of the representations that they have received, I am glad to see because of all that, that the Government has resisted the temptation which they had of introducing the Bill in the House at a much earlier date. This became clear from some comment which I think the Hon Mr Feetham had made over GBC that the Government was thinking, at the time, about possibly bringing the Bill to the House in September and perhaps even trying to take it through all its stages then. I can understand that the Government was very anxious to try and introduce the Bill in the House at the earliest opportunity given what was happening and as a declaration of intent and in order to set minds at rest that the Government really meant business in this important field. But I think that time has proved that that would not have been wise, certainly not to have taken it through all stages then and that as a result of the time that has now been allowed of about four months before, more in fact because we are going to take the Committee Stage and Third Reading in December, five months will have gone by before the Bill actually goes through all stages in this House and therefore as a result of all that the piece of legislation that will finally see the light of day will be far better than what it otherwise

would have been. Mr Speaker, broadly speaking we welcome the vast majority of the provisions of this legislation. It is a piece of legislation which is really long overdue. I am not going to say that it was somewhat hurried in the sense of producing the Bill but obviously in drafting such a complicated piece of legislation, it is not always possible to see all the implications and that therefore the Government knew beforehand and that is why they have not put down the Bill for Committee Stage at this meeting, the Government knew that there were representations that were coming which they really had to take on board. I was asked to Chair a Financial Sector Think Tank back in November, 1986, Mr Speaker, and the presenting Acting Financial and Development Secretary was my adviser in that body. I think that had I been given the job much earlier than I was, in the event I was only given about a year, something might have emerged before the end of our term of office. I was fully conscious of the need for this sort of legislation to be brought to the House and I think that I am also confident of my ability to have given the matter the necessary impetus, particularly once I had found my feet on what was then for me a new field. We were working towards this legislation. It is very much in line with our thinking then and I think that it is the sort of legislation which any Government of Gibraltar worth its salt would seek to get onto the Statute Book as readily as possible. As the Financial and Development Secretary has said, it has been drawn up on the advice of lawyers and other experts who are working in the financial sector in Gibraltar and who, by and large, know and understand our problems and therefore what is required. He has also confirmed the view that we had made beforehand that the legislation was probably modelled on legislation elsewhere. But having said all that, Mr Speaker, we do not agree with everything in the Bill and there is one particular matter of principle which we are concerned about. In fact, which we are very unhappy about and which on present thinking, unless something were to be said from the other side that might cause us to change our thinking, on present thinking there is one point of principle which I am going to elaborate on which will mean that instead of voting in favour of the Bill we will feel bound to abstain. The Financial and Development Secretary said that the Bill, by and large, is an enabling measure for Regulations to be made and we do not quarrel with that. That it should be an enabling measure and that further subsidiary legislation will be required but, unfortunately, it seems to us that the definition of the Ordinance contained in page 171 of the Bill really takes the matter further. The definition says "this Ordinance includes any Regulations and Rules made under this Ordinance". So it appears as if the Regulations and Rules which are to follow will become part and parcel of the Ordinance and that is something that we are not happy about. The upshot of all that can be that subsidiary legislation, Rules and Regulations to follow, could amend the Ordinance almost entirely and that therefore the

legislation which will have emerged from this House next month could at some time subsequent to that be entirely amended by the Government without subsequent reference to this House. If subsidiary legislation is going to become part and parcel of the Ordinance then instead of actually bringing a further amending Bill to the House, effectively, there will be no opportunity for Opposition Members of the House of Assembly to debate such rules and regulations. This amounts to, in our view, Sir, yet again, to an erosion of the functions of this House, a matter that we have been complaining about and sometimes bitterly over the last eighteen months. The Executive is effectively being empowered to amend overnight, without further reference to the House, the legislation which we have had a part to play in framing and the Hon the Financial and Development Secretary had some kind words to say about the positive role and the contribution that we have made in the earlier Bill and on this Bill, I think, our contribution is also of a positive nature and if that is valuable then why should rules and regulations be made subsequently that will not give us an opportunity, effectively, to do the job for which we are being paid. Mr Speaker, I have taken the trouble of consulting the Bible of Parliamentary Procedure, Erskine May, and the Chapter 22, on the question of Delegated Legislation, namely, Subsidiary Legislation Rules and Regulations. In the United Kingdom it has become the practice over the last fifty years or so in order to lighten the burden of Parliament which has got a very heavy legislative programme, to provide in the legislative machine ways and means of lightening Parliament's burden and hence there is a wide body of subsidiary legislation which does precisely that. But the considerations that apply in Parliament in the United Kingdom I do not think are applicable to Gibraltar. It is not necessary in Gibraltar to confer legislative power on the Executive to the same extent as in the UK because we do not have a heavy legislative burden here in this House. The House is able to meet as and when required, for a particular purpose, we are accommodating, we are helpful to the Government and in between the Government has considerable time to get on with its executive business without having to spend more time in the House than is necessary something which does not happen in the United Kingdom. In the United Kingdom Statutory Instruments can be amended by delegated legislation but the major provisions of an Act of Parliament are not amended by subsidiary legislation. To do that, in my view, makes a mockery of the whole process of the passing of legislation and the main function for which we are elected and which is to be legislators. This is a debating chamber but by and large this is the Legislature. This is the body for enacting legislation. So because what is at stake is a very important parliamentary principle, we feel that we are not going to be able to support the measure and vote in favour of the Bill. My colleague, the Hon Colonel Britto, is going to deal with many more of the details than I am going to concern myself

with but there are two or three that I do want to mention. I am particularly glad to note that the Bill is going to make provision for the contents of advertising to be covered, this is a matter which was of concern to the Financial Services Think Tank, as I am sure the Hon Financial and Development Secretary can confirm, that I had the honour to Chair, at an important stage in our proceedings. It was something that we really wanted to do something about and to get straight because we were already concerned about the nature of some advertising both in the press and on television. We have some misgivings about the provisions in respect of exempted persons and in particular the question of an agent. We think that there is a possible loophole here and we would like the Government to look at the matter more carefully unless there is already a proposed amendment which I have not had a chance to look at in the second batch of papers that has been circulated, perhaps there is. So we will look at that in Committee. The immunity which is conferred under Clause 49 is, in our view, far too wide and greater protection needs to be given to the public, really, in this respect. As I say, Mr Speaker, both in what is to follow my colleague will go into many more of the details and we will also be making our contribution in Committee. So whilst, generally, we welcome the Bill, we regret that for the reasons that I have stated which has to do with the enactment of legislation and rules, we cannot go all the way and we cannot vote for the Bill.

HON ATTORNEY-GENERAL:

Mr Speaker, can I deal with the point made by the Hon Leader of the Opposition insofar as Government making subsidiary legislation is concerned. This is, indeed, as the Hon Financial and Development Secretary has said, principally an enabling piece of primary legislation. It is, if you like, Mr Speaker, the skeleton and Government will have to put the meat onto the bones by means of subsidiary legislation. Mr Speaker, it is a matter for Government to decide in the exercise of its policy, whether it wants to implement that policy by means of primary legislation or by subsidiary legislation. If Government has decided, as is the case, it wants to implement its policies largely by subsidiary legislation, then it becomes my duty to consider three things when Government approaches me and instructs me to draft subsidiary legislation for a particular thing. I have to, firstly, Mr Speaker, decide whether the subsidiary legislation I am instructed to draft is proper legislation of a subsidiary nature made under the enabling provisions of the Ordinance. In other words, is the enabling provisions in the Ordinance adequate to cater for the subsidiary legislation desired to be made. If the answer to that is no then that is the end of the matter and we have to do something different. If the answer to that is yes, Mr Speaker, the next thing I have to consider is does the prospective subsidiary legislation conflict in any way with EEC legislation? If the answer to that is no, the third

thing I have to consider is does the subsidiary legislation conflict in any way with the principles of the Constitution and especially the fundamental rights and freedoms afforded by Sections 1 to 14 inclusive of the Constitution? If the answer to that question also is no, then the subsidiary legislation, once drafted and once published, is of course perfectly valid law. Mr Speaker, all those points were canvassed at very great length by myself in the case involving an appeal under the Fast Launches (Control) Ordinance in the case of Jose Manuel Rodriguez Cortes which was determined by the Chief Justice in 1985 and he supported each and every one of the points I have just made to this House. So, I hope that what I have said will allay any fears the Hon Leader of the Opposition may feel about any possible invalidity subsequently or challenge to subsidiary legislation which Government makes in the implementation of its policies under the enabling provisions of this Ordinance.

HON LT-COL E M BRITTO:

Mr Speaker, with the greatest respect to the Hon and Learned the Attorney-General, our immediate reaction on this side of the House, without a chance of further consultation or study, is that the highly technical explanation that has immediately been given does not allay the fears that have been expressed from this side in the introduction to our reaction to this Bill. It is, of course, up to the Government to lay down the policy and as the Hon the Attorney-General has said, for him to implement the policy. But we feel for one that the Government is departing from normal practice in what they are doing and that secondly the net effect is to allow a body outside this legislature to enact what is tantamount to laws which are the responsibility of this legislature to debate and enact. We feel that that is not something that we can accept. The Hon Attorney-General referred to the Constitution and I would have thought that Sections 32 and 33 of the Gibraltar Constitution were relevant to the matter that we are discussing and, in particular, amongst other things, to the definition of "Ordinance" in that Constitution. I would submit that "Ordinance" is defined in the Constitution of Gibraltar and that this legislation seeks to, in a way, modify or change the definition in the Gibraltar Constitution. And I put it to the Attorney-General whether that is in fact the case and whether that can be done. The net effect, as I say, is that we feel that the Bill would usurp the powers of this House and as such we still maintain our objections to it. I will not repeat, Mr Speaker, a lot of what I said in my introduction to the previous Bill except to repeat that, obviously as has been said, that we welcome it and that what I will say will be constructive. Once again to point out minor details that illustrate the fact that a certain amount of work needs to be done before this Bill can be completed and maybe some of it is already being done in the substantial amendments that have been

circulated. In Clause 8, for example, there is reference to non-existent subsections. In Clause 60, subsection (3), there are references to non-existent subsections of other sections. In Clause 26, subsection (2)(b)(iii), there are references to non-existent regulations. As I say, it is illustrating the point that I was making in a different way on the previous Bill. Coming to more detail and to particular areas, sections and principles of the Bill, the question of custody of customer investments dealt with in Clause 2, subsection (2)(b), we feel is too vague as it stands in allowing any person to be a custodian and we feel that the Isle of Man legislation which specifically lays down that only banking institutions shall be used as custodians is much better and one that should be followed. We feel that however tight the legislation that we are trying to enact may be, however effectively the Commission is working or the members of the Commission are working, at the end of the day what we are trying to achieve is to safeguard the investments of the people who could be affected adversely by a rogue company or by someone who breaks the law. However effective, I repeat, Mr Speaker, that legislation or that Commission may be, if at the end of the day those assets which that rogue company is holding or has passed on to a third person to hold, are not there there is not much point in having effective legislation if the person still loses out because the assets cannot be traced. We feel that the security that a banking institution can offer as opposed to the looseness which at present exists in that any person can be nominated as custodian is desirable and we must commend it to the Government very, very strongly. Secondly, on the question of exempted persons covered under Clause 4 and under Schedule 4, I have taken on board the Hon the Financial and Development Secretary's explanation on aiming ahead towards the Single European Market but it would seem to us that there is a possible loophole there in allowing a company to be registered in other EEC countries and then not being subject to the full rigours of the licence in Gibraltar by being exempted. Similarly, under the exceptions of Part I of that Schedule, subsidiary companies exempted we feel, as is the case in the Guernsey legislation, we feel that it should be obligatory and laid down by law that such subsidiary companies should have the necessary resources and expertise. At the moment the only requirement is that they should have an agreement with the parent company. A thought that occurs to me very much as I am speaking and to which I have not given detailed consideration but which I nevertheless could put to the Hon Attorney-General is that maybe the answer might be for exempted persons and subsidiary companies still to need to be licenced if not necessarily and I am not entirely certain why the exemption is necessary and why they are exempted from the licence, whether it is a question of fees or whether it is a question of administrative burden but the answer might be for them to be exempted from the fees but not from the licence. The third point is on the Commission's ability to grant or refuse a licence given under Clause 8.

It is a slight technicality but the way I understand it, the Commission must, because the word in the Ordinance is "shall", the Commission must either grant or refuse a licence within a period of six months and we would have thought that it might be sensible to allow provision for the Commission to defer that deadline of six months if the circumstances were such that such deferment were needed in order for the case to be either pursued further or considered further whereas at the moment it seems that it must either decide within six months on either a positive or a negative answer. But I stand to be corrected on that if that is not so. My understanding is that under Clause 8 there are only those two options and that there might be a case for further consideration in a positive way before saying no to a licence or, indeed, in a negative way further consideration before saying yes. Another point I want to make, Mr Speaker, is on the avoidance of the exclusion clauses in Clause 23 and again it would appear that the example contained in the Guernsey legislation is probably better than what we have ourselves and that the wording is not as watertight as it could be. My colleague, the Hon Leader of the Opposition, dealt with advertising regulations which, of course, we support and agree on the detail and effectiveness but to expand slightly on what he said, we feel that these advertising regulations could be considerably weakened by the definition of prospectus on page 171 of the Bill, specifically on the content of the words "detailed information" in reference to that prospectus. I am sure the Hon Attorney-General will agree with me that 'detailed' is subjective and difficult sometimes to define but we feel that the word 'detailed' could weaken the whole section on advertising regulations. Finally, Mr Speaker, on controlled activities and specifically on company management in Schedule 3, again our feeling is that the provision of nominee shareholders not having in aggregate more than 2% of the issued capital of the company is another possible loophole that needs to be studied more closely to avoid a possible rogue company setting up under the provisions of that exemption. A final point, we notice that trust companies have not been defined in the legislation in any way and we wonder whether this is a deliberate omission and whether the Attorney-General considers that it might be worthwhile to have them defined especially in relation to what I have just said, in relation to company management. In conclusion, Mr Speaker, I will repeat what I said in reference to the previous Bill on thanking the administration for the time that we have had in being able to work on this Bill and, hopefully, to make a positive contribution on it and thanking them for circulating the amendments at this point in time and asking them that if there are further amendments that will be coming up at the Committee Stage to let us have sight of them as early as possible before the date of the next meeting. Thank you, Mr Speaker.

HON P C MONTEGRIFFO:

Mr Speaker, I think it is difficult to underestimate the importance of this legislation and how desirable it is that Gibraltar should be seen to be passing an Ordinance of this type. The Bill is a marriage with the previous Bill that we have discussed and in that sense one without the other is not feasible or practical because both go together. The detailed comments which I have on the Bill I will expand on at Committee Stage because I would like to consider what amendments have been made by the Government itself. I would like to ask the Government, perhaps for a commitment on, is the question of timescales. As has been indicated, this Bill is very much a framework, very much just the skeleton and the details of how things will actually be regulated will be done by way of subsidiary legislation. Frankly I would not like to see the Bill pass all its stages unless there was some fairly clear indication of when the Rules are going to be published because we are providing a framework, technically in law, of regulation both with the Commission and both Financial Services proper without the actual flesh being attached to it and that is a dangerous set of facts. I would prefer a commitment from the Government that even if this Bill was passed it would not come into operation until the whole framework, the whole flesh had been put into place and comes in as a complete package and at the same time. I do not know what the Government's views are but I would have thought that you would have to have set up the actual Commission with a Commissioner and an element of infrastructure or an alternative to that infrastructure in order to make sure that the legislation could be policed. The important thing about this legislation which I think it is necessary to say, is that it is designed to comply with EEC Regulations and therefore the examples that some of my colleagues on this side of the House have quoted on Jersey and Guernsey and of which I directly have not had sight of, may not be that relevant because I think what Gibraltar has to do is to not follow Jersey and Guernsey necessarily but to follow the outlines and confines of European Community Directives which in some respects may be more onerous but in other respects may allow us to do things that other jurisdictions do not do. That is the basis on which I understand this legislation has been drafted and, certainly, as far as UCITS are concerned of which I have some personal contact and personal knowledge, that is the way clearly the Rules are drafted.

HON LT-COL E M BRITTO:

If the Hon Member will give way. Mr Speaker, I tend to concur with the feeling that we do not need to go the Guernsey and Channel Islands way but that we want to go more towards the Common Market way, but in quite a number of instances the actual wording of the legislation that we are discussing now and in the previous Bill, is a direct copy of

- I see the Financial and Development Secretary shaking his head, I can actually quote him chapter and verse, not here and now, but if we go through the legislation together I can point out where whole clauses.....

HON FINANCIAL AND DEVELOPMENT SECRETARY:

If the Hon Member will give way.

MR SPEAKER:

I think, again, these are matters that we can sort out at Committee Stage.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

It is a short one, Mr Speaker. The Hon Member will trace the source to the Financial Services Act whichever legislation you look at: Isle of Man, Guernsey, Gibraltar or whatever it is. That is the one that is laying the parameters.

HON LT-COL E M BRITTO:

Fine, Mr Speaker, be that as it may, the point I am trying to make is that if in drafting this legislation it has been thought fit and proper to use the same words in quite a number of clauses, and I mean exactly the same words for the whole clause as we have seen the Guernsey and the Isle of Man legislation, that is why I, in the example, said that we felt it would be better. But I am not saying that the policy should be towards the Channel Islands philosophy but, of course, to the EEC philosophy.

HON P C MONTEGRIFFO:

I am grateful for that clarification, Mr Speaker, because the point I was going to go on to make is that, in fact, our major competitors very much in the main areas in which this legislation addresses itself are places like Luxembourg and Dublin. Because Dublin has now established an offshore centre in the centre of Dublin to cater for work like collective investment schemes so it is only proper that we should look towards Europe as the framework. I just want to make a final point, Sir, which is on the question of the Rules. In my former contribution I asked the Government if they could give me some commitment that when the Rules were published in that Bill the Government would allow us on this side and allow people in the industry, sight of them for consultation before those Rules were published. I do not feel so strongly as some of the other Members on this side about the fact that the Ordinance includes any Regulations or Rules because I think that although I have opposed Regulations being used to flesh out things that I think the House should debate, in highly technical matters like legislation on this type of area the people who have to get to know are the people with an interest and people with the

natural input and I do not think that it is an abuse of the process of legislation for this type of legislation to be done through regulation. But what I think would be unfair would be for us not to have sight of the Rules before then and for the industry, in particular, also not to have sight of those draft Rules. If the Government can confirm that it is their intention that a draft set of Rules will be prepared and then circulated to people who have an interest in that, that would certainly satisfy me since it will ensure that their contribution would be taken account of. Thank you, Sir.

MR SPEAKER:

It is one o'clock now so we will recess for lunch and come back at 3.15 this afternoon.

The House recessed at 1.00 pm.

The House resumed at 3.20 pm.

MR SPEAKER:

Does any other Hon Member wish to speak on the Bill?

HON M A FEETHAM:

Mr Speaker, one of the main issues that has come out clearly from the Opposition has been the question of the legislation being put to the House in such a way that will not allow them in the future to have an input into subsidiary legislation and I can understand the views being expressed. But I think that what is important is that we analyse the spirit in which the legislation is brought to this House. When we looked at the Financial Services legislation one of the advantages we have had is, in fact, that we have been able to look at the experiences of the United Kingdom from the date that they introduced Financial Legislation. One thing that all interested parties in Financial Services in the UK and in Gibraltar are unanimous about is that the Financial Services legislation in UK has been proved to be extremely cumbersome and has, in fact, not assisted the industry as much as it was aimed to do. Therefore what we decided was to look at a short piece of legislation that would draw its main business from the introduction of subsidiary legislation which, in effect, is what happens in UK. Most of the enforcement is done by subsidiary legislation, it is a major part of the Financial Services legislation in UK. So in effect we are not attempting to do anything different than what exists in the United Kingdom taking on board the experiences that we have learnt and that we have been able to make best use of in Gibraltar. I think that having said that and having put over the background to the thinking behind the Government having made the decision to bring the legislation in its present form, I hope that Members opposite who clearly support the Bill should not

use, on this occasion, and an important aspect of it not to support the Bill and take the decision to abstain having made clear the reasons why we have brought the legislation in its present form. But there is another point in this as well and that is that we are in a very competitive business and in a business which we need to react at times to plug a loophole in anything that we will come up against that requires immediate action. We cannot do that if what we want to do is to have to come to the House to amend legislation. Therefore one aspect of the reasons of enabling legislation is to allow us to do that but also to be able to react quickly to any changes in other financial centres that are competing with us and we need to react quickly. The best way to do that is to have a situation where we can be far more businesslike in our approach to Financial Services in Gibraltar. Those were the main reasons why we went into the enabling legislation. Certainly not to produce a situation where the Government was going to be introducing Rules and Regulations in order to keep it away from the Opposition because at the end of the day we are going to have a Financial Services Commission which is independent and which is going to advise Government on legislation. Which is going to propose legislation and therefore what we are trying to do is that the industry itself is putting policies forward in the best interest of the industry. It is not a question of keeping the Opposition more or less informed or more or less involved. I think we are all clear that what we want to do is in the best interest of Gibraltar. The other point that I think needs to be answered is that, in fact, the point made by the Hon Mr Montegriffo, and that is that the Rules for Financial Services.....

HON A J CANEPA:

If the Hon Member will give way on the point about the need for the Government to react quickly through enabling legislation. I said this morning that I had scrutinised very carefully the chapter on delegated legislation in Erskine May. There is provision in the Houses of Parliament for what is termed 'the negative procedure' and that is that where there is subsidiary legislation then it will take effect forthwith or on some named future date but it shall be subject to annulment in the event of a resolution of the House. What I am saying to the Hon Member is this, the Government could consider proceeding as they intend to do, having the power to make Rules and Regulations to be able to react, as the Hon Member is saying, thereby amending the legislation but to be tabled here in the House and it shall come into effect forthwith unless at a subsequent meeting of the House the House would then be given an opportunity to annul it in pursuance of a resolution. We would have the power to bring a resolution to the House seeking to annul it if we are not in favour. I would commend to the Hon Member - it is page 381 of Erskine May, 'the Negative Procedure', we can make a copy available - and that, I think, would meet the intention which he has in his mind and the objections,

in principle, that we have. I think that would be a very reasonable way of proceeding.

HON M A FEETHAM:

Mr Speaker, I will take note of what the Hon Member has said and perhaps at Committee Stage I will be in a better position to look at the implications of what he has, in fact, said. But the point I am making is that we will be moving forward on the basis of having carried out full consultation (a) with the Commission and (b) with the entire industry in Gibraltar in introducing new Regulations and Rules and amending anything that needs to be done. This is not a particular industry where it in any way serves the Government politically to try to keep the Opposition at bay, that is not the case, this is a case where the industry itself, it is in their interest and in the interest of Gibraltar to work with a united effort in promoting Financial Services. I would say no to what the Hon Member has said but we will have a look at the point that he has made. With regards to the Rules, I have no quarrel with giving copies of the Rules well in advance to Hon Members opposite because at the end of the day if matters of a technical nature can be assisted by efforts from Members opposite there is no problem, I think we are all trying to do the best we can for Gibraltar in this area so that is alright with the Government.

MR SPEAKER:

If no other Member wishes to speak I will call on the Mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I thank everyone for their contributions. As my colleague, the Minister for Trade and Industry has said, note has been taken of the suggestions for amendments, these will be dealt with in detail in the Committee Stage. One point, however, I must clarify which I hope will also sway Members opposite to vote in favour of the Bill and that is that the expression on which both the Leader of the Opposition and his colleague, Mr Mascarenhas, is the reference to 'this Ordinance including any Regulations and Rules made under this Ordinance'. If they care to look with more attention at the preamble of that section it says: "in this Ordinance" meaning that that is the only application of the definition which has been inserted for ease of drafting so that wherever there is a reference to the Ordinance in a section it is not repeated by the words "or any Regulations or Rules made thereunder". Other than that, Mr Speaker, I commend the Bill to the House.

71.

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

The Hon J Bossano
The Hon 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 K W Harris
The Hon J H Bautista
The Hon P C Montegriffo

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 Dr R G Valarino

The following Hon Member was absent from the Chamber:

The Hon J L Baldachino

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 the adjourned meeting of the House.

THE SUPPLEMENTARY APPROPRIATION (1989/90) (No.2) ORDINANCE, 1989

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, 1990, 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 FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. The House very well knows the purpose of a Supplementary Appropriation Ordinance and therefore I feel that my explanation should be a brief one. The purpose of

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the Bill is to appropriate further sums from the Consolidated Fund and the Improvement and Development Fund during the current financial year as shown in the Schedules to the Bill in Parts I and II respectively. As is now the tradition, my colleagues on this side will be answering any points that arise in any detail of the Schedules. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON G MASCARENHAS:

No, Mr Speaker, just to say that we shall be supporting the Bill and we will have a query on Head 9 but that we can do at the Committee Stage.

MR SPEAKER:

I will now call on the Mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have nothing further to add.

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 Employment (Amendment) (No.2) Bill, 1989; the Pensions (Widows and Orphans) (Amendment) Bill, 1989; the Borrowing Powers (1988-1992) (Amendment) Bill, 1989; the Supplementary Appropriation (1989/90)(No.2) Bill, 1989; and the Income Tax (Amendment) (No.3) Bill, 1989.

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

THE EMPLOYMENT (AMENDMENT) (NO.2) BILL, 1989

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 PENSIONS (WIDOWS AND ORPHANS) (AMENDMENT) BILL, 1989

Clauses 1 and 2

On a vote being taken on Clauses 1 and 2 the following Hon Members voted in favour:

The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J I Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon K W Harris
The Hon J H Bautista
The Hon P C Montegriffo

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 Dr R G Valarino

The following Hon Member was absent from the Chamber:

The Hon J I Baldachino

Clauses 1 and 2 stood part of the Bill.

Clause 3

HON ATTORNEY-GENERAL:

Mr Chairman, there is a slight amendment to make. It is, in fact, a three clause Bill, Mr Chairman, and not a two clause Bill. The new section is Clause 2, the amendment to section 13 is meant to be Clause 3 but when the Bill was printed the figure '3' is missing. Can I apply, Mr Chairman, for that very minor amendment to be made at this stage.

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

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 K W Harris
The Hon J H Bautista
The Hon P C Montegriffo

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 Dr R G Valarino

The following Hon Member was absent from the Chamber:

The Hon J L Baldachino

Clause 3, as amended, stood part of the Bill.

The Long Title

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

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 K W Harris
The Hon J H Bautista
The Hon P C Montegriffo

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 Dr R G Valarino

The following Hon Member was absent from the Chamber:

The Hon J L Baldachino

The Long Title stood part of the Bill.

THE BORROWING POWERS (1988-1992) (AMENDMENT) BILL, 1989

Clauses 1 and 2

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

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 K W Harris
The Hon J H Bautista

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 Dr R G Valarino
The Hon P C Montegriffo

The following Hon Member was absent from the Chamber:

The Hon J L Baldachino

Clauses 1 and 2 stood part of the Bill.

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

THE SUPPLEMENTARY APPROPRIATION (1989/90)(NO.2) BILL, 1989

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

Schedule

Part I - Consolidated Fund

HON G MASCARENHAS:

Mr Chairman, clarification on the House of Assembly - Recording of Proceedings, Head 9, an explanation of what exactly it is.

HON J C PEREZ:

Mr Chairman, Hon Members will note that these gentlemen that are at the back recording the proceedings used to be part of the Public Works Department and they are now a private company and therefore the work that they do for the House is now contracted directly from the House and the expenditure needs to be voted for in order for the company to get paid for their services. That is the explanation.

HON A J CANEPA:

Mr Chairman, Head 26 - Pay Settlements, could we have an indication as within what areas of Government employment the pay awards have been in excess of the norm that have been provided for previously by Government?

HON CHIEF MINISTER:

In most of the areas of white collar employment. The industrial settlement was a flat rate of £8 a week for non-craft workers and £9 a week for craft workers which came within the kind of range of the amount that we had provided. We provided £2½m which is related to a pay and salaries bill of £42m. And I think the industrial settlement worked out at an average of 6½% except that it was not quite the same percentage for everybody because it was a flat rate so, in fact, a Band 2 labourer got the most. The only additional element on the industrial side which we had not provided for was the consolidation of craft allowances which is being phased in at different stages during the year. The craft allowance structure in UK in the MOD is virtually being done away with and there is a rate of, for example, technician which is going to be on a basic wage of something like £169 a week which would be the equivalent of the old basic craftsman plus level 3 craft allowance. Of course, this means that in terms of earnings and in terms of shift allowances the consolidation of the craft allowance into basic pay has an on-going effect. But this is only a very small part of the £750,000. The bulk of it is the restructuring exercise that has gone on in the administrative and in the technical side as well as the nurses where there was a totally new structure created in the National Health Service last year and part of the payment this year, in fact, in the Nursing Grades was backdated to April, 1988, because the 1988 pay review in the Nursing Grades involved, first of all, an interim payment and then the matter was referred to a Commission that did a study and a restructuring exercise and when they finally reported and we finally got the DHSS thing here and applied it we were well into 1989. Members opposite will remember the problem and the strikes that there were in the United Kingdom because some nurses were graded 'G' and some nurses were graded 'H' and they had previously been on the same rate of pay. So what we did, in fact, was we negotiated directly with the union here to apply an average which had

the same effect rather than have the problem of having people who were previously doing the same job on different wards, one being upgraded and the other one being downgraded which had caused so much problem in UK. It meant that by the time we actually settled the 1988 Pay Review we had to implement April 1988 and the April 1989 Pay Review and therefore in this financial year in terms of nurses there is two years of pay involved, there was over a year retrospection. And we have had the regrading exercise of the PTO's, the final stage of that which in fact was started when the Hon Member was in office which is when the basic PTO grade replaced the old PTO TII and we had people who were temporarily graded at TG1 and who then had to be staff inspected and analogued. This year we are getting in addition staged increases for the clerical grades and a spinal column covering HEOs, EOs, AOs and AAs with the same maximum and then spinal points which are discretionary depending on the recommendations of Heads of Department all of which, I think, is going to create quite a lot of complications for us in Gibraltar because frankly the move in UK now is away from national pay bargaining and the main advantage with parity was that we would apply whatever was agreed outside London. But if you have to apply one rate of pay in Devon and another one in Scotland and another one in Wales, logically everybody will want the one in Devon. This is really where the effects have been. In terms of basic pay, we are not talking about increases of more than 7% or 8% but because people are moving up the scale at the same time as the scale is moving sideways, in practical terms in earnings we are talking about much bigger increases.

HON A J CANEPA:

I am very grateful, Mr Chairman.

Part II - Improvement and Development Fund

HON P C MONTEGRIFFO:

Mr Chairman, there is a reference to General Services. Can the Minister for Government Services perhaps give a breakdown of what the figure of £157,000 represents?

HON J C PEREZ:

The Hon Member should have the breakdown attached to the Bill. Both are revotes, one is for the Sandy Bay pumping mains and the other one is the part of the refurbishment of the refuse incinerator which was not spent in the last financial year.

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

Clauses 2 and 3 were agreed to and stood part of the Bill.

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

THE INCOME TAX (AMENDMENT) (NO.3) BILL, 1989

Clauses 1 to 4

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

The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J I Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon K W Harris
The Hon J H Bautista

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 Dr R G Valarino
The Hon P C Montegriffo

The following Hon Member was absent from the Chamber:

The Hon J I Baldachino

Clauses 1 to 4 stood part of the Bill.

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

THIRD READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to report that the Employment (Amendment) (No.2) Bill, 1989; the Pensions (Widows and Orphans) (Amendment) Bill, 1989, with amendment; the Borrowing Powers (1988-1992) (Amendment) Bill, 1989; the Supplementary Appropriation (1989/90) (No.2) Bill, 1989; and the Income Tax (Amendment) (No.3) Bill, 1989, have been considered in Committee and agreed to, and I now move that they be read a third time and passed.

Mr Speaker then put the question and on a vote being taken on the Employment (Amendment) (No.2) Bill, 1989, and the Supplementary Appropriation (1989/90) (No.2) Bill, 1989, the question was resolved in the affirmative.

On a vote being taken on the Pensions (Widows and Orphans) (Amendment) Bill, 1989, the following Hon Members voted in favour:

The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J I Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon K W Harris
The Hon J H Bautista
The Hon P C Montegriffo

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 Dr R G Valarino

The following Hon Member was absent from the Chamber:

The Hon J I Baldachino

On a vote being taken on the Borrowing Powers (1988-1992) (Amendment) Bill, 1989, the following Hon Members voted in favour:

The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J I Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon K W Harris
The Hon J H Bautista

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 Dr R G Valarino
The Hon P C Montegriffo

The following Hon Member was absent from the Chamber:

The Hon J I Baldachino

On a vote being taken on the Income Tax (Amendment) (No.3) Bill, 1989, the following Hon Members voted in favour:

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 K W Harris
The Hon J H Bautista

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 Dr R G Valarino
The Hon P C Montegriffo

The following Hon Member was absent from the Chamber:

The Hon J L Baldachino

The Bills were read a third time and passed.

PRIVATE MEMBERS' MOTIONS

HON A J CANEPA:

Sir, I have the honour to move the motion standing in my name, that:

"This House welcomes, in general terms, the proposals for further constitutional advancement for Gibraltar drawn up by General Sir William Jackson".

Mr Speaker, it is not my intention this afternoon to discuss in any great detail the merits of Sir William Jackson's proposals. I do not think that this is necessarily the time or, indeed, the place to do so but I consider, nevertheless, that it is important and useful that the matter should be given an airing in the House. In the first place, Sir, I think that the credentials of the person who has drawn up these proposals should be given some consideration. This is not the case of a well meaning but perhaps eccentric crank who is trying to tell us what is good for us. On the contrary, the proposals have been, yes, Mr Speaker, from time to time we do get letters from people who think they know best, drawn up by someone who knows Gibraltar very

well; who understands the Gibraltarians very well; and who has identified himself with our interests and our aspirations, not just during the four and a half years that he was Governor, and let it be stressed that he was one of the most active and justifiably popular Governors, but that he has done so subsequent to serving his term of office, by the interest which he has continued to take in the affairs of Gibraltar and, particularly, Mr Speaker, in the course of writing his history of Gibraltar so aptly titled "The Rock of the Gibraltarians". Sir William Jackson, Sir, saw his role as Governor, perhaps to a more pronounced extent than most Governors, as being one of supporting the views of Gibraltar's elected representatives and naturally given his position, supporting the views in particular of those of the Government of the day. Also of helping us to fight our corner against all comers and assisting us and again fighting our corner with a Foreign and Commonwealth Office whenever that became necessary. Insofar as the latter is concerned, so much so that perhaps close to the end of his term of office, one could sense that London was becoming somewhat suspicious of his advice. Since his departure, as I have said previously, he has continued to take a very close interest in our affairs, perhaps in a more active sense than any of his predecessors. So, Mr Speaker, given these personal credentials and giving his almost unique record of observation from the inside as it were, the proposals that he has drawn up are worthy of the fullest consideration and should be generally welcomed by all shades of public opinion in Gibraltar. The timing of them is also, in my view, well judged for none of the other interested parties could reasonably take offence or pretend that they damaged in any way relations between them. Twenty years after the promulgation of the present Constitution, it is clear to us that constitutional change for Gibraltar cannot be ruled out and is, if anything, required as we move into a new decade. In the context of everything that has happened, vis-a-vis Britain during this period and in the context of developments in Europe during that time and further developments to be expected in Europe during the next few years, it is our view, Mr Speaker, that Gibraltar must be seen to be pressing for a more modern and for a more relevant relationship with Britain and that Gibraltar also requires to move in line with the rest of Europe rather than clinging to a Colonial framework which in reality and in practice we have long outgrown. In many respect the present Constitution is archaic and requires updating. Previous AACR administrations, and indeed the present GSLP Government, have both in practice, gone beyond the narrow framework which was envisaged in the early 1970's. Sir, many of us who have been involved with the working of the present Constitution over the years, have attested to the fact that as a community we cannot remain constitutionally stagnant and that the Constitution has, in fact, outgrown Gibraltar's needs. This has really been the gist of the reaction that there has been within Gibraltar, to the publication of Sir

William Jackson's proposals. When we, in the AACR, received Sir William Jackson's draft paper at the beginning of September, rather late in the event was proved to be the case, because it did not make it possible for our reaction to be included in the definitive document that was published by the Conservative Party's Monday Club, we immediately welcomed and supported his recommendations. We see these recommendations as being very much in line with our thinking of further constitutional reform for Gibraltar and very close, in general terms, to our traditional concept of Free Association with Britain. At an appropriate stage detailed discussion will, of course, be required on the specific proposals. That is why we have suggested to Sir William that for a start it would be useful if he were to follow up his initiative with a subsequent presentation in Gibraltar. I am sure that such discussion in Gibraltar would be both stimulating and inspiring particularly held against the background of our own proposals of Free Association which as is well known, and following the initiative taken some three years ago by my former colleague on the far left, to not breach the Treaty of Utrecht. Incidentally, Mr Speaker, it would be interesting and perhaps valuable, to try to discover, which we on this side of the House do not know, what actually transpired at the Monday Club to be able to consider in the light of whatever occurred, what further step or initiative should take place, as I have suggested, by way of presentation and discussion in Gibraltar. We on the Opposition benches, Mr Speaker, the official Opposition, warmly welcome the work and the effort of Sir William. We strongly feel that as Gibraltarians we must actively seek to define what we want for our future; for it is my view that our quest for economic self sufficiency would make even greater sense if there were to be running parallel to it a clear and realistic appraisal of the directions which further constitutional advance for Gibraltar should make. Mr Speaker, I commend the motion to the House.

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

HON P C MONTEGRIFFO:

Mr Speaker, this is the motion which I would like to feel that I have played a part in bringing to this House. It is a motion which I strongly welcome because I think that we must shake off an element of inhibition which sometimes exists in discussing our constitutional future. I think there is sometimes the impression given that discussing it is premature at this stage and puts more at risk than what we stand to gain. I believe strongly that the proposals that General Jackson has made, whilst not having to encapsulate in the framework that it is proposing what we necessarily want, contains ingredients which the vast majority of the people of Gibraltar would like to see as the next stage of their development constitutionally. Increasingly we are living in a framework of European integration where the

concept perhaps, the traditional concepts, of solutions which we have always discussed as being ways in which Gibraltar could develop will have to be amended. The truth is that nobody is going to be able to foresee now how Western Europe is going to look within the next ten years let alone even Eastern Europe and, therefore, the traditional frameworks, the traditional decolonising frameworks, that basically come out of the decolonisation of the 1950's and 1960's, I think, will have to be amended in particular in the light of where we are, which is a European framework. However, notwithstanding that, I think we do wrong not to welcome it and therefore I feel strongly that we should welcome it because it provides those ingredients which within a larger European framework we should be able to achieve. This morning we have had an example, Mr Speaker, of one area where Gibraltar's crucial interests, financial services, is in a grave situation; where banking, insurance and that type of area are not defined domestic matters and where we have an element of having to work with the Governor in a wholly colonial set up. The idea that the UK, in 1989, should be responsible for Foreign Affairs and Defence, although I have reservations on the Foreign Affairs question, is perhaps palatable, but the idea that we have to stand as politicians and to represent to the electors policies which economically are going to see Gibraltar move forward, policies which have to do with the welfare of our nation and at the same time be fettered by not being able to control such an important section of our internal economy, is absolutely untenable. In fact, when we commonly talk about Gibraltar being self governing and the UK having the responsibility in the two areas I talked about, it really is stretching the truth a little, and the only reason that we can give credence to that view, that the manner practiced we tend to extend that the Constitution actually says. I for one although, I like to think that I am a pragmatist, think that the constitutions and written laws are supposed to mean something and if they do not mean anymore what you think should be right, then to some extent we should do our own thinking in amending that. Another clear example is that example, of the Financial and Development Secretary, and the present role of the Financial and Development Secretary, constitutionally. There seems no doubt, Mr Speaker, that the role of the Financial and Development Secretary, as envisaged in the Constitution, is no longer something which politically, in 1989, is something Gibraltar is happy with. That is the sort of area where Gibraltar is living in a transition situation, again, where the letter of the law is saying one thing and where practical politics is changing it. I perhaps because of my legal background and, again though I try to be pragmatic, I do not intrinsically like the idea of somebody saying in a Constitution, which is our highest form of authority, this is the way Gibraltar should be run, and then as a matter of practical politics, we start doing things differently. There is a need therefore for a proper debate to start, and I would ask, since we are talking generally, I would suggest, Sir, that it is not impossible for us to look

at amending certain aspects of our internal administration which I think today are at a fetter on practical politics without at this stage bringing to arguments the macro level of the Constitution in terms of whether you remain a Colony or not. I mean things like the position on defined domestic matters where banking and insurance should become a local responsibility and enshrined as such, things like the position of the Financial and Development Secretary. Both of these issues are areas where, frankly, we should be able to sit down with the UK, as partners, and say right, we are not talking about today, changing the whole constitutional framework, because that requires a process which we have not yet started but I think we can start today to change the internal structures to actually make sure we have formal responsibility for the things that Gibraltar is slowly de facto assuming. In that respect, Sir, and if that argument were to find favour with other Members of the House, I feel strongly that there should be a Gibraltar view, a fairly united or as united as possible, Gibraltar view on those types of changes which could be implemented. The truth is that it would be very difficult for, or undesirable certainly, for one particular party or one particular set of individuals, to try and push through reform of this nature and it would do Gibraltar no good. If we want to be broadly agreed that these reforms, even at an internal level initially, are desirable then I think there could be a case for putting our heads together and trying to find some common ground in approaching the UK with a united stand. It is interesting to see, Mr Speaker, the Foreign Office reaction to the Jackson proposal which as would have been expected is simply a "no" although it says in formal language "that there are no present intentions, present plans, to change Gibraltar's Constitution". They stick by the present 1969 text. Bill Jackson himself has rightly pointed out that the Foreign Office is hardly going to say "What a good set of ideas, when does Gibraltar want it?" Nothing is gained without a certain amount of representation. Although I reiterate, as I close, that I am not convinced that the structure, the formal structure, that Bill Jackson is suggesting is necessarily the one that Gibraltar will be moving into in the next decade, I think there is a need to argue a case, in those things that are affecting practical politics today, and that case should start now. That would commence to form the basis of a foundation where we could then develop our own ideas of what we think, and how we think, the constitutional issue should evolve at a higher formal level. Mr Speaker, in conclusion, I very much welcome the motion. I hope that it will keep alive the idea of reform and I hope that thought can be given to considering practical reforms for the running of Gibraltar in the internal sense that I have suggested without necessarily going to lock, stock and barrel change at this stage. Thank you, Sir.

HON CHIEF MINISTER:

Mr Speaker, the Government will be supporting the motion of the Leader of the Opposition. In fact, the Hon Member knows that I have already welcomed, in general terms, what Sir William Jackson said and it is printed in the paper he produced on constitutional advancement. I think I need to deal, first of all, with the points that have been made by the Hon Mr Montegriffo. First of all, I do not know what difficulties the AACR had in Government, in their relationship, when dealing with the running of Gibraltar. I can tell the Hon Member that they often claimed, in this House, that there were two sides to the Government and that if he goes back over the Hansards of the past sixteen years, when I was sitting on the extreme left where he is now, he will find that on many, many occasions when I criticised an omission or an action on the part of the AACR the then Chief Minister would stand up and say that it is the other side of the fence and make a sideways glance in that direction. I can tell the Hon Member that now, as far as we are concerned, all the Members sitting on this side of the House, elected and appointed are part of one Government and have one policy and with one voice and if it ever came to the situation, as far as I am concerned, that there was a question as to which policy was being defended by the Financial and Development Secretary and the Attorney-General then there would only be one policy for them to defend, the policy of whoever was left in Government, because we would not form part of a divided Government. It is that simple. At the same time I can confirm, as I have already said on a number of occasions, that we have never found that to affect our Government since 25 March, 1988, and therefore I have got nothing to complain about. There has not been one single occasion when the Government of Gibraltar has taken a political decision which has then been blocked by the so-called Official Side. As far as we are concerned, we do not know how it operated before we came into Government, but we have seen no evidence of that dichotomy. I mean we have in fact just seen the House passing a piece of legislation which has shifted power from the Secretary of State in the United Kingdom to the Governor in Gibraltar in respect of pensions which the Leader of the Opposition has recognised that that may mean that things will not take as long now as they used to in the past on pensions. That has not required a major effort - I have not even discussed with the Secretary of State - we just simply said this made sense and everybody said "Yes, let us do it". So in terms of the day-to-day running, the position of the Government of Gibraltar is, that if we ever get to the stage where we are inhibited from being able to carry out the policies on which we were elected, then we will come out and say so openly and we will say look we are not prepared to carry on governing on this basis because at the end of the day when we go to the next elections we are going on the basis of what we have done or what we have not done, assuming full responsibilities, and we cannot assume responsibility if

somebody in the back room is stopping us from doing things. So that is how we see the question of internal reform. I do not agree with the Hon Member because, as far as I am concerned, I have had no experience of the kinds of problems that he has referred to, although I used to hear about that kind of problem very, very many times in the past.

HON P C MONTEGRIFFO:

Mr Speaker, I accept that point has to be made, that although at a practical level the Government may not be finding any difficulties because it is being allowed to do what it is doing, there is no doubt that in constitutional term, for example, banking and insurance for which we are assuming responsibility like, for example, having a Financial Commission this remains a non-defined domestic matter and all I am saying is that maybe the Chief Minister does not feel as sensitive about the point as I do and I accept that, that is his opinion, but I just feel it is odd that you have a Government that is doing what is doing within a set of rules that says something else. I believe that if you have a Constitution either it reflects reality or then do not have rules at all. Laws and Constitutions are to reflect reality, and although I am the first to accept that in practice you start to extend the boundaries of the Constitution, it gets to a point that what the Constitution says is so out of step with reality, you have got to say, because I think that it is an important document and I believe in things being done in that way, or I simply do what I can until I am stopped. That is the point I am trying to make. I totally agree with the Chief Minister in the fact that he can extend the Constitution but I think there is a stage where you have to formally implement things.

HON CHIEF MINISTER:

Well, Mr Speaker, as I understood what he was saying and I was relating it to the way we have experienced things in Government and the way the previous Government, elected by the people of Gibraltar, claimed to be experiencing under the same Constitution. It is not that the Constitution was changed on the 25th March, 1988, that is the point I am making. I am telling the Hon Member that in 1987 with the same Constitution and a different Government there was supposed to be problems which I am telling him in 1988 did not exist. I can also tell the Hon Member that if he goes back to the time when he used to belong to the AACR he will remember that when he tried to move the Party into putting the need to go for Free Association, as part of an election commitment in 1988, the then Leader of the Party, Sir Joshua Hassan, publicly stated that in everything except name we already had the Free Association. He is on record publicly as having said that. But that is not what I am talking about, I am talking about the constitutional relationship between Gibraltar and the United Kingdom. I do not agree with him that what the Constitution says about the

relationship between the Governor and Commander-in-Chief as Head of the Executive and the Chief Minister of Gibraltar as Head of the elected Government, is written in tablets of stone which need to be broken and remodelled every time the relationship is amended. De facto the interpretation put on to what degree the Governor acts on my advice and to what degree he disregards my advice, is something that depends, to some extent, on the nature of the philosophy of the Party in power irrespective of the nature of the Constitution and we have experienced, in our running, of the Government of Gibraltar, that there is nothing that we want to change. And we have said publicly that if we discovered that this was not the case we would want to change it. If the Hon Member ever gets to being in Government he might find that there is a requirement to change the Constitution. I do not think you can go into the business of changing the Constitution of Gibraltar simply for the sake of saying, well in order to have everything nicely slotted in place although I can do whatever I like I am going to go into a major constitutional debate with the United Kingdom, just to make sure that what I am doing is what the Constitution says that I am doing because it may well be that another lawyer comes along and looks at the same Constitution and disagrees with him. I can tell the Hon Member that the question of putting forward a Gibraltar view, on the future constitutional relationship with the United Kingdom, makes sense and it certainly would be easier today to try and find common ground with him now that we no longer subscribe to the Brussels Agreement, than it would have been in the recent past when he still subscribed to the Brussels Agreement. Because as far as we are concerned if you subscribe to the Brussels Agreement you subscribe to a view of constitutional change which the GSLP was elected to oppose. The Brussels Agreement clearly lays down that there should be negotiations with the Government of the Kingdom of Spain, about resolving all the differences between the Kingdom of Spain and the United Kingdom, on all matters, including sovereignty and taking into account the United Nations Resolutions which make reference to the element of territorial integrity under the United Nations Charter which was the agreement put forward by Spain and which is unacceptable to us.....

HON P C MONTEGRIFFO:

Mr Speaker, can I explain that, because I do not accept that my position is as explained by the Chief Minister on the Brussels Agreement.

HON CHIEF MINISTER:

Well, Mr Speaker, if it is not as I have explained then, fine, it means that it is difficult to reach common ground with him now as it was a few weeks ago. So that has got rid of the problem then.

HON P C MONTEGRIFFO:

Mr Speaker, if the Hon the Chief Minister is prepared to listen I will explain my position.

HON CHIEF MINISTER:

Mr Speaker, I have listened to the Hon Member explaining his movement on the Brussels Agreement and I have heard him say that the Brussels Agreement was the right thing to do, at the time, but that now it is no longer pertinent and that we need to move beyond the Brussels Agreement to a new basis for negotiation. That necessarily means that he no longer subscribes to the Brussels Agreement as it was done at the time.

HON P C MONTEGRIFFO:

If the Hon the Chief Minister will give way I will explain.....

HON CHIEF MINISTER:

Mr Speaker, what I am saying is that I heard the Hon Member say, in an interview, and what I am responding to is the Hon Member's suggestion that we need to have a Gibraltar view. There are, as far as I am concerned, in this House two Gibraltar views, the view of the AACR and the view of the GSLP and if the view of the Hon Member is no longer the view of the AACR then there are three Gibraltar views. As far as I am concerned, certainly there cannot be a Gibraltar view based simply on what the Hon Member thinks and what the Government thinks without the Official Opposition, it would be meaningless. So to some extent what he thinks is really academic because it does not really matter, it is what the Leader of the Opposition thinks that really matters. But since he appears to have shifted his ground, from his original support in the 1988 election on the Brussels Agreement when he defended it on many occasions during the campaign, he has now seen the light, a little bit, not entirely because he still has one foot in and one foot out, probably not to upset too much the Life President. Mr Speaker, I am just making clear what we would consider to be the necessary qualifying conditions for a platform on which we could move forward with a possible Gibraltar view and unless the Official Opposition and ourselves were to find common ground on where we stand on the Brussels Agreement, I do not think we could find common ground on where we stand on the Constitution. The position, I think, as regards the actual proposals put forward by Sir William Jackson - I would agree with the Leader of the Opposition that they are of the nature that the AACR has advocated since they went to the United Nations in 1964 and said that they were in support of Free Association and that they were returning to Gibraltar and that they would start work immediately to prepare Constitutional Proposals in 1964 in order to put to

the United Kingdom, I mean, it is only a mere twenty-five years ago. But I agree that Sir William Jackson has taken up the mantle dropped by Sir Joshua in 1964 at the United Nations. Mr Speaker, it is only when we become octogenarians that we are in a fit state to start making Constitutional Proposals. The Leader of the Opposition said that it is a question of knowing in the direction that further constitutional advance should take. Well, we all know in what direction we do not want it to go. I do not think that it is something which we need to discuss because there is total unanimity in Gibraltar that we are not talking about bringing Gibraltar closer towards integration with Spain. So really if you are talking about a relationship between Gibraltar and the United Kingdom where Gibraltar is a dependent territory of the United Kingdom, then there are only two possible directions: either we become more dependent or we become less dependent. There is no other way that we can go. And becoming more dependent is another way of saying becoming closer integrated and if there ever was a chance to do that and I believe that there was in the 1960's, then that chance, I think, disappeared when Roy Hattersley made it clear that a Labour Government would not accept such proposals and a Conservative Government would not accept such proposals. So really what I am talking about is a move towards greater independence, or greater self Government, or greater autonomy, whatever label we want to put in it. Therefore, the question of being a Dependent Territory of the United Kingdom, over which the United Kingdom is responsible, becomes if you like diluted without in any way weakening the bonds of friendship and culture and identity that binds us to the United Kingdom. That is the direction in which I think we all want to go, I think the Gibraltarians have an increasing sense of nationhood and an increasing sense of national pride. And one of the restraining factors in that development has been lack of self confidence and lack of belief in our capacity to, not only govern ourselves, but pay for ourselves. I also think that the changes that are taking place in our economy through the reduction of Ministry of Defence expenditure means that more and more people realise, in Gibraltar, that it is not a question of choice, it is not that we can choose to be more economically dependent on the United Kingdom or less economically dependent on the United Kingdom, it is that we choose to either find alternatives to dependence on the United Kingdom to maintain and improve our standard of living or we accept that our standard of living declines as our dependence declines because the United Kingdom is clearly embarked on a worldwide retrenchment policy which has been going on since 1945, we are now the third biggest Colony left and when Hong Kong goes in 1997, we will be number two, after Bermuda. Bermuda has got 63,000 and we have got 30,000 and we are now the second biggest bit of the Empire. That is to what it amounts to. At this rate we will be the whole of the Empire!

HON A J CANEPA:

The Empire strikes back!

HON CHIEF MINISTER:

Sometimes the way I behave one would think they are our Colony. So I really agree with the Leader of the Opposition that it is not something that we can ignore and say it is something we do not need to face and I also agree with him that there is no reason why we should not be looking at this, in parallel, to the striving what the Government of Gibraltar is doing and I am sure the AACR would want to do when they were in Government to make it all viable and self sufficient. I do not think that anybody in Gibraltar wants anything other than that. It is a matter of judgement whether what we are trying to do to bring it about are the right things to do and whether they would be successful. We have been elected to do that job and we are trying to do it. But there is nothing to stop us at the same time considering, in parallel with that, politically where do we go. As far as the Government is concerned we said during the election campaign and immediately after the election campaign that this was not a matter that was a priority on our agenda and that we would not be seeking constitutional change with UK during our first term of office. That as far as we were concerned the first thing we had to do was to put our house in order economically. But that does not mean that we are not prepared to look at it until we have achieved that. We just think that genuine constitutional change in terms of total self-government is very difficult unless you can demonstrate that you can survive, I mean a lot of small Colonial Territories have had problems in achieving independence because, in fact, from the United Kingdom point of view, the view that has always been taken is you cannot have your cake and eat it. And if you want to be independent then do not say to me we want to be independent but you want aid from me and defence from me but you want to be independent, so that means that you want to do whatever you do but then if things go wrong you want to be able to come running to me for help. That has held back the independence of many of the small territories that were left in the Commonwealth and we believe that we can create a very sound basis for our economy to lead us into the future. There is, of course, another aspect to this which we cannot ignore and I think it is right that we should put it out in the open and that is that the lukewarm response from the Foreign Office to Sir William Jackson's ideas and to any ideas of constitutional advancement for Gibraltar are not because they dislike us more than any other Colonial Territory and therefore they mind us developing and they do not mind anybody else, but because in their judgement this can only lead us into increasing hostility from Spain. That is their view. Their view is that if we push for greater constitutional reform in Gibraltar then the consequence of that will be that Spain will take a harder line towards us

and that is, of course, consistent with what happened in 1969. We must not forget that the 1968 restrictions were started because Spain accused the United Kingdom that by giving us the 1968 Constitution and by creating a House of Assembly to replace the Legislative Council and by creating Ministers, they were giving Gibraltar more self-government and putting it on the road to independence, which they claim was in fact, in practical terms, an infringement of the Treaty of Utrecht because although there had been no transfer of sovereignty to the Gibraltar people, by giving the Gibraltar people a say in their affairs it meant that British sovereignty was being diluted and, if you like, Gibraltarian sovereignty strengthened. I do not think anybody can dispute that that is, in fact, an accurate reading, there is no question of the fact that today the Government of Gibraltar governs in Gibraltar, to all intents and purposes, as an elected Government does in any other country of our size and there are smaller countries than us in the Commonwealth that are independent and have to have some of their external affairs handled by somebody else because they are not big enough to do it any other way. So the course to determine how this is going to happen, clearly, needs to be determined because we are talking about a situation about which the view in London is that to embark down this road carries with it dangers, in terms of our relationship with the neighbouring State. I am saying that because at the same time the Government of Gibraltar is clear that it is something that it is prepared to risk, like I said before in another motion in the previous House of Assembly, if at the end of the day we are not going to be able to speak our minds openly in this House for fear of upsetting our neighbours then what is the point of having the right of free speech in Gibraltar? I do not think we should go out of our way to upset our neighbours, if we can avoid it, but if they need to be said then they need to be said. Therefore, it needs to be said that we welcome proposals for further constitutional advancement and that we are saying it in the knowledge that they probably will not like it.

HON G MASCARENHAS:

Mr Speaker, there can be very little doubt left today that, certainly in political circles, we have come a long way since the 1969 Constitution and we have a lot of witnesses: we have witnesses of the Peliza administration from 1969 to 1972 and four successive AACR Governments from 1972 to 1988 and now we have the GSIP administration which is quite happy to work within the existing framework. I agree with the Chief Minister that there is certainly an amount of colonial outlook still about in Gibraltar and we have to get rid of that one hundred percent. Gibraltar Governments have been allowed all along to get on with their business, that has been my view in Government, certainly on the last AACR administration, without hardly any interference whatsoever. In effect what I am trying to say is that Gibraltar has

ceased being a Colony if not de jure then certainly de facto. In practical terms we are no longer a Colony and the actual governing of the territory is no longer a colonial situation, in our view. From the individual point of view since the moment that we earned the right to British citizenship we were no longer colonials in that respect. But returning to the subject under debate, Mr Speaker, what Sir William has set out to do simply is to put the practicalities of the real situation into a formal proposal. Of course, we welcome it generally, from this side of the House, because these proposals in themselves are very much in line with our aspirations on Free Association. Although, as far as I am concerned, it does not really matter what you call it, whether you call it Free Association, Dominion Status or anything else for that matter. The keyword, as far as I am concerned, is decolonisation and that is something that goes very deep into the hearts of all Gibraltarians. What we have in practice, Mr Speaker, really needs to be put formally and what Sir William's proposals do is to take us a little bit further, perhaps, than we would like to go, we have not gone into details and it is not my intention to do so, whether the Government of the day should be responsible for the Police, rather than come under the Governor. Internal Security, etc are minor details that would have to be looked at on the day and I really do not think it should be dealt with now. This debate will take place both inside this House and outside this House and I think it is important that as many Gibraltarians as possible take part in this debate because I do not think it is just the province of the elected Members, the people of Gibraltar should express their views, certainly through the media. The Hon the Chief Minister mentioned the Foreign Office and what the Foreign Office have already said is virtually a veto. Mr Speaker, our attitude has to be that the exercise is worth carrying out and we have to proceed irrespective of what the Foreign Office says, the people of Gibraltar have to be clear on their own minds where they are going in the future. It is absolutely essential. Nobody is going to do it for us. We have to lay on the table that this is what we want, Mr Speaker. What is happening in East Germany, if one were to have two two months ago with the Wall supposed to have come down last night, well there is still a chance that the Spanish Government might change their minds on the Gibraltar problem and tolerate further change. Who knows? I think there is hope for us for the future. Mr Speaker, the Hon Mr Montegriffo also mentioned the question of Europe and I think we have to take that into account. Eastern Europe is a prime example. The way things are changing there is nothing to say that Spain might not change in its attitude towards Gibraltar and I think they are already changing, certainly at certain levels. But I think it is important that we in this House, and I welcome the Chief Minister's view on this, that we have to present a Gibraltar view. That we have to know where we are going for the future that is absolutely essential.

MR SPEAKER:

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

HON A J CANEPA:

Mr Speaker, I think that the shape that the debate has taken this afternoon has shown that it has been a very useful exercise indeed. I would like to dispose, in the first place, of the valid point made by the Chief Minister regarding the lukewarm response of the Foreign Office and his understanding as to why that has been the case and I would not quarrel with his analysis that it is because of their perception of increased hostility on the part of Spain. I would not quarrel with that. Perhaps for the record, I should say, rather more accurately, that the response that we had from Spain in 1969 culminating with the closure of the frontier, I do not think that it was so much the fact that we were getting in Gibraltar a great devolution to the Government of Gibraltar as seen by the creation of Ministerial office because that had actually occurred in 1964. The Landsdowne Constitution, which was an interim measure if you like, in fact created the office of Ministers and created a Council of Ministers without any distinction as between defined domestic matters and non-defined domestic matters which is odd. I remember when we came into Government in 1972, notably people like Aurelio Montegriffo and the late Abraham Serfaty, were somewhat surprised that matters were going to Gibraltar Council which in their days between 1964 and 1969 had actually gone to Council of Ministers because there was not this separation of powers. But nevertheless I do agree with the Chief Minister that the reaction from Spain was very much a reaction to what they saw as provocation on the part of Britain in that not only were they conferring powers on the Gibraltar Government which were moving us away from the status quo in a direction in which the Spanish Government did not want to see, but also I would submit, a reaction to perhaps what the Spaniards call "el broche de oro" of the Constitution which was the Preamble to the Constitution. That, I think, was an affront to Spain in the context of what they have been trying to do. The Chief Minister spoke in response to what the Hon Mr Montegriffo had said about difficulties in Government in running the affairs of Gibraltar and I think the reality, Mr Speaker, is that it is a continuous process of progress in the day-to-day running over the years. I remember when we came into Government in 1972 and there were certain measures that we brought to the House, certain matters had been implemented, I remember that there was an element of surprise from the then Opposition. Some of the Ministers who had served under you, Mr Speaker, when you were Chief Minister, notably Mr Maurice Xiberras, mentioning to me on two specific matters I remember, where I had been able to make progress which was the question of

Sponsored Patients and something either to do with Supplementary Benefits or with Family Allowances and he expressed surprise as to how I had been able to get these measures through the Treasury when he had been trying to do so and had not succeeded. And really I think there were two reasons why I had been able to make progress on matters which he had not been able to. First of all, because I did not take on the Treasury head on. I did not go to the then Financial and Development Secretary, Alistair Mackay, who was a bit of a no man, instead I went to somebody else whom I knew well and whom the Director of Labour and Social Security knew even better and whom we knew that Mr Mackay would take some advice from. So by clearing the Council of Ministers Paper in draft with this person one circumvented the Financial and Development Secretary, you had a friend within the Treasury and when the proposals were referred to the Financial and Development Secretary, on advice, to this other top official whom I will not name, but whom I know the Hon Mr Bautista knows perfectly, the battle had been won but in the eyes of Mr Xiberras, who was by then the Leader of the Opposition, this astounded him and no doubt something similar must be happening today as between what the Hon Mr Bossano is saying and the line that perhaps was taken by the then Chief Minister. On the question of non-defined domestic matters, however, and that is the setback in the eyes of the people of Gibraltar in respect of the point of view which this House, and with hindsight, we in the Government made a mistake in allowing ourselves to be persuaded by the very eloquent person occupying the Chair today and by Mr Peter Isola on the question of the hours on which the frontier opened, at the time of the pedestrian opening, because our initial reaction was to say nothing. But we were carried along and what happened really, the assessment that I have made as to why, first of all, let it be said that the then Spanish Foreign Minister, Senor Moran, we are led to believe, made a telephone call to the then Secretary of State, who was not Sir Geoffrey Howe, this is important, it was Mr Francis Pym, and this was in December 1982 and I can tell Hon Member, because I was present and Mr Peter Isola was present, it was the first occasion when I accompanied Sir Joshua Hassan and Mr Peter Isola came along because that was the time of the bilateral approach on foreign affairs, I was present in September 1982 at the meeting with the then Secretary of State, Mr Francis Pym, where Sir Joshua Hassan, believe it or not, and it was the second or the third occasion when I had really seen him over the years lose his cool, had one hell of a row with Mr Francis Pym. I remember that he had to stay behind after the meeting was over to try and mend fences. I do not know to what extent he succeeded but it would not surprise me for one moment if in the light of that row Mr Francis Pym had not been very forthcoming and therefore his disposition to accommodate the Spanish Foreign Minister may have been greater than what it otherwise would have been. These are realities which have to be stated because we get a better understanding as to why matters sometimes occur. The reality of the matter is that in those

days of 1982, I do not know what the position would be today, I think very similar. I think the reality is that the Gibraltar Government then, or today, under the Constitution, does not have powers to lay down what the opening hours at the frontier should be. Moreso, having regard to EEC Directives, etc on freedom of movement and so on. That, I think, Mr Speaker, disposes of the point which the Chief Minister made and which I felt it necessary to react to. I agree, Mr Speaker, with what the Chief Minister has said about us today in Gibraltar having an increasing sense of nationhood, the Chief Minister is perfectly correct. But let me also add that in the early 1970's we, and when I say "we" at least the philosophers, as I like to call them, within the AACR, were fully conscious of this, the doctrine of our right to our land which was espoused by Aurelio Montegriffo and myself, I remember a key phrase that Aurelio Montegriffo used and he spoke about this doctrine as being "a concept of nationhood", that was in the early 1970's. The pity of it all is that not everyone understood what we were trying to say not the least within my own party and hence we did not make much progress on the matter. I feel, Mr Speaker, that what we have today is a situation which, as my colleague George Mascarenhas has said and as Mr Montegriffo hinted, Europe is on the move, who would have said, certainly when I was involved in the Debating Society of the Grammar School, who would have said when I was seventeen or eighteen years old that in our lifetime we were going to see the dramatic events of the last few months and few years in Eastern Europe. Dramatic because of their input, because of their extent and even more dramatic because of their rapidity, the short period, the incredibly short period of time in which these events have occurred. Therefore what is clear to me, what must become clear to all is that we in Gibraltar simply cannot stand still. Quite honestly I do not think that we are going to be allowed to stand still and if we tried, we would fall into the trap of becoming isolated and of being bypassed by the breathtaking events that are unfolding on the broader canvas of the Europe of the 1990's and of the Europe of the 21st century. Therefore I welcome the constructive line that has been taken in this debate, I am glad that I have brought the motion to the House and that the motion has clearly received so much recognition and support of the realities about which we have been speaking.

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

The following Hon Members abstained:

The Hon K W Harris
The Hon J H Bautista

HON A J CANEPA:

Sir, I have the honour to move the motion standing in my name that:

"This House considers that the role of the House of Commons British/Gibraltar Group is to defend the interests of the people of Gibraltar, as expressed to them by Gibraltar's elected representatives".

Mr Speaker, the House of Commons All-Party Gibraltar Group was created and set-up essentially because of the Spanish restrictions against Gibraltar. In the 1960's, as the restrictions escalated leading to the closure of the frontier in 1969, a number of Members of Parliament who had visited Gibraltar, sometimes as part of a Commonwealth Parliamentary Association delegation, and I have in mind, Sir William Teeling, Sir Frederick Bennett and George Jeger amongst others, formed a Group in Parliament which took a very close interest in Gibraltar. A Group who supported us and identified themselves with our struggles and aspirations. I remember only too well how in the late 1960's and early 1970's, George Jeger who was the Labour MP for Goole, being referred to as Gibraltar's own MP. He frequently came to Gibraltar, officially and informally, and on more than one occasion at the Party Conferences of the AACR. During the 1960's the help that we received from these Members of Parliament was a vital factor in the development by successive British Governments of the policy of "support and sustain" for Gibraltar, it was also an important contributing factor in the lead-up to the present Constitution and most important of all in creating a climate of opinion, in Parliament, that was amenable and helpful in achieving the Preamble to the Constitution. Throughout the 1970's, Mr Speaker, we knew that there existed a body of Members of Parliament, in both Houses of Parliament, that one could count on. People who were receptive to our views and aspirations as a people and who were always ready to welcome, at Westminster, visiting Members of the Gibraltar House of Assembly in order to acquaint themselves with the mood of our people. You yourself, Mr Speaker, are in a unique position to confirm what I am saying given your close association with many of them during the years when you were an elected Member of this House living in London. Perhaps the most dramatic episode that could be cited as evidence of the role traditionally adopted by Members of Parliament was during the successful campaign to obtain full United Kingdom citizenship for the people of Gibraltar through the historic amendment to the 1981 Nationality Act, moved in the House of Lords. On that occasion Gibraltar's many friends in the Upper House who had known us from their days as Members of the House of Commons, some of them, indeed, had been Ministers, in fact, Secretary's of State for Commonwealth Relations, who had direct responsibility towards Gibraltar and who rallied to our assistance because they saw matters

as we saw them. Notable too in that campaign, in the succeeding years, were Sir Albert McQuarrie, Chairman of the Group, and Lord Bethell, the latter being both a Member of the House of Lords and a Member of the European Parliament and lately Chairman of the Gibraltar in Europe Representation Group. I think, Mr Speaker, that anyone who has followed events closely over the years will have no doubt that Albert McQuarrie during all the years that he was Chairman of the British/Gibraltar Group never said or did anything that was not fully in accord with the interests of Gibraltar as seen by their elected representatives. His close family links with Gibraltar naturally helped, but then he is not alone in having such links. We know and we accept that Members of Parliament are very jealous of their autonomy, moreso as individuals and we would not want it otherwise. We would not dream, as individual Members of this House or collectively, to do anything that would detract from that perception which they have of their role and functions as Members of Parliament. But there is a difference, in my view, between the line or the attitude which is adopted by an individual Member of Parliament, on any issue, and that taken when he is a member of a group and speaks for a group, particularly as its Chairman. Moreso when that group, as in our case, styles itself the House of Commons All-Party British/Gibraltar Group. An individual Member of Parliament can write to the Secretary of State for Foreign Affairs and express whatever personal views he may have to put to him about any matter including Gibraltar as long as it is clear that such views are personal. But the Chairman of a particular group, I would submit, can hardly claim that he is putting across the views of that group and representing views on behalf of others when that group has not met and base it on the basis of assumptions or on the basis of the fact that such views had been put into a letter and that letter had been circulated to Members and there had been no comeback, during a period when Parliament was not, in fact, in session, that that was alright. By not having consulted other members of the Group fully and not having obtained their agreement, I would submit that those representations are not validly the representations of the Group. I would also add, Mr Speaker, that in a political context the representatives of the people are not the commercial interests, be they general interests or specific ones, but those who have been elected at a General Election. For instance, the Confederation of British Industries does not represent the people of the United Kingdom in a political sense or in a constitutional sense. It is Parliament that has that function and no one would wish that that principle should not apply to Gibraltar. I do not accept the view that is held in a certain quarter that simply because the All-Party British/Gibraltar Group represents all parties and "because of the exigencies of political life" it would be wrong for that Group not to bear in mind the views of other bodies and individuals who may have the wellbeing of their countries at heart, in this case Gibraltar. Matters which closely affect the national

interests of a people, of our people, are matters for those who have put their views to the electorate and who are therefore politically responsible for them. In any case, how can we put to the test whether other bodies or individuals actually have the wellbeing of their countries at heart and not their own interests particularly insofar as their pockets may be concerned? Any Parliamentary Group cannot surely be out of step with the majority view. Also thrown at us in support of what has happened has been the time honoured definition of the role of an MP of a prominent MP and write of the eighteenth century, Edmund Burke. He has been quoted at us in reply to our comments about the views put to the Secretary of State. Edmund Burke held the view that "Your representative owes you not his industry only but his judgement and he betrays instead of serving you if he sacrifices it to your opinion". Again, Mr Speaker, the difference is that we are not talking about the role of a Member of Parliament vis-à-vis his constituents in the UK but of the role of the British/Gibraltar Group whom we the people of Gibraltar did not elect vis-à-vis us. Sir, we have taken advantage of the recent visit of the four Members of Parliament who formed part of the recent CPA delegation that visited Gibraltar last month and we have put to them our views on this matter. I think that they understand our point of view and trust that they will be in a position, at Westminster, to help in getting the Group to see their role in the traditional way that I have described this afternoon. The Group's role, their effectiveness to our benefit as in the past, can only be a success if Gibraltar is totally behind them. There is also the real danger that views expressed opposite to our own can convey, can only send wrong signals to Spain. There may be, Mr Speaker, a need to clear the air on this matter and to clarify the role of this Group as we in Gibraltar see it. In that case we in the Opposition would only be too ready and available to help the Government in every way that we can. Even to the extent that if a visit to the House of Commons were to be necessary to discuss the matter with the Officers and Members of the Group, if that were to be required, in the interests of maintaining the close relationship, the beneficial relationship, that we have had over the years, then I would be willing and happy to accompany the Chief Minister to achieve the objective. Mr Speaker, I commend the motion to the House.

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

HON P C MONTEGRIFFO:

Mr Speaker, as you are aware, I have given notice that the House should consider an amendment to the Hon the Leader of the Opposition's motion. The amendment is about to be circulated, Mr Speaker. The motion before the House has the undesirable effect of only giving the impression that the British/Gibraltar Group has not acted in the way that we

feel it should have acted and about which we are all unanimous but does not, I think, go further to recognise the value of having a closer collaboration with them so that this type of incident, does not reoccur. If we want a British/Gibraltar Group then I think to some extent they require our input to make sure that there can be no doubt as to how we expect them to perform. I feel, Mr speaker, that there has been too little contact with the Group over the last few months although very recently that may have started to correct itself. I, however, think that it is fair that we should recognise the value of greater collaboration with them so that every element of influence which they require to properly represent a Gibraltar view is given to them so that we are there to correct, if that requires any correction, any type of misapprehension which they might have. What is very dangerous, Mr Speaker, is to have a British/Gibraltar Group operating other than within the views of Gibraltar's elected representatives. Therefore if we want a British/Gibraltar Group, and I think we are all of the view that we want that, let us recognise the value of that closer collaboration so that there can never be the accusation that we have not given enough input and support and expressed what views we expect them to project. I hope the amendment will not be controversial and the House sees its way to approve it because I feel it will tend to balance the Leader of the Opposition's motion. My amendment provides that the following words be added at the end of the Leader of the Opposition's motion: "and to this end recognises the value of greater closer collaboration between Gibraltar's elected representatives and the members of the British/Gibraltar Group". I move the amendment, Mr Speaker.

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

HON CHIEF MINISTER:

The Government will be opposing the amendment, Mr Speaker. As far as I am concerned, the Government is in no doubt about the desirability of close collaboration between Gibraltar's elected representatives and the British/Gibraltar Group but I believe that to introduce that, at this stage, is to suggest that there was justification for that letter because the degree of collaboration has not been as great as it could have been and that it should be greater. I, Mr Speaker, do not believe that that is true at all. I believe that the Chairman of the British/Gibraltar Group had every opportunity to take account of our views because they were well known to him. I heard about the letter in the media before I received a copy and I do not see how one can do anything but damage to the Leader of the Opposition's motion by adding the words that the Hon Mr Montegriffo has proposed at the end of the motion. These words, Mr Speaker, can only be interpreted, and we interpret them, as a weakening of the criticism in the Leader of the Opposition's motion which is a criticism

that we share. It is wrong for the Chairman of the British/Gibraltar Group to put views in the knowledge that they are in conflict with our own. It is not that the Chairman did not know what we think, it is that he does not agree with what we think. Mr Speaker, he has a right not to agree but he does not have the right, as the Leader of the Opposition has said, to put his personal opinion in his capacity as Chairman of the British/Gibraltar Group in the knowledge that that view is not shared by the people of Gibraltar through their elected representatives. I can inform the House, Mr Speaker, that I made it absolutely clear in my first address to the British/Gibraltar Group in the House of Commons with the Chairman beside me, that in the view of the Gibraltar Government he had no right at all to go round drumming up support for the Airport Agreement when the Airport Agreement did not have the support of the elected Government of the day. Mr Speaker, the Chairman of the British/Gibraltar Group may think that the Agreement is a good thing but we do not think that it is a good thing and we think he damages Gibraltar's cause by lending his weight to it. The Government is therefore not prepared to support an amendment which gives the impression that part of the responsibility for the letter that was sent to the Secretary of State is borne by a failure on behalf of Gibraltar's elected representatives to collaborate with the British/Gibraltar Group to a greater degree than it is doing already. All I can say is that the Government of Gibraltar is quite happy about the degree to which the British/Gibraltar Group in Parliament is aware of the Government's views because every single time I go to London and I go quite often, I make it a point of visiting the House of Commons and telling them what our views are. Mr Speaker, I am speaking on the amendment and when we speak on the motion I will reply to the Leader of the Opposition as to his ideas and whether we could act together on this.

HON A J CANEPA:

Mr Speaker, speaking to the amendment. It seems that we have, what I could describe, a little local difficulty. That, Mr Speaker, is how Harold MacMillan once termed a wholesale sacking of the Cabinet. We, in the official Opposition, are concerned in trying to get a consensus motion to emerge from the House and therefore in an effort to do that, having regard to what the mover of the amendment said and having regard to the Chief Minister's reaction that he sees this amendment as being an implied criticism or a reflection of there not having been enough collaboration. Particularly what he has said about the way in which he learned about the letter and which I think is regrettable. In an effort to reconcile views I wonder whether an amendment to the Hon Mr Montegriffo's amendment might not be acceptable to both the mover and the Government. If my amendment were to remove from Mr Montegriffo's amendment the words "greater and closer", the amendment, Mr Speaker, would then read "and to this end recognises the value of

collaboration between Gibraltar's elected representatives and Members of the British/Gibraltar Group". This in no way expresses an implied view about the collaboration that there has been and I think it is in line with the historical development that I made in my previous contribution and its relationship with the people's elected representatives. Such an amendment, Mr Speaker, would not cast an aspersion one way or the other. I would therefore, Mr Speaker, move an amendment to the Hon Mr Montegriffo's amendment deleting the words "greater and closer".

HON CHIEF MINISTER:

Mr Speaker, we do not see the need to alter the original motion at all. If we thought that there was a need we would not have waited for the Hon Mr Montegriffo, we would have amended it ourselves. As I have said we are quite happy, Mr Speaker, with the way that the Leader of the Opposition has put the matter to this House. We think it reflects what we all feel and we feel that adding anything to it makes the original motion worse. We are therefore not prepared to accept Mr Montegriffo's original amendment and we do not see the need to placate him or satisfy him so we do not accept the compromise proposed by the Leader of the Opposition either. We will vote against it and then pass the Leader of the Opposition's original motion.

HON P C MONTEGRIFFO:

Mr Speaker, I am happy with the amendment proposed by the Hon the Leader of the Opposition in an effort to try and find a compromise and therefore arrive at a united view in this House. I do not see what all the fuss is about because if the Leader of the Opposition does not feel that his motion is weakened by the amendment to the amendment, I do not see why the Hon the Chief Minister is so concerned. In my view it should be the Leader of the Opposition who should decide if the amendment weakens his motion and not the Chief Minister. I agree with the Leader of the Opposition that it in no way implies a criticism of Gibraltar but simply stresses the value of cooperation.

HON A J CANEPA:

Mr Speaker, perhaps the most expeditious thing would be if the amendment to Mr Montegriffo's amendment was put to the vote.

Mr Speaker then put the question in the terms of the Hon A J Canepa's amendment to the Hon P C Montegriffo's amendment and on a vote being taken the following Hon Members voted in favour:

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

The following Hon Members voted against:

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

The following Hon Members abstained:

The Hon K W Harris
The Hon J H Bautista

The following Hon Member was absent from the Chamber:

The Hon J L Baldachino

The amendment was accordingly defeated.

HON P C MONTEGRIFFO:

Mr Speaker, I am surprised at the Chief Minister's reply because I do not see any weakening at all in the motion by what the amendment is seeking to do. I happen to believe, Mr Speaker, that there is room for greater and closer cooperation and collaboration and that if there is room for closer collaboration then there is nothing wrong in us recognising that and therefore influencing the British/Gibraltar Group further. I would simply say that if at the end of the day the Government continues in its present mode of saying no to the amendment and vote against it that I will vote in favour of the original motion because that encompasses at least half of what I would like to see. It would, however, be with regret that the extra link which I think is a sensible extra link has been thrown out.

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Mr Speaker then put the question in the terms of the Hon P C Montegriffo's amendment and on a vote being taken the following Hon Member voted in favour:

The Hon P C Montegriffo

The following Hon Members voted against:

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

The following Hon Members abstained:

The Hon K B Anthony
The Hon It-Col E M Britto
The Hon A J Canepa
The Hon M K Featherstone
The Hon G Mascarenhas
The Hon Dr R G Valarino
The Hon K W Harris
The Hon J H Bautista

The following Hon Member was absent from the Chamber:

The Hon J I Baldachino

The amendment was accordingly defeated.

MR SPEAKER:

So now we can proceed again with the original motion.

HON J C PEREZ:

Mr Speaker, the Chief Minister made a slight mistake in his contribution when speaking to the amendment when he said he had actually read the matter in the press before he received the letter. He got the communication that I had actually received because the Hon Member was in Tokyo at the time and I read the contents to him. Basically I am explaining that that is why I am responding to the motion on behalf of the Government because I was Acting Chief Minister at the time and the initial remarks to Mr Colvin's attitude came from me. Let me explain, Mr Speaker, that at no time was there any attempt at all to get in touch either with any Member of the Government or any Member of the Opposition or to discuss in any way either through a telephone conversation or through a letter or through friends or relatives what the Hon Mr Colvin intended to do. I think quite mistakenly he has taken the role of Chairman of the British/Gibraltar Group to mean that he represents what he thinks is better

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for the people of Gibraltar in the British Parliament and that conceptually is not what the Gibraltar Group is about. We have had other Members of Parliament in the past taking a view on Gibraltar outside the Gibraltar Group which none of us have shared, however to belong to the Gibraltar Group and particularly to lead the Gibraltar Group, must be on the basis that one leads a group in defence of Gibraltar and comes here and talks to the elected representatives, then looks at the political position that the elected representatives are taking and with that position then defend it in Parliament. It is not a question of saying: "Well, it is matter of status for me that I can stand up in the House of Commons and claim to represent Gibraltar and now I am going to represent Gibraltar without regard to the elected representatives' views there but as I think fit". That is not what the Gibraltar Group has done in the past and that is not what the Gibraltar Group should do. By virtue of its existence it exists because there are Members of Parliament in the House of Commons that agree with the position of the elected representatives of the people of Gibraltar and are prepared to raise important matters in the House of Commons in defence of the position of the elected representatives of the people of Gibraltar. Mr Speaker, I agree totally with what the Hon the Leader of the Opposition has said in introducing the motion and how we see the role of the Gibraltar Group in Parliament. Since I have not spoken on the amendment to the amendment, Mr Speaker, or on the amendment I have taken your point that we could speak once and that was it so I have left the question of collaboration for now, and if the role of the Gibraltar Group is to represent the views of the elected representatives then the question of collaboration does not exist. Either you defend the position of the elected representatives of Gibraltar or you do not but it is not a question of collaborating. We have had Members of Parliament, Mr Speaker, very good friends of mine, in the Foreign Affairs Committee, taking a view on Gibraltar that was not our view but it was taken independently from the view of the Gibraltar Group. So if Mr Colvin has strong views about what he feels is the Airport Agreement then he can quite rightly, like the Hon the Leader of the Opposition, express that view in Parliament but not in representation of the people of Gibraltar. He can express it as an individual MP with a view on Gibraltar but certainly not in representation of the elected representatives of Gibraltar. Mr Speaker, I take the point of what the Leader of the Opposition has said and his offer that perhaps, in the future, we might jointly take an approach and visit the MP's. However, as the Hon the Chief Minister has said already in his contribution in the previous motion, I think there are things that we need to clear ourselves, particularly on the Brussels Agreement and I come to that now because the motion reads "as expressed to them by Gibraltar's elected representatives". When there has been a bipartisan approach by the House that has worked to the extent that the Group has been representing a view. When we

were in the Opposition and there was not a bipartisan approach because we were against the Brussels Agreement and the previous Government was in favour of the Brussels Agreement, the Gibraltar Group quite rightly defended the majority view in Parliament and the majority view was in favour of Brussels and the line that was pushed was the one in favour of Brussels and we as an Opposition never complained because we understood that the role of the Group, if it could not get a united front in Gibraltar, was to defend the majority view in the Gibraltar Parliament. I think that that distinction needs to be understood and perhaps if we at one stage or another agree on a joint approach then the matter that divides us, which is really the Brussels Agreement, then we can have a joint approach on the way forward by the Group and on other matters as well. I would just like to add, Mr Speaker, also and I emphasise the point, that there are other members in the Group and that its leader decided not to consult them either and that he was not only acting without the approval of the elected Members of the people of Gibraltar but he was also acting without the approval of the members of the Group because he did not see it fit to consult them. I think we need to put our point of view quite clearly to Mr Colvin and certainly we on this side of the House are going to. So it is up to Mr Colvin then to decide whether he can eventually defend the position that we all believe in or give up being leader of the Gibraltar Group and express whatever views he wishes and which he is free to do in Parliament, but his views as a Member of Parliament, not as the leader of a Group in Parliament which is there, specifically, to defend Gibraltar's interests. Thank you, Mr Speaker.

HON IT-COL E M BRITTO:

Mr Speaker, I would like to make a short intervention and apply the old time honoured principle of the five "w's", what, when, where, why and how, or rather an abridged version of it, I will quickly add and to put into context the situation. I think we have to try to avoid the debate turning into a witch hunt or even planting the seeds of discontent or discord between us and the All-Party British/Gibraltar Group. I think one should try to think positively on the situation. We all regret what has happened, we all regret the incident of the letter but I think we should be looking at it positively as, indeed, the motion sets out to do. As such we have to see what do we have here? We have a group of British MP's who are linked to Gibraltar by various reasons be it the fact that they have been here in Gibraltar, be it that they are interested in Gibraltar, be it that they have family connections with Gibraltar or be it for any other reason. But they are Members of the All-Party British/Gibraltar Group on a purely voluntary basis. They have no actual remuneration except an interest in associating themselves with the people of Gibraltar and as such, as you well know, Mr Speaker, they

have done excellent work in the past. That is the sort of situation that one has to look to foster and try to ensure that it continues. In that the Group needs every encouragement and every good word that we from this House in Gibraltar can say. And now, to get to the final 'w', how should this be done? There is no doubt that we all agree in this House that the Chairman of the Group, when he speaks as Chairman, should speak voicing the opinions of the elected representatives of the people of Gibraltar and the point made by the Hon Member just now that whereas in the past the Group represented the view of the Government of day in reference to Brussels, we entirely accept on this side of the House, and that the Group in the case of conflict between views on either side of the floor of this House, should express the view of the Government of the day. We feel that the onus is on us to make sure that the members of the Group are kept informed on day-to-day developments in Gibraltar and on our feelings - when I say 'our feelings' I speak collectively of this House - rather than expecting Members of the British/Gibraltar Group to come to us to try to find out what is happening. As such I would submit that the onus is very much on the Government of the day to make sure that that lines of communication are kept open and fostered at every opportunity. I fully support, of course, the suggestion made by the Hon Leader of the Opposition on the question of a joint approach to the House of Commons. But, again, I would submit that that is, as was said earlier on in a different context, "el broche de oro". It is the continuing contact, the maintenance of that flow of information to and from the Group via the Chairman, on a much more frequent basis, that is desirable and, in fact, essential if one is to avoid the sort of regrettable situation that we have had recently of letters being written without consultation. In conclusion, Mr Speaker, I wish to reiterate what other speakers have said, that whereas British Members of Parliament have no direct allegiance to either this House or to the electorate in Gibraltar and they are, of course, quite free to speak their own minds on any matter in the House of Commons, and if at any time either the Chairman or, in fact, for that matter, any of the members purports to be speaking or writing on behalf of the British/Gibraltar Group then it should be quite clear that he should be voicing the opinion of the elected representatives of the people of Gibraltar. Thank you, Mr Speaker.

HON K B ANTHONY:

Mr Speaker, I am not going to add a great deal to this debate because so much has been said by Hon Members already that they have almost pre-empted everything I had jotted down. I do however feel, Mr Speaker, that the British/Gibraltar Group in Parliament is vital for this House and although I have only been a Member of this House for less than two years, I do have a knowledge of many Members of the British/Gibraltar Group because of my

previous employment in the media, there was George Jeger who did such valuable work in Gibraltar; Sir Frederick Bennett who I met on a number of occasions; and of course Albert McQuarrie who in his time in the House of Commons was almost a monthly preacher standing up and waving his Order Paper asking questions on our behalf. Over the years the British/Gibraltar Group has always maintained strong links with this House and it is important, Mr Speaker, to remember that although they are a Group it is made up of individuals who have their right to their individual views and their individual approaches and each member of the British/Gibraltar Group has the right to talk to any member or any sector of our community. They have the right to express their views but what they express in official circles in Parliament in London must be the views of the Group as a whole, that is vital, not the individual view of any one Member expressed unilaterally without consulting the rest of the Group. There is no doubt, Mr Speaker, that minority sectors of our community may hold views that might differ from the views of the majority. And, again, this is right, we live in a democracy, anybody can express any views they wish. But I think it is important, Mr Speaker, that if individual members of the British/Gibraltar Group talk to any sector of our community or any individual they must make certain that the views that they obtain are the views of the majority as expressed normally through the Members of this House and they should make certain that if they support a minority view it is for the betterment of Gibraltar as a whole and that must be confirmed in this House of Assembly, they cannot do it unilaterally. No one man in London can come here and say: "I know better than the elected Members of this House". We are in this House because we were elected by the people of Gibraltar to express their views and that is a very important factor. Everybody in this House has said quite clearly that we appreciate the work being done by the members of the Group and, certainly, when we met the recent delegation of Members of Parliament who came here, they all showed their support for the work of the Group. In fact some were not members of the British/Gibraltar Group and they expressed the desire to become members when they returned to London and I welcomed that very much. There is a delegation coming out in December, as you know, Mr Speaker, and we will all be welcoming them and we are going to support them and they will work in Parliament on our behalf just as they support us. I feel, Mr Speaker, by all means, let individual members talk to whoever they wish but let them consider whatever they are told and let us make it quite clear that we will not accept nor tolerate any diminution of our responsibility to our electorate. We represent the people of Gibraltar and the British/Gibraltar Group in Parliament must understand that they are a Group whose role is to fight for us in Parliament in fields that we have approved not in fields that they unilaterally think is best for us. On the recent case of the famous letter, I prefer to be generous and feel that it was a major error of judgement. I may be wrong but I am going to be generous and say I hope that it

was an error of judgement and it will be the last time that such errors of judgement concerning our relationship occur. But I am certain that if our arguments are put forward sympathetically and as was said by the Hon Member on the Government bench, a bipartisan approach, if possible, because if we disagree with the Government's policy, then the majority view will have precedence. I would however like to see a bipartisan approach because I would like a united Gibraltar view expressed, through this House, to the people in London. I am sure that if we continue with the strong links that we have forged over the years with this Group then we are going to benefit by the fact that we have a very strong proxy voice in the Mother of Parliament and I think that is vital. Thank you, Mr Speaker.

MR SPEAKER:

If no other Hon Member wishes to speak I will ask the Mover to reply.

HON A J CANEPA:

Thank you, Mr Speaker. I agree with the Hon Mr Juan Carlos Perez about the point that he made that over the years there have been a number of Members of Parliament who have had contrary views. In fact, on some occasions those contrary views have been expressed publicly and sometimes they have been views which have been sympathetic to Spain and they have been publicly expressed and on other occasions they have been views which have been held by Members of Parliament who have had a role to play, such as in the House of Commons Foreign Affairs Committee. In fact, there was one notable one, from our point of view in Gibraltar, Mr Frank Hooley, and most Gibraltarians subsequently rejoiced when he was deselected and had to contest a seat in Oxfordshire and he very nearly lost his deposit, he only got something like 5,000 votes and we all rejoiced as did the people of the Falkland Islands. Even here in Gibraltar, Mr Speaker, we have had visiting Members of Parliament who have expressed views which have been somewhat unpalatable. For instance, the last time that we hosted the CPA Conference, Mr Douglas Hoyle of the Labour Party expressed some views which had it not been for the fact that we were hosts, I think that I would have bitten his head off because I honestly did not like such views that were too accommodating towards our neighbours. But we are conditioned to the exercise of democracy and we respect the views that such people have as individuals provided they do not think, which in none of these instances which have been mentioned were spoken on our behalf. I would dearly express the hope, Mr Speaker, that the motion, in spite of the defeat of the amendment and the amendment to the amendment, will have unanimous support. As the motion stands, I think, that it is absolutely clearcut, it is a very simple clearcut motion and if it does not get unanimous support from this House, I feel that outsiders who will only see the end product, if it were not to be

unanimously accepted, as a dissent from what is a very simple clearcut motion. Mr Speaker, once again I commend the motion to the House.

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

The following Hon Members abstained:

The Hon K W Harris
The Hon J H Bautista

The following Hon Member was absent from the Chamber:

The Hon J I Baldachino

ADJOURNMENT

HON CHIEF MINISTER:

Sir, I have the honour to move that this House do now adjourn to Tuesday the 12th December, 1989, at 10.30 am.

Mr Speaker put the question which was resolved in the affirmative and the House adjourned to Tuesday the 12th December, 1989, at 10.30 am.

The adjournment of the House to Tuesday the 12th December, 1989, at 10.30 am was taken on Friday the 10th November, 1989, at 6.30 pm.

The House resumed at 10.30 am.

Mr Speaker(In the Chair)
(The Hon Major R J Peliza OBE, ED)

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 K W Harris - Attorney General
The Hon J H Bautista - Financial and Development Secretary

OPPOSITION:

The Hon A J Canepa - Leader of the Opposition
The Hon G Mascarenhas
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

The Hon P C Montegriffo

IN ATTENDANCE:

C M Coom Esq - Clerk of the House of Assembly

PRAYER

Mr Speaker recited the prayer.

MR SPEAKER:

I understand that it has been agreed between the Chief Minister and the Leader of the Opposition that the laying on the Table of the Accounts for Gibraltar Shiprepair Limited for the Year ended 31 December 1988, the Gibraltar Register of Building Societies Annual Report 1988 and the Motion asking in the House to note the Gibraltar Shiprepair Limited for the Year ended 31 December 1988 will now be taken on Tuesday 19th December 1989.

This was agreed to.

BILLS

FIRST AND SECOND READINGS

THE PUBLIC HEALTH (AMENDMENT) ORDINANCE, 1989

HON M A FEETHAM:

Sir, I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the First Reading of the Bill to amend the Public Health Ordinance.

Mr Speaker then put the question which was resolved in the affirmative and Standing Orders were accordingly suspended.

HON M A FEETHAM:

Sir, I have the honour to move that the 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 M A FEETHAM:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of the Bill is to permit Government to charge fees to meet the cost of time spent on the examination of Building Applications. With the advent of an increase in development possibilities in Gibraltar, the situation has changed quite rapidly from the position where perhaps members of the Department could spend time in examining Building Applications which would be normally outside their responsibility. In the past with Gibraltar being such a small place, one tried to be as helpful as possible, unfortunately this is no longer the case and the result was that officers were finding themselves spending an enormous amount of Departmental time in regularising and putting Building Applications on a proper footing. This is something that would normally be done by the Consultant employed by the applicant. In the circumstances it is our view, at this point in time, that what we are doing is something that we should charge for. The fee involved is going to be based on the same rate which is charged to Government by private consultants when we have a situation when we have so much work that

we have to put some of it, I am referring to the Building Application, to be undertaken by private consultants. It will also, I think, assist in identifying the serious applicants from those who are not so serious, because the House should note, that the officers spend quite a long time in processing Building Applications which get nowhere once the Planning Permit is issued. Besides it is so cheap to go through this process that perhaps there is a need to make people stop and think, and if they are to be charged a reasonable amount, people might not be prepared to spend even a reasonable amount if at the end of the day they are not really going to proceed with the application. I also think that it will put the onus, at least some of the onus of responsibility, onto the applicants and not to employ what one could term as cowboys to prepare their Building Applications. Because as some of the Members opposite are aware these applications are full of technical clauses which sometimes require the Department to spend a lot of time in seeing all the details. Therefore these fees which we will introduce will assist in the efficient running of the department and help those serious applicants that really want to have their application looked at and considered as quickly as possible. At present there is no real priority since all the applicants are considered from the moment the application is received. So for a number of reasons we feel that this is a necessary innovation that we want to introduce in the best interest of the public and the Government. I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

Mr Speaker, unless I have not understood the Honourable Minister very well, I do not think he has made it quite clear whether the fees that it is intended to charge under 5B(1) are the reasonable cost of examination of such plans by experts employed by the Government for a purpose and whether these experts are to be permanently employed by the department or whether they are going to be Officers of the department or whether the Government is going to put that work out to consultants? For instance Mr Speaker, there have been difficulties over the years in getting the services of a Structural Engineer to check such calculations and sometimes the work has had to be put out to someone in the Private Sector. In those instances, I would have certainly no objection to the Government charging fees to reimburse itself for the cost that the Department would have to pay out to such Consultants Engineers. But the Minister, as I say, has not made it clear whether in fact it is going beyond that and where it is not necessary to employ such Engineers or such Consultants, because the Government has adequate staff whether it is also intended to charge a fee in those

circumstances. Perhaps in exercising his right of reply the Minister might clarify the matter for me. It also seems to us that this could well be taken as a step along the path of privatisation of the Crown Lands Department however notwithstanding² our fears that this could well be the beginning of such a process and we are of course opposed to that, and we have already made that public. Nevertheless at this stage we are looking at the legislation on its merits and insofar as the merits are concerned, we have no problem really in supporting the principle that the Government should be able to raise fees for this.

HON P C MONTEGRIFFO:

Mr Speaker, in looking at the Bill I have a few queries that perhaps the Government could clarify before I am able to indicate how I would be voting on the matter. The point made by the Leader of the Opposition as far as experts are concerned, I think, raises the question also as to whether the Government itself intend to employ a company, specifically, on a long-term basis or even on a permanent basis. And whether they would then be considered experts and who in turn would then be allowed to charge a fee which the Government would then recover from the developer. I think I would like clarification of that Mr Speaker. I would also like the Minister to perhaps give me indication as to how it might be possible for him to ensure equality of treatment between all developers? Is the intention that there will be a standard procedure, whereby all Building Applications would be affected by this procedure? Will all applications be the subject of fees? Or will the Government only at its discretion decide if in particularly complicated matters fees would be justified? I think that it is important to see exactly how in practice it is going to be implemented. Whether it is going to be across the board or if it is going to be a one off situation. Finally, Mr Speaker, I am not sure whether the Minister is able to indicate, at this stage, but I would certainly find it useful if he could and to specify whether this particular amendment is part and parcel of a more general strategy, whereby Licenses Permits and Consents granted by Government, or granted on behalf of the Government, would be the subject of payment by those seeking those Licenses. I am not in principle, opposed to that but, I think, it would be useful for this House to know whether this is a one off situation which is just arisen because of particular circumstances affecting this area or whether it is part of a larger strategy, eg tomorrow somebody might seek an Insurance License and there could be a specific fee for the processing of that, or if somebody seeks some other License in another capacity will there be a specific fees. As I say, I do not object necessarily to that type of method but I think it would be useful for us to know whether this forms part and parcel of type of approach to Licensing and Consents or whether it is a one-off matter.

MR SPEAKER:

If no other Member wishes to speak, I will call on the Mover to reply.

HON M A FEETHAM:

Mr Speaker, first of all I think what we ought to do is to pinpoint exactly what we are talking about and, I think, that the Honourable Member has highlighted the issue involved. First of all, Mr Speaker, we get Building Applications which are certified by Structural Engineers and that is dealt with by the department in the normal way. There are a lot of Building Applications which are not supported by a Structural Engineer's certification and therefore this has to be undertaken by the Department. Now there are times when the Department is not able, because of the volume of work, to do this and it has therefore to be put out to Private Consultants. What we are saying Mr Speaker is that the cost of this must be paid for by the applicant. Because we are not in the business of subsidising development of any sort. That is the issue involved. We will therefore be drawing up Rules which will make it clear what we will be charging fees for. There is nothing else that I can answer about the intention behind this. Insofar as the point which has been made about the privatisation of the Crown Lands Department, the Government is not at this point in time in any case in a position to make a statement about that particular aspect. However I can assure Members that this is something which was processed a very long time ago and it just happens that it has now come to the House. So, quite frankly, one thing has got nothing to do with the other.

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 CONSUMER PROTECTION (PROPERTY MANAGEMENT)

(AMENDMENT) ORDINANCE, 1989

HON J L BALDACHINO:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Consumer Protection (Property Management) 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 J L BALDACHINO:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, the first thing that this Bill does is that it transfers the powers that the Consumer Protection Officer has under the Ordinance to the Rent Assessor. Secondly, that it is the intention of the Government that an offence committed under Section 33 of the Landlord and Tenant Ordinance will also fall under Section 29 of this Ordinance. Because as Section 33 now stands it is a criminal offence for landlords to charge key money. There is however no provision under the Landlord and Tenant Ordinance for any person to be responsible for carrying out any investigation. Therefore Sir, by inserting that Section 33 of the Landlord and Tenant Ordinance under the Consumer Protection Ordinance, people who are being charged rent key money may proceed to somebody who will then be able to investigate if an offence has been committed. Under the Ordinance Mr Speaker, the Rent Assessor will not have the power to decide whether to prosecute or not. This is something that falls squarely on the Hon the Attorney General. So basically, what we are doing is that we are now clarifying the matter and if anybody has a grievance and thinks that they have been charged key money he can now proceed to the Rent Assessor who can then investigate the matter and then pass it on to the Attorney General to see if there is a case for prosecution. That basically, Mr Speaker, is all we are doing by this amendment. I therefore I commend the Bill to the House.

MR SPEAKER:

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

HON LT COL E M BRITTO:

Mr Speaker, the Opposition supports, in principle, the intention of the Bill. Although I must say that we have doubts about how effective the measures that the Government is trying to bring will be. Obviously when parties agree to the payment, or to the receiving, of key money it is normally done to suit both sides and it is therefore not likely that the matter will be aired. But inasmuch as it provides a vehicle for redress and for giving people a chance to recover what they should not have paid in the first place, we support the principle of the Bill. I would like to make a second point to illustrate that once again we have an example of not enough forethought, or of muddled thinking on the part of the Government, in the way this legislation has been brought to the House. In the earlier part of the meeting we went through the preliminary stages

of Bill No.41 of 1989, which sought to achieve the same as we are trying to achieve by this Bill. By in fact incorporating the whole of Section 29 of the Consumer Protection Property Management Ordinance into the Landlord and Tenant Ordinance. This to my mind was a clumsy way of doing it and obviously someone on the other side has realised this and the Bill is not now being proceeded with and instead we have a new Bill which hopefully achieves the same purpose in a much neater and elegant way. I am however illustrating the matter because it shows the hurriedness with which Government is pushing through its legislation and obviously not enough thought is being given to these matters.

MR SPEAKER:

If no other Member wishes to speak on the Bill I will ask on the Mover to reply.

HON J L BALDACHINO:

Mr Speaker, on the last point that the Honourable Member made Mr Speaker, the Bill was published and like the Honourable Member has said and it was then brought to our attention that it would have been better to have incorporated Section 33 under the Consumer Protection Ordinance and therefore Sir it is better for us to legislate properly rather than proceed with something that even though intended to achieve the same purpose could be done in a better manner. Mr Speaker, I remember when the Honourable Members were on this side of the House and they produced Bills galore which were then not proceeded with. One that comes to mind is the Labour from Abroad Ordinance and how it affected the Landlord and Tenant. Even though the Bill was published it was never proceeded with. Even though we have not proceeded with the Bill that the Honourable Member has mentioned we have introduced another which achieves exactly the same that what the other Bill did but in a better manner. It is also true, Mr Speaker, what the Honourable Member has said, and I have said this publicly as well, that very few cases will be able to be taken to court precisely because this involves the changing of money between a tenant and a landlord without any receipts. Nevertheless, Mr Speaker, there might be someone who will make a mistake and we must have that protection for that tenant to be able to go to a particular person, in this case the Rent Assessor, who can then investigate and if there is a case and the Attorney General thinks there is, a landlord might be taken to court. I think the objective of the whole Bill is for there to be protection of a tenant and this is what we are doing. If the matter is investigated it can be taken to court if it cannot then at least the possibility is there. We are here to legislate and to protect the weaker, in this case the tenant, and despite the criticism of the Honourable Member on the Bill and I am grateful that the Opposition will be voting in favour.

HON J L BALDACHINO:

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 (GIBRALTAR HEALTH AUTHORITY) (AMENDMENT) ORDINANCE, 1989

HON MISS M I MONTEGRIFFO:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Medical (Gibraltar Health Authority) 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 MISS M I MONTEGRIFFO:

Sir, I have the honour to move that the Bill be read a second time. Mr Speaker, this Bill is one which I have already informed the House I would be presenting and as the Explanatory Memorandum says it extends the same format for presenting the Health Authority Accounts that all Government Departments have and as indeed the Medical and Health Services used to have. Again Mr Speaker, as I have already fully explained at Question Time to the House, three months is simply not enough time for the Health Authority to present their Accounts to the Principal Auditor. We also have to depend Mr Speaker, on other Government departments like, for example, the Treasury and the DLSS to pass on information to us and I am not able to do this simply because they do not close their books until six months after the Health Authority is required to. When we took up office, Mr Speaker, we were confronted with this anomaly and therefore we knew that we would need to change the law. We did not provide additional funds for extra staff to allow Health Authority to expedite the presentation of the Accounts because we did not consider that that would be a prudent manner of spending money in this area simply to have the Accounts prepared two months earlier. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON M K FEATHERSTONE:

Sir, we do not support this Bill and the reason is that the law states that the Accounts should be prepared within

three months of the end of the year. We accept that in the short period of time, although they did vote for this when the Bill was actually promulgated, they cannot present the Accounts but they should keep it in line with the normal Government system of nine months. They however want to go further and they want to have "or such longer periods as the Governor shall allow". In other words they can have twelve months or fifteen months or twenty four months or even ten years if they wish. We shall be moving an amendment to delete the "or such longer period that the Governor should allow". We will support the nine months period, Mr Speaker. We consider that is reasonable, although it is interesting to note that in the Financial Services Commission Ordinance, which we will be taking at Committee Stage later on, in Section 15 it states "that the Accounts shall be prepared within three months after the end of that year". I presume they will be coming sooner or later to ask for that to be nine months. This shows the slipshod method in which Bills are being presented these days with not sufficient and due care being taken in their preparation. Although we will vote against the Bill as it stands, if they are willing to accept the deletion of "such longer periods as the Governor shall allow" we will support the Bill.

MR SPEAKER:

That will have to be at Committee Stage.

HON M K FEATHERSTONE:

It is just to give the House notice of the intention of the Opposition that we support the nine months period but we do not support the unlimited period that this Bill proposes to put into effect.

HON P C MONTEGRIFFO:

Mr Speaker, I will not be able to support this Bill either. In its present form and for the reasons that the Minister has given which are reasons which are surprising because reference was made both by her and in the Bill itself to bring the Health Authority into line with Government Departments. Now the Health Authority per se is not a Government Department and the whole idea was to liberalise Health Authorities, ie giving it certain freedoms and powers to administer the funds which this House of Assembly votes for in the best interest of medical care in Gibraltar. Therefore to equate the Health Authority to other Government Departments, I think, is misconceived. If the Minister comes here and says for other reasons of a practical nature that they need more time, well that is one thing but, I think, to argue that it should be brought into line with Government Departments betrays perhaps what the Government considers Health Authority to be and which is another Government Department and not what it should be, an autonomous

administration caring for health and medical matters. The matter is also important from the point of view of accountability and I would ask Members opposite to consider this point. By virtue of the fact that the Health Authority is not a Government Department, we vote in this House a block vote at Estimates time for the Health Authority. So as it does not fall into the same system of Government Departments where funds are specified and itemised expenditure elements. We vote in this House on the basis of a block amount of money for the Health Authority and then it gets on with its job. Therefore the reasons for Accounts eventually coming to this House as expeditiously as possible surely has a bearing on the question of public accountability or the accountability of funds that this House votes and which we are entitled to some extent to be able to follow through in Accounts on an arrears basis, so to speak. The deferment of the presentation of the Accounts to the Minister, which the Bill would involve, would also imply further deferments of the time that those Accounts come to this House. Because the Minister knows there is a set procedure of time-scales before which the Accounts can be tabled here, so you could very easily end up with the situation Mr Speaker, as I see it from here, where you vote for funds in any Financial Year for the Health Authority on a block vote basis and we do not know what we are voting for until the Accounts are prepared and presented at the end of the Financial Year to this House. It would be quite reasonable if they were presented within the terms of the Bill as presently drafted, an extension of three months afforded by the Governor in Council. So we in this House see the Accounts literally a year or a year and a half effectively after funds may have been voted. That I think is most undesirable as a matter of principle, and although nobody would want to, from a practical point of view, to pressure the Health Authority in the preparation of Accounts it must be at least within nine months particularly where we are voting funds in block: I have not heard enough yet, Mr Speaker, to convince me that there is a good case for deferring the time for presenting Accounts to the Minister and subsequently to the House. At present we would simply remain in the dark for much longer than would anyway be the case. So as a matter of principle Sir, I think that this type of Bill is undesirable and unless I am persuaded by much stronger arguments as to the practical reasons why it is so difficult for the Health Authority to prepare Accounts within three to six months as opposed to nine months "or such time as the Governor may decide" I think the Bill is undesirable and we are simply voting funds and only getting to know a year and a half down the line how those funds are spent. There is one other point which the Minister has not alluded to and it may be totally innocuous. But if she could address in her reply the element of retrospection in the Bill. The only amendment that I can see from the former Bill which has not been proceeded with and the proper Bill now before the House is the element of retrospection back to April

1989, 1st April 1989. Now I assume that to be the case that the time-scale will start running from the 1st April 1989 for the purposes of what is considered the Financial Year. Has there been an element, and I put it no higher, of irregularity and therefore we are correcting it in this way. I am not making necessarily any fundamental points on that element at this stage Mr Speaker, except to say that I think that before we are asked to vote on a Bill which has retrospective effect, again as a matter of principle, I would require some clarification from the Ministers to why the second Bill had to be issued with a retrospective element and not with the first one. I think that the House is entitled to some comment on that aspect of the matter as well. Thank you, Mr Speaker.

HON ATTORNEY-GENERAL:

Mr Speaker, thanks to the legal qualifications of the Honourable Mr Montegriffo, he seems, with respect, to misunderstand the legal implications of this Bill and the amendments which are being proposed to the Ordinance. Firstly it is perfectly correct to say Mr Speaker, that the Health Authority is a Statutory Body and is not strictly speaking a Government Department, but sight must not be lost to the fact that the Honourable Minister who proposes this Bill and indeed many Government servants have duties in connection with the administration and the running of that Health Authority. Secondly Mr Speaker, the Bill proposes in fact per se that the time for presentation of the Accounts be extended to nine months. That is the time Mr Speaker, and if further time is desired, then the Health Authority has to go to the Governor and seek his Excellency's permission for an extension of that time. Now the relevant phrase "or such longer period as the Governor shall allow" does not impose any mandatory obligation upon His Excellency, Mr Speaker, to allow a period of time beyond the nine months but it gives the Governor a discretion to say "yes" or to say "no". And like any discretion, Mr Speaker, that discretion must be exercised fairly.

MR SPEAKER:

If no other Member wishes to speak I will ask the Mover to reply.

HON CHIEF MINISTER:

Mr Speaker, let me clarify one thing for the Honourable Member who spoke last from the other side of the House. Since he said that if anybody could give him any reason why the arguments he was putting forward were not valid, then he wanted to hear them. Well quite simply nothing that he has said about the Accounts coming to the House has any relevance to what is being amended. Because 15.1 does not deal with what happens to the Accounts after they have been prepared. It deals with the time that the Finance

Officer in the Hospital has to prepare the Accounts. The rest of Section 15 leaves the Authority with unlimited time, so even if we had no change at all in the law, there is currently "no time limit in the law" to bring the Accounts to this House. It says that they have to be prepared in three months which is considered to be too short, but then after they have been prepared it says they shall be taken to the Principal Auditor as soon as practicable, and there is no definition of how soon that is, so that does not change.

HON P C MONTEGRIFFO:

Will the Chief Minister give way?

HON CHIEF MINISTER:

Yes I will give way.

HON P C MONTEGRIFFO:

Mr Speaker, whilst appreciating the point. I feel the point also is that if you give somebody further up in the process more time to do something which initially has to be done before you can get to the bottom, I mean Accounts being tabled in this House, then what you are doing is encouraging delay, as opposed to hoping for things to come to the House quicker. There may be no mandatory provision to bring the Accounts to the House within a certain time limit, but if Mr Speaker, we are allowing, at this stage, an extension of time from between three to nine or such further time as may be considered necessary, then we are extending from a practical point of view the ability of the Government to eventually table those Accounts here.

HON CHIEF MINISTER:

No Mr Speaker, when the Honourable and Learned Attorney General stood up to try and clear the Honourable Member's mind, the Attorney General referred to the Hon Member's legal expertise but it seems to me that not only does he seem to be shaky in his legal expertise but it certainly appears that he is shaky on his mathematics as well because an indefinite period is not made longer by making it an indefinite period plus nine months, instead of making it an indefinite period plus three months. The Hon Member is arguing not about the time it takes to prepare the Accounts, but the time it takes to bring the Accounts to the House and the Bill before the House seeks no change in that. The Ordinance remains totally unchanged in the requirements for bringing the matter to the House. What is being changed is how long somebody in the Health Authority has to prepare the Accounts. He is not addressing himself to that problem and to suggest that because it may take six months instead of nine months, it means that we are

going to bring it here six months later is nonsense because in fact what he was saying before that it could be brought here after an indefinite period is still true, even without the amendment. If we did nothing to change the law under the original Ordinance there is no time limit, so therefore since there is no time limit, there cannot possibly have an extension of the time limit, it does not exist, Mr Speaker.

MR SPEAKER:

If no other Member wishes to speak I will call on the Mover to reply.

HON MISS M I MONTEGRIFFO:

Mr Speaker, we have given an explanation as why we want to bring this Bill to the House. I would however like to answer the Honourable Mr Featherstone on the question of actually agreeing on the nine months and yet the Opposition do not seem to favour the clause which says "or such longer periods as the Governor should allow". I think Mr Speaker, that what we are doing is coming into line with what all other Government Departments have and therefore what the Health Authority is doing now is copying exactly what happens under the Public Finance (Control and Audit) Ordinance. As I have said before if the Health Authority were to prepare the Accounts earlier, it would mean that the Government would need to employ more people in the Health Authority to do this and we do not think, as I said before, that this is prudent because the money could be used much more effectively for something which is more important. We think that that money can best be deployed in other areas within the Health Authority because it has been an area which has been neglected for many years. All that we are doing is bringing the Health Authority in line with the privileges that all other Government Departments have Mr Speaker. I commend the Bill to the House.

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

The Hon 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 K W Harris
The Hon J H Bautista

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 Dr R G Valarino

The Hon P C Montegriffo

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 SOCIAL SECURITY (EMPLOYMENT INJURIES/INSURANCE)

(AMENDMENT) ORDINANCE, 1989

HON R MOR:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Social Security (Employment Injuries 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, in November 1988, the benefits and contributions related to the Social Security Employment Injuries Insurance were reviewed. At the time I drew attention to the advice given by the UK Government Actuary who had carried out an actuarial review of the Employment Injuries Fund. According to this advice and the recommendations of the Actuary, given that the Employment Injuries Fund represented about thirteen and a half times the yearly expenditure of the Fund, this was considered to be a sufficient reserve and no need was seen to build up the Fund to a higher level relative to expenditure. Consequently Mr Speaker, the recommendation by the Actuary was that the Fund be maintained at the level of thirteen and a half times the yearly expenditure and that contributions should be increased by approximately the same percentage as benefits, in order to ensure that all

expenditure during any one year could be met from the yearly contributions without the necessity for supplements to be drawn from the reserves. The Fund was seen by the Actuary as a means of acting as a buffer in an emergency situation of where we had the number of claims increased sharply or if there were to be a substantial drop in employment, which would obviously result in less contributors and less payment into the Fund. The projections made by the Actuary insofar as contributions were concerned indicated that for 1989 the joint adult contribution required in order to balance costs was 25p. The joint adult contribution was in fact already 30p in 1989, which represented 20% over what the Actuary was recommending, so this was the reason why in November 1988, the Government decided that whereas benefits were increased by 5%, contributions remained unchanged at 30p. However Mr Speaker, despite the sound advice of the UK Government Actuary, no doubt based on accurate statistical information and sensible judgement, the theoretical projections have not been quite as near as the practical results have been. Although as I said the rate of contribution has been some 15% higher in 1989 than that recommended by the Actuary, which was considered insufficient to cover the cost of benefits, even at the rate of 25p per week, the reality, Mr Speaker, has been that at the rate of 30p per week, there has been an excess of expenditure over income of £23,487 over the Financial Year ending 31 March 1989. This means Mr Speaker, that not only has the Fund overspent in relation to the contributions received, but that a portion of interest for the Fund has been lost as a result of drawing from the reserves in order to meet this extra expenditure. This brings to light, Mr Speaker, the somewhat unwise and really absurd situation where in accordance with current legislation, the requirement is that I review contributions and benefits in respect of the Employment Injuries Legislation on an annual basis. Had I therefore been empowered with the necessary flexibility to be able to take corrective measures at any time, then quite clearly the necessary adjustments could have been introduced in time, in order to prevent the deterioration of what can be considered a healthy Fund, but given it is a small Fund, that also makes it rather vulnerable when amounts overspent such as I have already quoted are involved. Basically Mr Speaker, the £23,487 represents nearly 12% of the total contributions received which indicate that contributions in order to have covered expenditure over the year ending 31 March 1989, should have been 12% higher than what these were. So the Bill before us, Mr Speaker, is seeking to give a degree of flexibility to the Government so that in future contributions and benefits in respect of the Employment Injuries Insurance Ordinance can be reviewed whenever it is considered necessary and in order to allow us to take preventive measures to save that Fund when situations such as I have already described arise. In line with our policy on other areas, Mr Speaker, the Bill also provides that all expenditure incurred in the administration of the Fund should be charged to this Fund

and not to the Consolidated Fund. At present the only administrative cost charged to the Fund is that charged by the UK Government Actuary to cover their administration costs. In general terms Mr Speaker, it is intended to equate the relevant provisions of this Ordinance to the corresponding provisions of the Social Security Insurance Ordinance. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

Mr Speaker, we will be voting against this Bill. We supported in November 1988, the amendments which the Government brought to the Social Security Social Insurance Ordinance because those amendments were introduced in the House against the background of the negotiations which the Chief Minister was carrying out with the British Government because of the problem with the Spanish pensions. The powers which the Government obtained then in November 1988, to give the Minister the flexibility about which he has also spoken today have not yet been used, other than to increase contributions and it is significant that it is only about the question of contributions that the Minister has addressed himself today. We do not have any difficulties, Mr Speaker, with Clause 3 which provides "for the administrative expenses incurred by the Department, incurred by the Government in the administration of this Fund for these expenses to be charged to the Fund". There is no difficulty about that, that is only a minor provision in the Bill. The Bill, Mr Speaker, once again erodes the powers of this House in that the Minister will be able to take executive action by Regulation, by a Legal Notice in the Gazette, without giving us an opportunity to debate in the House at the time the measures being introduced and try to influence the Government in any way in respect of their proposals. The need to bring the Employment Injuries Insurance Ordinance strictly into line with the Social Insurance Ordinance is not entirely necessary other than in respect of certain benefits. There are benefits where in respect of which there is no need really to do that. The Minister is obtaining powers to take action at intervals which he may deem appropriate, and on the basis of performance, the situation is not very encouraging. As I say Mr Speaker, the Minister has not said a word about what his intentions are or what the Government's intentions are about Injury Benefit for instance. Injury Benefit is more related to the level of wages in Gibraltar than what it is to the level of pensions. And the Minister needs to keep Injury Benefits in line with movements in wages where someone suffers an injury and is off work for a long period of time unless the amount which he and his family are to receive is going to become very low compared

to the general level of wages in Gibraltar. A similar case in point also arises with respect to Industrial Death Benefit, whereas when the beneficiary opts to collect a weekly pension there is a relationship between that pension and a widow's pension let us say, that is not the case where the Beneficiary opts to receive instead a lump sum, the Industrial Death Benefit as a lump sum, and if that lump sum is not kept under review, then as the years go by the value of the lump sum in question is eroded as the cost of living increases or indeed as the pound loses value. The Minister has made reference to some excess expenditure of nearly £25,000 over income. Yes that can happen in any particular year, the Employment Injuries Fund is not like the Social Insurance Fund where you can project, you can estimate, the anticipated level of expenditure. In the case of this Fund it may be due to accidents, that expenditure goes up. You might have a year where there are no industrial deaths and therefore expenditure on the Fund is going to be more by way of Industrial Injuries Benefit, which is a weekly benefit, but if unfortunately in any particular year, there is more than one tragedy, there are a number of tragedies, then the payment made can be very considerable. I think that Industrial Death Benefit, as a lump sum, is in the order of £13,000. So if there are three or four such deaths, the Fund has to fork out something of the order of £50,000 and for that year the Fund may well go into deficit, but an examination over the years of the operation of the Fund will prove the point that I am making, that it is really difficult to control what happens and I do not really think that that is a good reason, I think it is a weak case on the part of the Minister to say "if I had the powers to act more quickly, I could have taken corrective measures. Two or three deaths occur and therefore the Minister feels that he has got to take corrective measures immediately to increase contributions and he cannot wait until October or November which is what the date the present Legislation is reviewed. I do not think that that is a very strong case. The impression that the Minister has given is that the powers he would wish to exercise, in respect of contributions, but as I say, Mr Speaker, he has had nothing at all to say about what his intentions are about benefits. I do not think that the Employment Injuries Fund is entirely subjected to the problems which the Social Insurance Fund was subjected to by the problem of Spanish Pensions. The two are not entirely related in that manner and therefore we do not consider that the Minister needs to take these powers which erode from the functions of the House and which quite honestly, Mr Speaker, we are quite sceptical about the extent to which the Minister is in reality going to exercise those powers for the benefit of Beneficiaries and not just to put up contributions.

HON P C MONTEGRIFFO:

Mr Speaker, this Bill effectively is about wrenching powers

from this House and giving it to the Minister and that therefore it is really Clause 4 which is the only matter of principle which is in debate. There is no reason that has been put to this House of sufficient cohesion to justify yet another power being taken away from this House, in having necessarily to vote for important benefits which this Ordinance involves and to give the Minister a complete blank cheque to decide what contributions are going to be levelled, what reviews of benefits are going to be introduced and generally for the purposes of the administration of the Ordinance obtain greater power and wrench it away from this House. The trend which the Government has been seen to be taking in this respect has been the subject of criticism from this side of the House in the past and if in the past, Members opposite have gone some way towards trying to understand the need for greater flexibility, I for one have been prepared to allow for greater flexibility in the context of, for example, the Financial Services Bill or in the context of some other piece of Legislation where Gibraltar has to act quickly and expeditiously because we are capturing a certain sector of business or a certain market which requires the somewhat more cumbersome process of this House to be exceptionally put to one side. I do not think, Mr Speaker, that any such case can be made in this particular regard and for that reason, because it is a reason of important principle where we have a review of benefits under a very important Ordinance which the Minister pretends to be able to decide on in the quiet of his Office and for us just to get to know when these things are published in the Gazette. I do not think that that is the way that things should be done in an Ordinance of this nature and for that reason I will be voting against.

MR SPEAKER:

If no other Member wishes to speak I will call on the Mover to reply.

HON R MOR:

Mr Speaker, I think I explained it quite clearly when I started off. The only simple exercise which is required for the Social Employment Injuries is simply to keep contributions in line with the expenditure, because the Actuarial advise that we have is that the Fund is in a healthy state and consequently what I would be required to do every year is just say contributions are being increased by 5% because the expenditure has increased by 5%. I think there has been an over reaction on the side of the Opposition that we should have some ulterior motives in bringing this legislation to the House. It seems to us absurd that if you have a situation where you find that a particular Fund is overspending that you should just sit back with your arms crossed waiting for the end of the year because that is the time that it needs to be

reviewed and that is absolutely nonsense. We would prefer to have the flexibility to be able to take corrective measures when we consider it is necessary. Thank you, Sir.

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 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 K W Harris
The Hon J H Bautista

The following Hon Members voted against:

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

The Hon P C Montegriffo

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 ADMINISTRATION OF ESTATES (AMENDMENT) ORDINANCE, 1989

HON ATTORNEY GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Administration of Estates 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, the simple object of this Bill

as set out in the Explanatory Memorandum is to increase the Statutory Legacy of a person whose spouse dies intestate, that is without having left a valid will. Clause 2 of the Bill seeks to effect an amendment to Section 51, which sets out the order of distribution of the residuary Estate of such a deceased person. Under Section 51, Subsection 1, paragraph A of the Ordinance Mr Speaker, the surviving spouse is first and foremost entitled to a personal legacy charged on the residuary Estate of only £5,000 as the law stands at present and this House is being asked to raise this figure to the sum of £20,000. Similarly, Clause 3 of the Bill proposes an identical amendment to Section 53 of the Ordinance which deals with the powers of the personal representative of the deceased person's Estate in respect of the interest of the deceased surviving spouse. Under Sub-Section 2A of that Section, Mr Speaker, the personal representative is at present restricted to a net sum of only £5,000 on a residuary Estate to enable payment of the Statutory Legacy to be made. Likewise the Bill also seeks to raise that figure to the sum of £20,000. Mr Speaker, as all Members of the House I am sure are aware the Ordinance was first enacted in 1934, when relevant figures the Bill now seeks to amend stood at £3,000. They were increased to £5,000 in 1975, but has not since been increased at all and it is therefore felt, Mr Speaker, that a revision is long overdue. Members of the House will remember, I am sure, that a recent amendment to the Estate Duties Ordinance increased the ceiling for payment of Estate Duty from net Estate valued at £10,000 to £20,000. And that I am happy to say, Mr Speaker, is proving to have been a great benefit to the inheritors small Estates and the idea behind this Bill is to give similar treatment to the Statutory Legacy payable to the surviving spouse of a person who dies intestate. Mr Speaker, I can tell the House that the Bill has the support of the Officials of the Supreme Court and I hope the support of all Members of both sides of this House. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON LT COL E M BRITTO:

We support the Bill Mr Speaker, we think that the reasons which the Attorney General has expressed justify the measure well merited. It was perhaps overdue that the figure of £5,000 should have been brought into line with present day realities and that £20,000 seems to be the correct sort of level today. It is of course a sort of figure that has to be kept and ought to be kept under constant review.

MR SPEAKER:

If no other Member wishes to speak, I will call on the Mover to reply.

HON ATTORNEY GENERAL:

Just to say that I am most grateful for the support of the Opposition.

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 CRIMINAL PROCEDURE (AMENDMENT) (NO.3) ORDINANCE 1989

HON ATTORNEY GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Criminal Procedure 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, the object of this Bill is I hope clearly set out in the Explanatory Memorandum. The amendments sought to be made are to equate the Court's powers of forfeiture in Gibraltar with the additional powers the United Kingdom possess by virtue of Section 43 of the powers of the Criminal Courts Act 1973. The Bill if enacted will increase the powers of Courts here in relation to ordering forfeiture of property found in the possession or control of a convicted person at the time of his apprehension. It will be seen that the Bill is in effect a one clause Bill Mr Speaker. It seeks to add a new Section to the Criminal Procedure Ordinance which is fairly extensive and which I suggest has important implications. The proposed new Section contains in subsection 1 power to the Court to order forfeiture property used not only for the commission or facilitating the commission of the offence involved but also property which was intended by the offender to be used or used for such purposes. Mr Speaker, such items as a boat or a motorcar immediately spring to mind in such context especially Members of the House will think in the field of drugs related offences where the provisions of this Bill, particularly enlarge the powers the Courts already have under Section 20 of the Drugs Misuse Ordinance. The

same Section also provides that the Courts powers extend not only to offences for which a person is actually being charged but also to additional offences which he has asked the Court to take into consideration. Subsection 2 of the proposed new Section, Mr Speaker, does have some safety catch because it requires the Court to take into account certain matters before determining what, if any, forfeiture order shall be made. Subsection 3, defines the expression "facilitating the commission of the offence" in such manner as to extend the Courts power to the forfeiture of any item used to dispose of any other property unlawfully acquired or used to avoid apprehension or detection. The prospective subsection 4 makes clear that a forfeiture order deprives the offender of any rights he may otherwise have in the property to which it relates and that any forfeiture order made must be made in favour of the Police. Mr Speaker, again I am happy to be able to report to the House that the Bill has the support of the Judiciary in Gibraltar and in my respectful opinion it is a measure which could and should be presented to this House some considerable time ago. Mr Speaker, I commend the Bill to this House.

MR SPEAKER:

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

HON LT-COL E M BRITTO:

Mr Speaker, as the Honourable Attorney General has very clearly said, the Bill is perfectly described in the Explanatory Memorandum and we on the Opposition have no difficulty with it, and will be supporting the Bill. We are however a little bit curious about the timing of it and the underline motive for bringing it into effect at this time and we wonder whether the Attorney General can give us an indication whether it has been as a result of any sort of recent cases that it has been thought necessary to bring the legislation into effect now or it is just a general improvement to legislation in general terms.

HON P C MONTEGRIFFO:

Mr Speaker, my only comment of any substance is that where, as I see, a safeguard in sub-paragraph 2 inasmuch as the Court will be able to take into consideration the value of the property and the likely financial and other effects of the offender of making any such order, I am not frankly very concerned about the effects of the offender if he is convicted of an offence which the Court would be justified in making an order of this nature but I would be concerned about the effect on the family of any such order made. It would be grossly unfair that the Court should have power to have regard to the effect that, for example, the

forfeiture of a motor vehicle or a boat or such other properties may be involved in a whole series of circumstances which we cannot now envisage should be forfeited and that therefore dependents and family should suffer a loss of what is in reality in all these circumstances family property and unless the Attorney General can assure me that he would look at this and that this would give the Court the power to have regard to such circumstances or such interest, interest of dependents and family members, something about which I have my doubts of. I would have to ask the Government to consider introducing, at a later stage, an appropriate amendment to make sure that the Court can take the interest of such people into account so that the hardship which could be suffered by purely blameless individuals, dependent on property which could be forfeited could be protected and could be taken into account by the Court when making such an order. Except for that point Sir, I will support the Bill.

MR SPEAKER:

If no other Member wishes to speak I will call on the Mover to reply.

HON ATTORNEY GENERAL:

Yes Mr Speaker, can I deal firstly with the point raised by the Honourable Lt Col Britto. Mr Speaker, I have only been Attorney General for a short time now, but I did on taking office promise to do everything I reasonably and possibly could to modernise the Criminal Procedure system in Gibraltar and this is the third Bill and in my comparative short time in office I have had the honour to put before the House. The Criminal Procedure Amendment No.2 Ordinance Mr Speaker, went through its First and Second Reading in this House last month and I understand will be put into Committee Stage and its Third Reading and hopefully passed later at this Meeting of the House. That Bill, Mr Speaker, the Members of the House will recall seeks to enlarge the Courts sentencing powers by giving the Court the power to defer sentence and that Bill also equates, if it is fully passed, Mr Speaker, and becomes law, certain provisions of the 1973 United Kingdom Act. And it was whilst I was looking at the provisions of that Act, Mr Speaker, that it came to my attention that the Courts powers of forfeiture in Gibraltar was something less than they have been in the United Kingdom for something like fifteen or sixteen years and I therefore felt it appropriate, Mr Speaker, to introduce it very hotly in pursuit as the Criminal Procedure Amendment No.2 Bill 1989. To turn next if I may, Mr Speaker, to the apprehensions which the Honourable Mr Montegriffo has expressed, I think and I hope, I can lay any fears he may have with little difficulty. Mr Speaker, the Courts power of forfeiture which I seek to extend by the amendments to the law which this Bill proposes is of course a discretionary power. Mr Speaker, one of

course does not want to punish in any way people who are innocent so far as the commission of Criminal Offences are concerned. One seeks to punish the offender and hopefully no one else. But perhaps punishment imposed upon the offender frequently rubs off onto other persons and particularly members of his family and it may well be, Mr Speaker, that the sort of situation that the Honourable Mr Montegriffo has in mind is, for example, when a person owns a speedboat and he uses it for the innocent pursuit of water ski-ing on behalf of himself and family through the day and he uses it perhaps for smuggling at night. Now why or if or should that boat be forfeited if he is subsequently convicted of an offence for which the Court has a discretionary power to order forfeiture. Well firstly Mr Speaker, I have no sympathy for a person in such circumstances and I do not think the Court would either. I would imagine Mr Speaker, the Court will say to the defendant when pleading that the forfeiture power should not be exercised because it would have adverse repercussions on his family. I would expect the Court to say "well you jolly well should have thought of that in the first place before you committed the offence for which you now stand convicted". And members of the public I hope will do well to consider that deterrent effect which I seek to give the Court by the introduction of this Bill, Mr Speaker, before they decide whether to use the boat or motor car or whatever piece of property is involved for the commission of an offence which they know by the change in the law will or could possibly result in forfeiture of that piece that property being ordered. Secondly

HON P C MONTEGRIFFO:

Mr Speaker, will you give way on one point?

HON ATTORNEY GENERAL:

Certainly Mr Speaker.

HON P C MONTEGRIFFO:

Sir, I am grateful for the Attorney General's comments, but I beg to differ in that what the Section is doing is that although it is giving the Court a discretion on whether to make an order or not it will be open to prosecuting Counsel in any situation, as far as I can see, to seek such an order from the Court. To actually make its submission saying that it is considered by the Crown Mr Speaker, in such a situation that an order should be made and therefore if the prosecution, the Police or Counsel, for the prosecution wants to seek an order from the Court then the Court would have, as I see it Mr Speaker, look at the terms of the Section in order to assist it in determining how it should exercise its discretion. Once an application was made for an order, the Court would then have to say "right, I have been asked to make an order,

how do I exercise that discretion". And the point I am making is that there is a specific Section saying that in exercising that discretion, in exercising the making of an order, the Court would have regard to certain things. And it specifically says "the effect, including financial effect on the offender". I am concerned Sir, that frankly when the thing comes to Court and an application is made, the Court is not empowered, if on behalf of the defendant it is stated "but hold on what about his wife and four kids who have no other form of income now, and who may be able to benefit from the property by selling it and having an element of a safeguard financially. The Court might well say and I would certainly say if I was on the side of the prosecution that the Court has no power to take into account that element, that factor, when being asked to make an order, because the initial step is taken by the prosecution when they seek an order from the Court, and I do not think as it stands, I make the point because I genuinely feel that it would be open to argument that the Court does not have the power to have regard to the interests of dependents or the family once it has been asked to exercise its discretion. Although I would support the Bill because in general terms it is doing a good thing, I think, that there could be a danger. Surely the effect on family and on dependents is something that the Court should have regard to. It is property which in fact according to the Section is just in the ownership of the defendant but could be taken much further than that, I think, having regard to people directly affected in terms of dependents and family and something should specifically be put into this Section which the Court should mandatorily have regard to when it is asked to make an order Sir.

ATTORNEY GENERAL:

Mr Speaker, I respectfully cannot agree with the Honourable Member's interpretation of the law because there is in a sense a safety catch on the exercise of the Court's power because the Court before considering whether or not to order forfeiture must take into account, the Court has a mandatory obligation that is, Mr Speaker, to take into account the various criteria set out in the appropriate subsection. But as I see that criteria, Mr Speaker, it is not restrictive and it is not exhaustive. There are factors which the Court take into account but the Court can take into account any other factor it considers relevant and appropriate in assisting the Court how it should exercise its discretion and that can include, Mr Speaker, of course, in all cases such matters as the Honourable Member opposite is suggesting it would be appropriate for the Court to take into account. Furthermore, Mr Speaker, the prosecution I can assure you does not play the active role in the sentencing process which the Honourable Member opposite seems to think. It is not the prosecution's role to seek to extract blood or to suggest, Mr Speaker, whether any particular type of sentence is appropriate in a

certain case. And of course an order for forfeiture, Mr Speaker is very much, in my opinion at least, part of the sentence which the Court imposes and even if the prosecution and/or its representative does not suggest to the Court, in a particular case, that it is appropriate to make a forfeiture order, the Court still has power to do so of its own volition as the Honourable Member opposite me is perfectly well aware I am sure. It may be of interest to the Members opposite Mr Speaker, to know that I was recently personally involved in a case in the Magistrates Court, before the Stipendiary Magistrate, where I was very much against a forfeiture order being made but nevertheless the Stipendiary Magistrate made a forfeiture order in respect of a motorcar. Not surprisingly his Counsel is appealing to the Supreme Court and I am supporting the proposition that the appeal should be allowed. So the Prosecution is not always the big bad boy that the Honourable Member opposite is suggesting that perhaps we are.

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 CURRENCY NOTES (AMENDMENT) ORDINANCE, 1989

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Currency Notes 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. Sir, the proposals in this Bill are meant firstly to introduce a further method of payment for the issue and redemption of our Currency Notes and secondly to allow Note Security Fund monies to be held on deposit with the Savings Bank. As regards the first proposal to which Clause 2 of the Bill relates the intention is to allow payment to be made in sterling locally which apart from facilitating matters should assist in enhancing the notes circulation figure given that the payment in sterling notes effectively means a withdrawal of such notes from

circulation. I would stress, Mr Speaker, that payments through the Crown Agents will still continue but in the light of the change being introduced, will now be optional. The amendment to subsection 7 of Section 8 of the Ordinance resulting from Clause 3 of the Bill will make it possible for Note Security Fund monies to be placed on deposit at the Savings Bank. This is in keeping with the expanded role envisaged for the Savings Bank. The new arrangements will not in any way affect the reserve requirements of the Note Security Fund, nor for that matter in any way undermine the security of the Note Issue. Lastly Mr Speaker, I should mention that the new subsection also introduces another change, that of substituting the Governor for the Secretary of State for the purposes of the approval required under the subsection. The change is of administrative convenience. The Government does not consider any such references to the Secretary of State necessary. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

The Opposition supports the Bill Mr Speaker and we will be voting in favour.

HON P C MONTEGRIFFO:

Mr Speaker, I have no difficulty with the Bill, but again could there be an indication by the Financial Secretary as to its effect having been necessary to the 15 August 1989, why the Ordinance should be deemed to have come into operation from that date. I assume, and I lay myself open to be told otherwise, that it is because that what is being legitimised here has effectively been occurring since the 15 August and therefore we are ratifying something in this House that has already been happening. If that is the case then it should be stated and if it is not the case I would like to know why we are voting again retrospective legislation.

MR SPEAKER:

If no other Member wishes to speak I will call the Mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I thank the Members opposite for their support and to the last Member to speak for his having pointed out something that perhaps quite correctly I should have included in the speech and that is yes, retrospective

effect is being given to the Legislation because the Government had to move at the time and this is the purpose of correcting what would otherwise would have been a technical breach.

HON P C MONTEGRIFFO:

So there has been a breach of the rules and we are now legitimising it.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

In a way yes. But I should mention.....

HON P C MONTEGRIFFO:

In what way no?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, the breach may be a technical one but financially a prudent one and that is why I say in a way yes and in another way no. But otherwise Sir, other than that, Mr Speaker, 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 GAMING (AMENDMENT) ORDINANCE, 1989

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Gaming 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, at one time the Gaming Machines installed in clubs, bars, restaurants etc, were only permitted provided they were non-cash dispensing machines and the winnings were paid out with lottery tickets. The arrangement was regulated under Section 4A of the Gaming

Ordinance which allows the Financial & Development Secretary to issue, in his absolute discretion, licenses for lottery ticket paying machines on the payment of a subscribed fee. Subsequently in 1985, the Government agreed to relax the restriction limiting the winnings to lottery tickets and to permit payments of cash winnings provided such payments were made over the counter and not dispensed by the Gaming Machines themselves. Pending the necessary amendment to Section 4A of the Ordinance, the new arrangement was given effect by the issue of Certificates of Exemption under Section 5 of the Ordinance. Section 5 permits the Governor to grant exemption from the prohibition of keeping on premises Gaming Machines for gaming purposes. In the event the intended amendments to Section 4A were not proceeded with at the time and for the past few years, the Deputy Governor has therefore been annually landed with having to sign nearly 100 such Certificates of Exemption. Obviously, Mr Speaker, the matter is not one which should warrant such high level of attention and the situation can be resolved by the simple amendment which is proposed in the Bill to Section 4A. Lastly the operation of such machines would be regulated by license rather than by exemption. Exemptions should really be reserved for more important issues such as the operation of Casinos. And finally Mr Speaker, I should emphasise that no other changes in the existing arrangements are involved. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

Mr Speaker, we have no objection in this Bill and we have been satisfied by the explanations given by the Honourable Financial and Development Secretary and therefore we will be supporting the Bill.

MR SPEAKER:

If no other Member wishes to speak, I will call on the Mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I thank the Members opposite for their support and I therefore 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 INCOME TAX (AMENDMENT) (NO.4) ORDINANCE 1989

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Sir, I have the honour to move that the Bill be now read a second time. As the Bill stands, the measure before the House is for an Ordinance to repeal Section 14 of the Income Tax Ordinance. This is a Section which never seems to have been used but which on the other hand is considered to inhibit foreign investment in Ordinarily Resident Companies particularly Investment Companies. For the benefit of the Honourable Members in the House who may not be conversant with the provisions of the Section, I should explain that the provisions of subsection 1 of Section 14 enable the Commissioner of Income Tax to treat the undistributed profits of the company as income in the hands of the shareholders and after due apportionment to tax such income accordingly. Such powers may however only be exercised in limited instances, mainly when it appears to the Commissioner that a company is not distributing profits with a view to the avoidance of reduction of tax. Being profits which might otherwise reasonably have been distributed without detriment to the maintenance and development of the company's business. In the case of a trading company, these powers cannot be exercised, if within a reasonable time after the end of its Financial Year the company has distributed to its shareholders by way of dividend not less than 80% of its income for that year. But this does not apply to Investment Companies. That is, those companies defined in subsection 5 of the Section. In the case of Investment Companies the Commissioner is required to regard all the undistributed income as income of the shareholders. This requirement found, Mr Speaker, in subsection 5 of the Section is being wrongly interpreted to mean that the undistributed assessable income of an Investment Company must be taxed as income in the hands of the shareholders thus more or less forcing a declaration of dividends, whereas the requirement really only bites if the Commissioner exercises his powers under subsection 1. This erroneous interpretation is causing would be foreign investors to think twice before putting

their money into local Investment Companies especially investors from high taxed countries in Europe. Clearly this needs to be redressed if we are to attract such investments. Accordingly the Government considers that the best course lies with the repeal of Section 14 altogether. Sir, the repeal of the Section has repercussions for other Sections of the Ordinance, namely Sections 2 and 7 where reference is made to the Sections and I shall therefore be moving the relevant amendments during Committee Stage of the Bill. Likewise Mr Speaker, the opportunity will be taken in Committee to introduce an amendment to Section 87 of the Ordinance, the Section which deals with pay as you earn. The intention being to translate the enabling powers for administering the system to Regulations which also involves the repeal of the Schedule. However this amendment will not be brought into force until the Regulations themselves are ready. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

Mr Speaker, we were wondering when we saw this very short Bill, where the Explanatory Memorandum was far longer than the Bill itself, what the real reason was behind this measure of legislation. We were wondering why it was that the Section was being repealed now when it had never been used and when the Explanatory Memorandum indicated that it was not likely to be used. We are a little bit clearer now having regard to what the Financial and Development Secretary has said about the implications of it. What he has not said though is whether representations have been received from any sector which has made the Government decide that they should legislate in this manner. Have they, for instance, had representations from the Finance Centre perhaps? When the Honourable Mover exercises his right to reply he may explain this. It might enable us to make up our minds rather more clearly as to how we should vote on the Bill. Our inclination at the moment, because we do not see the full implications, is to abstain on the Bill. The other thing that puzzles me somewhat, Mr Speaker, is that we have had PAYE in operation in Gibraltar since the mid 1970s and it is only now fourteen or fifteen years later, that apparently it has been decided that Regulations are necessary to underpin, as it were, the operation of the system. Again perhaps at the appropriate stage when the Honourable Mover moves his amendments in Committee he might give us some explanation as to why it has been felt that it is necessary for this to be done and perhaps it might also give us some indication as to what the Regulations are likely to do. We might then be able to, at that stage, if we cannot support the Bill at the Second

Reading, if the reasons merit so, then support the Third Reading of the Bill.

HON P C MONTEGRIFFO:

Mr Speaker, as I understand the Section in question and my reading was that the Section would only be invoked by the Commissioner in a situation where he considers that the company is trying to prevent tax being paid and that it is not declaring a dividend in an attempt to avoid what would otherwise be a legitimate charge if the distribution was made. I understand the concern of the investors if they felt that that provision, as it stands, gives them a problem but I do not understand why it should have been necessarily induced to come to that interpretation of the Section. Be that as it may, if it is causing a difficulty and I see that there are also numerous other amendments to the Ordinance which are apparently necessitated by the Bill. Then my inclination at this stage is not to indicate in firm terms how I would be voting but to look at the amendments which I have only seen in the course of this morning and see their implication. But my general feeling will be that if there is any genuine interpretation that can be placed on that Section which gives a degree of discomfort to an investor then of course the Section should be either amended or done away with completely. I however think, Sir, at this stage having seen particularly the proposed amendments which appear to be consequential but which it is difficult to tell, frankly, simply from looking at this. I will therefore reserve my position until Committee Stage. I am therefore abstaining Sir.

MR SPEAKER:

If no other Member wishes to speak I will call on the Mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Thank you, Sir, I thank the Opposition for their contributions and yes I confirm that representations have been received from professional advisers. As to the reasons for the erroneous interpretation that I am afraid I cannot answer. It came as a surprise to me that Members in the profession should have taken an enabling power to mean a compulsory or mandatory provision. I thank, as I have said the Members opposite and I will give any further explanations at Committee Stage. Sir, I commend the Bill to the House.

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

The Hon 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 K W Harris
The Hon J H Bautista

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 Dr R G Valarino

The Hon P C Montegriffo

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 Pensions Increase (Amendment) Bill 1989; the Criminal Procedure (Amendment) (No.2) Bill 1989; The Drug Trafficking Offences (Amendment) Bill 1989; The Financial Services Commission Bill 1989; The Financial Services Bill 1989; The Public Health (Amendment) (No.2) Bill 1989; The Consumer Protection (Property Management) (Amendment) Bill 1989; The Medical (Gibraltar Health Authority) (Amendment) Bill 1989; The Social Security (Employment Injuries Insurance) (Amendment) Bill 1989; The Administration of Estates (Amendment) Bill 1989; The Criminal Procedure (Amendment) (No.3) Bill 1989; the Currency Notes (Amendment) Bill 1989; The Gaming (Amendment) Bill 1989, and the Income Tax (Amendment) (No.4) Bill 1989.

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

THE PENSIONS INCREASE (AMENDMENT) BILLS, 1989

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 CRIMINAL PROCEDURE (AMENDMENT) (NO.2) BILL, 1989

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 DRUG TRAFFICKING OFFENCES (AMENDMENT) BILL, 1989

Clauses 1 to 11 were agreed to and stood part of the Bill.

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

THE FINANCIAL SERVICES COMMISSION BILL, 1989

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I beg to give notice that I wish to move the amendments which have already been circulated to Members in the House. The amendments are too extensive to read out and I wonder whether, Mr Chairman, you would prefer asking Members if they have any comment on any relevant Clause and I could then reply.

MR SPEAKER:

Bearing in mind the Financial and Development Secretary's comments would Members agree to his suggestion that he dispense with the reading of the Amendment and, of course, any Member who wishes clarification can ask.

Clauses 1 to 10 were agreed to and stood part of the Bill.

Clauses 11 to 15

HON LT-COL E M BRITTO:

Mr Chairman, there has been a certain amount of consultation between us and the Financial and Development Secretary on this so these amendments carry already the approval of the Opposition, but under Clause 8 there was a slight disagreement in that the Opposition felt that the independence of the Commissioner should be established by legislation and we still think so although we appreciate the difficulties the Government have in accepting that amendment. We however still think, as the Commissioner is an independent person, that he is not subject to the discipline, for example, of the Civil Service if he were to have been a member. As I say we still think that the legislation should include provision for the financial independence of the Commissioner to be established from

all Financial Institutions working within Gibraltar and we regret that the Government has not been able to bring this into the legislation.

MR SPEAKER:

So will you be voting against the particular Clause?

HON A J CANEPA:

We do not want to vote against, Mr Chairman and we will be supporting it but with regret that it has not been included.

Clauses 11 to 15 were agreed to and stood part of the Bill.

Clauses 16 to 23

HON M K FEATHERSTONE:

Mr Chairman, is the Government really happy that the Statement of Accounts should be prepared within three months after the end of the Financial Year?

HON FINANCIAL & DEVELOPMENT SECRETARY:

Mr Chairman, the point is that if the Honourable Member wishes it otherwise we could expand the period to nine months or such other period that the Governor may allow, but Mr Chairman, I do take the point and I welcome his contribution because it gives me the opportunity of saying that we are creating an animal which we have conceived but we still have to see its birth and see how it grows and develops and it is very difficult at this juncture to provide for every eventuality even though we have put our heads together to achieve that purpose. So there will be imperfections shown up during its life which I leave to our successors to correct in due course when and if they come. But the principle has been set and let us see how it works in practice. Contrary to the position of the Health Authority, there will not be such interlinking or connection with the Government as such because the Commission will have its own employees who need not necessarily have been drawn from the Civil Service. Neither would the Commission incur expenditure which requires the Government to help out, whether by way of invoicing or ordering or whatever it may, so I ask the Honourable Member to be patient and let us wait and see how the Commission develops before changing any of its procedures or its intended procedures. Thank you Mr Chairman.

Clauses 16 to 23 were agreed to and stood part of the Bill.

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

THE FINANCIAL SERVICES BILL, 1989

HON FINANCIAL & DEVELOPMENT SECRETARY:

Mr Speaker there are one or two amendments of a typographical nature to the list that is being circulated. They are very simple and if I may with your permission read them out and Members may annotate them in the copies they have they will see that they are consequential and unnecessary.

MR SPEAKER:

Will the Hon Members agree to that?

This was agreed to.

HON FINANCIAL & DEVELOPMENT SECRETARY:

Thank you. The first amendment occurs on page 5 of the circulated amendments where there is a reference to Section 11/2(A) about a quarter of the page where it says "delete Trustee in line 2". Clearly that should be line 1. The next amendments are on page 6 where under Section 12/2(F) we say "delete under" in line 1. That should read under Section 57, Mr Chairman and the insertion in its place should be "in accordance with Section 55". The difference in numbering follows the changes that have been effected elsewhere in the list. Then further on where it says in the middle of the page "to reflect change numbering". The reference to 12/2(G) should be to 12/2(F). The other change is on page 10 in relation to Clause 34 clearly the reference to 34(c) there should be to 34(e). On page 19 there is the omission of the re-numbering of Clause 55 as Clause 53. This would have come up in the reprint of the Ordinance but I feel it better to mention it now. Finally on page 24 at the very top it says "and Section in Line 2", it should really be "and Section in Lines 1 and 2". In fact we are being very pedantic here. It is just deletion of the hyphen between sub and section instead of the combined word. Mr Chairman, before I sit down I would like to thank the Members opposite for their very constructive and helpful approach which has enabled us to go speedily through the changes and which have very much improved, in certain respects, the Legislation we had proposed.

HON A J CANEPA:

Mr Chairman, if I may direct myself to Clause 55. It is in Clause 55 where an amendment is being moved in order to meet the point that we made rather vehemently during the Second Reading of the Bill regarding the fact that Regulations to be enacted under the Ordinance would become part and parcel of the Ordinance without giving this House an opportunity to have a say. It is the amendment that is being introduced which will bring the Regulations into immediate effect for the reasons which the Honourable the Acting Financial and Development Secretary has explained,

in detail, to my colleague, the Honourable Lt-Col Britto, and which have satisfied us about the need which the Government has to be able to move expeditiously whenever it may be necessary. But we are being given an opportunity at a subsequent meeting of the House, in fact at the next three meetings, if we are unhappy about any such measure introduced by way of Regulation to bring a motion to the House to have the matter aired and I think that the Government has really gone very far along the road of meeting the legitimate representations that we have made on the matter. I think it is appropriate for me, on behalf of the Opposition, Sir, to say how grateful we are to the Honourable the Acting the Financial and Development Secretary for his helpfulness, not only meetings with my colleague, Col Britto, but also in the way that the amendments have been presented and put to the House. These two Bills together, I think are about the most complex piece of legislation which this House has had to deal with since the Landlord and Tenant Bill. And the Landlord and Tenant Bill, Mr Chairman, you will recall that we went through it in Committee and it took days because the amount of work that had to be put in by the Attorney General, at the time, and the leading exponents on the matter who were then, I think, Mr Brian Perez and Mr Maurice Featherstone on the Government side, and Mr Peter Isola from the Opposition, that took days and it was a vast exercise. The exercise that we are going through here so quickly this morning is of a similar nature, the only thing is that all the donkey work has been done outside the House and so we come to the House today with the majority of Members being spared that laborious and detailed exposure of each clause virtually in Committee and I think we have to be grateful to the Honourable the Acting Financial & Development Secretary. In a way he is making history because he is the Government official who has been most closely concerned with the layman's draft of the legislation and then he has had, for a rather peculiar reason, that we are in an interregnum between one Financial and Development Secretary and another he has been lucky to find himself Acting Financial and Development Secretary and actually bringing and steering the Bill through this House. It is a rather unique record and we are very grateful to him and even though he is not likely to be here at the next meeting of the House because by then the new Financial and Development Secretary will be in harness, I think, that he has made his mark in the deliberations of this House and has impressed us all by the thoroughness with which he has presented the matter here. I think that we should also be grateful to the staff who have very painstakingly put all this together, not the least the Typist, it has been very very hard work and which has made our task immeasurably more straightforward and certainly, on this side of the House, we are very grateful for the way in which this very complex piece of legislation has been conducted. I think it just goes to show what can be done when there is a meeting of minds. Perhaps, Mr

Chairman, it is also pertinent to comment coming back to Clause 55 that if the Government accepts the spirit and the principle which they are introducing in the House today then of course the misgivings that we have had all along about the powers that they are obtaining to enact Regulations, we would feel differently about that if they follow this principle in other Bills in the future.

Clauses 1 to 10 were agreed to and stood part of the Bill.

Clauses 11 to 20 were agreed to and stood part of the Bill.

Clauses 21 to 30 were agreed to and stood part of the Bill.

Clauses 31 to 40 were agreed to and stood part of the Bill.

Clauses 41 to 50 were agreed to and stood part of the Bill.

Clauses 51 to 61 were agreed to and stood part of the Bill.

Schedule 1

HON M K FEATHERSTONE:

Mr Chairman, under 7 "Options", they have Gold and have added "Palladium". I wonder if they would like to add iridium as well.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, yes if the Member wishes but there was a controversy over the conclusion of "palladium" and why not other commodities and it is clear that there seems to be market elsewhere for palladium and that is why it has been included with silver, platinum, but if the Honourable Member wishes seriously for us to consider including iridium and anything else that is radioactive certainly, but I do not think there will be a market.

HON M K FEATHERSTONE:

and
Iridium is a precious metal must have some say in the London Metal Market. However if the Government will keep it in mind for the future I will be satisfied.

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

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

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

THE PUBLIC HEALTH (AMENDMENT) (NO.2) BILL, 1989

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 CONSUMER PROTECTION (PROPERTY MANAGEMENT) (AMENDMENT) BILL, 1989

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 (GIBRALTAR HEALTH AUTHORITY) (AMENDMENT) BILL, 1989

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

Clause 2

HON M K FEATHERSTONE:

I beg to move the amendment of the deletion of the words "and or such longer periods as the Governor shall allow".

Mr Speaker then put the question in the terms of the amendment as moved by the Hon M K Featherstone.

HON P C MONTEGRIFFO:

Certainly, Sir, that amendment goes further towards what I would like to see than the Bill as it presently stands. Although my line on this will be that I will vote against Mr Chairman, because I do not think that sufficient emphasis has been made for the Bill as a whole. With your leave, Mr Chairman, if I could just make one point which the Chief Minister alluded to at the Second Reading stage and which was in relation to the fact that there was an indefinite period for the presentation of Accounts to this House which is the basis on which I am taking this stand on the Bill. The Ordinance in fact does not say that there is an indefinite time for Accounts to be brought here. It says that once the Accounts are available to the Minister, that they have to be brought to this House as soon as practicable. Now as soon as practicable means precisely that and there is an onus on the Minister to bring them here as soon as she possibly can and that therefore the extension of the time is not the extension of an indefinite time, it is the extension of a duty which the Minister has to bring the Accounts here and of course the Authority has greater time to prepare its own Accounts, before they are audited, that means that that whole process is deferred. So although I welcome in general terms the amendment, I will be voting against the Bill.

MR SPEAKER:

You are voting against the Clause itself? Not just the amendment?

HON P C MONTEGRIFFO:

Yes the whole Clause.

HON J C PEREZ:

Mr Speaker, if the Honourable Member were right in what he has just said we would not have brought the amendment to the House. Because having three months would mean that the Minister can then come to the House nine months later, but that is not the problem we are tackling, we are tackling the actual preparation of the Accounts and whereas before the person or persons that prepare the Accounts, in the hospital or in the Health Authority, had three months they will now have more time. That is in essence what we are talking about. Not how long it will take after those Accounts are ready to be presented in this House.

HON P C MONTEGRIFFO:

Sir, the Minister is talking nonsense. If the Hon Minister looks at the Section before saying something which is going to be proved incorrect. What we are being asked to do under Section 15 is give the Authority time to do the Accounts. It is being extended from a period of three months from the end of the Financial Year to a period of nine plus months. Following that, once the Accounts are prepared, the Section goes on to say that once the Accounts are ready they are sent to the Principal Auditor who certifies them, are reported and prepared within three months of that

HON J C PEREZ:

That Mr Chairman, is not being amended it is only the first part that is being amended.

HON P C MONTEGRIFFO:

Within three after the report is prepared by the Principal Auditor, the Authority then needs to report to the Governor and the Minister then lays one copy of the Annual Report in the House of Assembly as soon as practical. Now Mr Chairman, you cannot change one stage without it affecting the others. Of course, we are not changing the dates which the Minister has to bring them here. Now they have to bring it here as soon as they possibly can" as soon as it is practicable" that it is a Statutory obligation. Now if the Authority instead of having three months in which to prepare the Accounts are given nine months or a year or whatever. that then means that the Principal Auditor will not get it until six months or nine months later and the Report will not be submitted until later. The Governor will not see it until later and the Minister will not bona fide be able to bring it to this House until after all these procedures have been carried out. That is the situation, Mr Chairman. Now frankly unless there are compelling reasons for the extra nine months, in a situation where we vote block monies, as one item, for the Health

Authority, and we do not get to know on what it is being spent on until the Accounts are brought to this House then they should make every endeavour to bring them as soon as possible. The Minister however does not appreciate that point. And by not recognising that if you extend the first three stages the Report will be laid in the House that much later. That is common logic, Mr Chairman.

MR SPEAKER:

Does the Honourable Mr Featherstone wish to speak?

HON M K FEATHERSTONE:

The only thing I wish to say is that we are happy to give them the nine months as they seem to feel that that is the period of gestation that is necessary. It should not be the gestation of the elephant. The nine month period should be enough.

Mr Speaker 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 Dr R G Valarino
The Hon P C Montegriffo

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 K W Harris
The Hon J H Bautista

Clause 2 stood part of the Bill.

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

THE SOCIAL SECURITY (EMPLOYMENT INJURIES INSURANCE)
(AMENDMENT) BILL, 1989

Clauses 1 to 3 were 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.

THE ADMINISTRATION OF ESTATES (AMENDMENT) BILL, 1989

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

Clause 3

HON ATTORNEY GENERAL:

Mr Chairman, I would like to put an amendment to Clause 3, purely for the purpose of correcting a printers error in the 3rd line of Clause 3. Mr Chairman the word "submitting" should of course read "substituting", and I apply for that minor amendment to be made.

Mr Speaker then put the question which was resolved in the affirmative and Clause 3, as amended, was agreed to and stood part of the Bill.

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

THE CRIMINAL PROCEDURE (AMENDMENT) (NO.3) BILL, 1989

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 CURRENCY NOTES (AMENDMENT) BILL, 1989

Clause 1

HON P C MONTEGRIFFO:

Sir, I want to indicate that whereas I express my support for the Bill, on confirmation of the reason for it being given retrospective effect back to the 15 August and which involves the Government in an illegal activity, as far as I am concerned, I will be voting in favour of all the Clauses except Clause 1. This is because it includes the fact that the order is deemed to be given effect from the 15 August. I am happy to give the order effect as from today or from its publication in the Gazette but I am not prepared to legitimise and illegality going back to the 15 August.

HON FINANCIAL & DEVELOPMENT SECRETARY:

Mr Chairman, just to try to modify those words by saying that from our view it is a technical breach rather than anything illegal.

On a vote being taken on Clause 1 the following Hon Members voted in favour:

The Hon K B Anthony
The Hon J L Baldachino
The Hon J Bossano
The Hon Lt Col E M Britto
The Hon A J Canepa
The Hon M K Featherstone
The Hon M A Feetham
The Hon G Mascarenhas
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 Dr R G Valarino
The Hon K W Harris
The Hon J H Bautista

The following Hon Member voted against:

The Hon P C Montegriffo

Clauses 2 and 3 were agreed to and stood part of the Bill.

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

THE GAMING (AMENDMENT) BILL, 1989

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 INCOME TAX (AMENDMENT) (NO.4) BILL, 1989

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

Clause 2

HON FINANCIAL & DEVELOPMENT SECRETARY:

Mr Chairman, I beg to move that Clause 2 of the Bill be re-numbered as Clause 5 and new sub-Clauses 2 to 4 be inserted immediately before the re-numbered Clause. Amendment to Section 2.

MR SPEAKER:

It seems to me that again we are going to have quite a lot of boring reading. May I ask the House whether it would not be convenient to dispense with the reading as we have with the other amendments. If any Member wishes to bring out any point in any of the Clauses we can stop and do so. Would the House agree to that?

This was agreed to.

HON FINANCIAL & DEVELOPMENT SECRETARY:

Thank you Mr Chairman.

New Clause 2

HON P C MONTEGRIFFO:

Mr Chairman Sir, just to indicate, as I mentioned at Second Stage, that I do not consider that I have enough time to absorb and form a view on the amendments to what was a very short Bill. The amendments also include the provisions for certain Regulations in the Pay As You Earn System of the provision to make regulations. My attitude therefore is that I can do nothing more than abstain on this Bill for the reason that I have indicated.

New Clause 2 was agreed to and stood part of the Bill.

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

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

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

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

New Clause 7 was agreed to and stood part of the Bill.

New Clause 8 was agreed to and stood part of the Bill.

New Clause 9

HON G MASCARENHAS:

We are voting against Clause 9.

On a vote being taken on New Clause 9 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 K W Harris
The Hon J H Bautista

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 Dr R G Valarino

The following Hon Member Member abstained:

The Hon P C Montegriffo

New Clause 9 stood part of the Bill.

New Clause 10 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:

Sir, I have the honour to report that The Pensions Increase (Amendment) Bill, 1989; The Criminal Procedure (Amendment) (No.2) Bill, 1989; The Drug Trafficking Offences (Amendment) Bill, 1989; The Financial Services Commission Bill, 1989 with amendments; The Financial Services Bill, 1989 with amendments; The Public Health (Amendment) (No.2) Bill, 1989; The Consumer Protection (Property Management) (Amendment) Bill, 1989; The Medical (Gibraltar Health Authority) (Amendment) Bill, 1989; The Social Security (Employment Injuries Insurance) (Amendment) Bill, 1989; The Administration of Estates (Amendment) Bill, 1989, with amendments; The Criminal Procedure (Amendment) (No.3) Bill, 1989; The Currency Notes (Amendment) Bill, 1989; The Gaming (Amendment) Bill, 1989; and The Income Tax (Amendment) (No.4) Bill, 1989 with amendments, and I now move that all Bills be read a third time and passed.

Mr Speaker then put the question and on a vote being taken the Pensions Increase (Amendment) Bill, 1989; The Criminal Procedure (Amendment) (No.2) Bill, 1989; The Drug Trafficking Offences (Amendment) Bill, 1989; The Financial Services Commission Bill, 1989 with amendments; The Financial Services Bill, 1989, with amendments; The Public Health (Amendment) (No.2) Bill, 1989; The Consumer Protection (Property Management) (Amendment) Bill, 1989; The Administration of Estates (Amendment) Bill, 1989, with amendments; the Criminal Procedure (Amendment) (No.3) Bill, 1989; The Currency Notes (Amendment) Bill, 1989; The Gaming (Amendment) Bill, 1989; the question was resolved in the affirmative.

On a vote being taken on the Medical (Gibraltar Health Authority) (Amendment) Bill, 1989; and the Social Security (Employment Injuries Insurance) (Amendment) Bill, 1989; the following Hon Members voted in favour:-

The Hon J L Baldachino
The Hon J Bossano
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 K W Harris
The Hon J H Bautista

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 Dr R G Valarino

The Hon P C Montegriffo

On a vote being taken on the Income Tax (Amendment) (No.4) Bill, 1989, 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 K W Harris
The Hon J H Bautista

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 Dr R G Valarino

The following Hon Member abstained:-

The Hon P C Montegriffo

The Bills were read a third time and passed.

MR SPEAKER:

I understand that the Private Members' Motion by the Honourable Lt-Col E M Britto will now be proceeded with on Tuesday 19 December 1989.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that this House be adjourned to Tuesday 19 December, 1989, at 10.30 am.

Mr Speaker put the question which was resolved in the affirmative and the House adjourned to Tuesday 19 December, 1989, at 10.30 am.

The adjournment of the House to Tuesday 19 December, 1989, at 10.30 am was taken at 1.10 pm on Tuesday 12 December, 1989.

The House resumed at 10.35 am.

PRESENT:

Mr Speaker(In the Chair)
(The Hon Major R J Peliza OBE, ED)

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 K W Harris - Attorney General
The Hon J H Bautista - Financial and Development Secretary

OPPOSITION:

The Hon A J Canepa - Leader of the Opposition
The Hon G Mascarenhas
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

The Hon P C Montegriffo

IN ATTENDANCE:

C M Coom Esq - Clerk of the House of Assembly

COMMUNICATIONS FROM THE CHAIR

MR SPEAKER:

Before starting on the business of the day, I must bring to the attention of the House and of the public that it has been reported to me that, at least, in the last two meetings of the House, the radio commentator of the proceedings has unintentionally given the wrong impression to some radio listeners by his choice of words, I quote "We are now waiting for the Speaker to arrive". This has been interpreted to mean that the proceedings of the House are delayed in commencing because of the late arrival of the Speaker. The commentator had, of course, meant "waiting for the Speaker to take his place in the Chamber".

The commentator's choice of words has been wrongly construed by some radio listeners as a failing on the part of the Speaker of not being in the House on time, thereby delaying the commencement of the proceedings and thus bringing the Office into disrepute.

It is therefore my duty to make it known, as Honourable Members are well aware, that blame cannot be attached to the Speaker for delays in the commencement of the meetings.

I do not believe that the commentator's choice of words were in any way intended to misrepresent the situation and therefore I do not consider the matter to be an act of contempt. Indeed, I would not have mentioned the matter in the House today had the Gibraltar Broadcasting Corporation agreed to clarify the misinterpretation in their news bulletin.

SUSPENSION OF STANDING ORDERS

The Hon the Minister for GSL and Tourism moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to lay on the table the Accounts of Gibraltar Shiprepair Limited for the year ended 31st December, 1988, and the Gibraltar Registrar of Building Societies Annual Report, 1988.

Mr Speaker put the question which was resolved in the affirmative and Standing Order 7(1) was accordingly suspended.

DOCUMENTS LAID

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

The Accounts of Gibraltar Shiprepair Limited for the year ended 31st December, 1988.

Ordered to lie.

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

The Gibraltar Registrar of Building Societies Annual Report, 1988.

Ordered to lie.

MOTIONS

HON J E PILCHER:

Sir, I have the honour to move the motion standing in my name that: "This House takes note of the Accounts of Gibraltar Shiprepair Limited for the year ended the 31st December, 1988."

In so doing, Mr Speaker, I would like to start by saying that in moving the motion asking the House to take note of the Accounts of GSL for 1988 it is my intention to review and analyse the position of GSL since we took over on the 25 March, 1988. I will give a general rundown of what occurred during 1988, and advise the House and the public of what has transpired through 1989 and hopefully at the end establish what the Government consider to be the way forward for GSL. I have also to stress, Mr Speaker, that my analysis of the Accounts will be a general one reviewing the position and obviously any comments made by the opposite side of the House will be answered by me when I "wrap up" the debate.

Having said all that Mr Speaker, let me just start with the general review when the Gibraltar Socialist Labour Party took office on the 25 March 1988. Mr Speaker, one of the outstanding problems which had to be looked into was the problem of the state of GSL. At the time when we took over, the yard was in a rundown state. No marketing of the yard had been done since the redundancies had started in October/November 1987, and the situation was such that the Government had to very quickly take a policy decision on the way forward for GSL. This we did immediately we came into power and the first decision was to give the business a chance to prove itself or otherwise. We felt that although we had been saying since 1985, in fact, that the Appledore Business Plan was not sustainable because it was not realistic and because of various elements, particularly the element which had not been taken into account, ie the economic background of Gibraltar. We nevertheless felt in deference to all the employees who had worked so hard since 1985 to make a go of the yard and that it should be given a chance with the A P A Business Plan. We however felt that this was not possible under the existing Agreement with A & P A and therefore immediately on taking office we rescinded the Management Contract with A & P A. At the same time, Mr Speaker, GSL started activating and establishing a network of Agents in order to start marketing the yard. We also had many meetings with the trade union movement and established certain agreements that would give the yard the chance to work in an environment of good relationship and cooperation with the unions in order to make a go of it. By the end of May 1988 the yard was ready to start the trial year

which the Government felt was required to see whether the A & P A Business Plan which involved selling in the region of 750,000 man hours a year, a turnover of £10m, could be sustained and could in fact be achieved. The Government, as I say, gave the yard a year up to the end of June 1989, to see if viability, whether commercial or economic, could be arrived at within that year. At the same time, Mr Speaker, the GSL diversification plans which were conceived by the GSLP ie trying to use its resources and its labour to create Joint Ventures which would be independent from the mainstream of shiprepairing, could be enacted to make this a reality. Let me say, Mr Speaker, that in all the areas which I have just mentioned the challenge was taken by GSL, by the workforce, and in those areas I have to say that GSL had tremendous success in (1) activating the market (2) getting the work and (3) having a strike free yard and more important creating a confidence in the market which meant that shipowners were more than happy to bring their ships to Gibraltar where they could be repaired on time and to a very high standard of workmanship. This put an end to the myth that GSL was not productive or not efficient and which was the argument always used by the A & P A management for the losses in the past. By the end of 1988 or early 1989 the targets set out in the A & P A Plan had been attained. The yard had sold around 725,000 hours, the turnover was nearly £10m, in fact, £9,265,000 which is not bad considering that the start of the marketing had not started until April of 1988. What was also discovered in early 1989 was that although the targets had been attained, financially GSL was sustaining heavier losses which were not compatible with previous years. In fact they were not compatible with the Management Accounts and what the company was showing in its monthly management accounts. GSL, Mr Speaker, brought in an independent auditor to work in conjunction with the GSL Accounts Department to try and discover the reasons for the heavier financial losses in comparison to other years. What was discovered by the independent auditor and by the GSL Accounting Team, forms the essence of the statement which I am just about to read.

Mr Speaker, if Hon Members turn to the Principal Auditor's Report attached to the GSL Accounts they will see that in his first comments of the Report, and let me say as the House well knows that the Principal Auditor is an independent entity, independent from the Government and from GSL and looks at the Accounts independently, the Principal Auditor's first points is what I would like to raise first and which was also discovered by the company early in 1989 but which the Principal Auditor has also picked up. Mr Speaker, I will quote from the Principal Auditor's Report "there was a significant reduction in turnover in 1988 following the ending of the commitment by the Ministry of Defence to send ships to the yard for refitting. This type of work had proved profitable because

of the cost plus arrangement and had provided a consistent flow of work thus helping offset cyclical fluctuations in commercial work". I think Mr Speaker, that that is the crux of the matter. In comparing, Mr Speaker, the financial problems that GSL has had through 1988, I think, that one of the things that worried us the most was trying to analyse those losses against the background of the losses sustained by GSL in 1985 and like the Principal Auditor our thoughts went to the fact that there was more than just a hidden subsidy when the situation of GSL was launched in 1985 because there was in fact £14m of guaranteed RFA work. What we have therefore done, Mr Speaker, and you will see that I have just handed round a Note, in order that Members opposite can follow what I am about to say. This is Mr Speaker, that in analysing the 1988 Accounts we have looked at the GSL Accounts from 1984 to 1987 ie the GSL Accounts that contain RFA work and what we have therefore done, Mr Speaker, and it will be seen, if Members look at the two columns 1984 to 1987, that the turnover of GSL during those 3 years ie 1985 to 1987, because there was virtually no trading during 1984, Mr Speaker, the turnover of the yard between 1985 and 1987 was £34.096m. If we then subtract the "guaranteed RFA work" of £18.255m what is left is a "commercial turnover" for the yard of £15.841m. Therefore, Mr Speaker, what we are doing today, and what the Hon Members opposite should also do, is compare the turnover in 1988 £9.265m, a purely commercial turnover, with the turnover between 1985 and 1987, of purely commercial work ie £15.841m. We now arrive at the losses sustained during 1988 and the preceding 3 years which is £13.126m. It will be seen, Mr Speaker, as mentioned by the Principal Auditor and as will be seen by Members opposite, particularly those that were involved with the GSL operation before we took office, that the arrangements to do the work was at a cost plus basis. The cost plus basis was fluctuating around 9% or 10% and therefore in trying to analyse properly what has occurred at GSL in 1988, what we have done is deducted the profit of RFA work and which we have been able to establish at £1.846m. Therefore we add this amount to the sustained loss between 1985 and 1987 and come up with a figure of £14.856m. However, Mr Speaker, that is not all because if you look again at the Principal Auditor's second comment ie comment 2 and I quote "During 1988 independent surveyors carried out an exercise to establish the existing use value of the assets. This valuation was accepted by the company and consequently a charge of nearly £6m was made in the accounts to reflect the permanent diminution in the value of the assets". Mr Speaker, if members opposite turn to page 10 of the Accounts they will see at the bottom of the page "(d) Tangible fixed assets and depreciation", Mr Speaker, and I will read from these Accounts the Auditor's comments "Improvements to buildings and facilities are written off to maintenance in the period that the costs are incurred. This is a change in accounting policy from last years treatment which was to capitalise these costs, including direct internal labour and share

of attributable production overheads. Had this policy not been changed the operating loss would have been reduced by £253,000". The importance of that statement, Mr Speaker, is not so much to reduce the losses of 1988 which we could do by subtracting £253,000 from the losses but to highlight that up to the 25 March, 1988 when we took over, labour was being capitalised and the improvements to buildings and facilities were also being capitalised. We have gone back and looked through past year's Accounts ie 1984, 1985, 1986 and 1987 to see how much money on improvements to buildings and on labour and materials had been capitalised. The figure, Mr Speaker, that we found is a staggering £4.893m, nearly £5m of work, done on buildings and facilities had been capitalised and should not have been capitalised because the fact that you paint a building and improve slightly your facilities does not mean that they are worth more in your assets. What it does, Mr Speaker, is just improve your facilities but does not make them more expensive. If one now turns to page 16, Mr Speaker, in the Accounts one sees what can only be described as a scandalous situation. The tangible assets of the company have had to be devalued during 1988 by something in the region of £6m. To give but one example, Mr Speaker, which has been mentioned before, the Slop Barge was entered in the GSL books as having a value of £2.08m whilst the "assets worth" of the Slop Barge is actually £325,000. This means that the Slop Barge has had to be devalued by £1.755m and it is therefore clear that what the previous management was doing, prior to the 25 March 1988, and it is not I that I am saying it, but the Auditors at page 10 of the 1988 Accounts that are saying so, GSL was capitalising a lot of their idle time, their maintenance labour was therefore not going through the company's profit and loss account. Mr Speaker, therefore in doing this exercise, I must say, that we have been relatively conservative inasmuch as we have taken out of the 1985, 1986 and 1987 Accounts everything which was clearly maintenance and improvement of facilities and which is in fact mentioned by the Auditors in page 10 of the 1988 Accounts. What we have done is taken the £253,000 in 1988 and gone back to see what was the exact figure that the Auditors used on a year to year basis and by adding those figures we come up with the figure of £4.893m. So what we have done, Mr Speaker, is put that back where it should have been in the first place, in the losses of the company and therefore by deducting the capitalised works one sees that in 1988, as the Auditor has mentioned has already been included, and between 1985 and 1987 we can see that it has not been included, so we add £4.893m, Mr Speaker, I think that we then arrive at the bottom line which is that in 1988 the yard did £9.265 of commercial work and the losses were 85% of turnover ie £7.9m. During 1985, 1986 and 1987 out of £15.8m turnover of purely commercial work, the losses are 123% of turnover, £19.479m. Mr Speaker, that is the analysis of the situation and it is a very

clear analysis, which I have very carefully gone through, and shows that if one takes out of the devaluation the RFA guaranteed work, more than £14m in fact £18.255m, as well as the profit element ie the cost plus factor of MOD work and added on what should have been included in the profit and loss account of the company ie £4.893, a conservative figure since there are other factors in the 1985 to 1987 Accounts which could make this figure even higher I would go even further, Mr Speaker, because if one turns to page 7 of the 1988 Accounts it will be seen that the extraordinary charges to the company were £6.052m (£5.868m) being the devaluation of the company's assets. It is on the basis of that analysis, Mr Speaker, that the Government in early 1989, in February or March, sat down and looked at the GSL operation and what in fact it meant to be running an operation under the guise of the business plan that A & P Appledore had set and which they, in fact insisted was the way forward to attain viability ie by selling, as I have said before, somewhere in the region of 725,000 man hours, a turnover fluctuating between £10 and £11m. This, Mr Speaker, is unfortunately something that is in fact quite unsustainable. Again, Mr Speaker, I must turn to the Principal Auditor's Report to where he states "However, because the cost of sales did not decrease in the same proportion as turnover, mainly due to the cost of maintaining the permanent workforce, the company sustained a gross loss in the year under review". That, Mr Speaker, is in essence the reason why GSL cannot attain commercial or economic viability under the existing A & P A proposal or business plan. Since 1984, Mr Speaker, the GSL operation which requires the employment of a lot of people, given the economic background of the higher cost of living in Gibraltar, was not feasible. Unfortunately, although we have been saying this since 1984, it was landed on our laps like every other problem in Gibraltar and left to us to resolve the matter. I think, Mr Speaker, if we now turn to something which I have forgotten to mention, and which is note 4 of the Principal Auditor's Report and which concerns stock levels. It will be noticed that the company has again this year had to raise the provision on stock of £400,000 made in the previous year to £675,000 another £275,000 that went through the profit and loss account of the company because of the fact that A & P Appledore had over provided on materials and there is a tremendous amount of dead stock, in fact £675,000, which is not moving and which I would not like to hazard a guess why it was bought in the first place. Certainly some of it will never move. I would now like to turn to my statement, as Chairman, at page 3 of the Accounts. What I have said in the statement is a condensed version of what I have just explained and which is "The results for the year have proved that the volume of work and scale of the operations programmed and budgetted in the previous management's Business Plan was not sustainable. It is clear from the experiences of the last eighteen months

that the only conceivable future for the company is a realistic contraction in its size. This must mean a reduction in both repair capacity and manpower at all levels". That, Mr Speaker, is the decision that the Government took in 1989 after we had had something in the region of 9 months from June 1988 under our belts. By that time it had become clear, unfortunately, that it was not possible to run GSL with the number of employees and the turnover envisaged in the A & P Appledore Business Plan. The answer was very simple. The A & P Appledore Business Plan was a very labour intensive operation and because labour in Gibraltar is very expensive and therefore the more labour that was brought in the more people that had to be paid even if there was not work for them. The other alternative, which was something that was done in the latter part of 1988, was to use sub-contracted labour and increase the amount of hours ie pay overtime to the workforce in order to see if viability would be achieved. The results, Mr Speaker, speak for themselves, we are not saying something today which we have not said before and it is something which those who were responsible previously should have picked up much earlier and not left it to us to resolve the situation. There was only one possible solution because the yard could not be run under the guise of selling the amount of manhours, or the turnover, in the A & P Appledore Business Plan and this Government decided to do two things. One, Mr Speaker, was what was done very early in April/May, the establishment of the Joint Venture Companies which were by that time working with considerable independence from GSL and the Government divorced them completely from the GSL management. The second thing was that the company started looking at the possibility of reducing its workforce as well as reducing its physical capabilities and seeing whether it could itself create a Business Plan to sell less hours to make the yard less labour intensive and to go for more specialised work. It also had to determine how many hours and what type of set up would be needed to do that. There were of course two problems for the company, Mr Speaker, the first problem was the fact that although that decision was taken March/April of this year, because of the nature of shiprepairing, there were ships booked one or two months in advance and although the decision to halt the operation was taken in March/April there was no physical proof of that until about June because ships had been booked in advance which we, as a company, felt we had to honour. The reason was that we felt that if GSL was going to be given a second chance under a much reduced operation it was vital to keep market confidence. Therefore we could not just shut down the yard and try to restart it again in January of the following year. Because that would create a situation like the one created by A & P Appledore in October/November of 1987 and mean that we would have to start all over again in 1990. We therefore felt, as a company, that we had to continue the operation although we stopped market ing

the company commercially, or attracting ships, but for the ships already agreed to we continued the operation at a quite high activity until early to mid June. At that stage, Mr Speaker, the company started what I consider to be the final structuring. Two things were done, the company looked at the number of people it required and in early September started a system of voluntary redundancy. The voluntary redundancy exercise was relatively successful and between these redundancies and re-deployment the yard has been able to substantially reduce its manpower and has, I feel, a chance with this reduced manpower to give the operation another go. The company also looked at what was needed physically for this much reduced operation which we reckoned could obtain a turnover of between 300,000 and 400,000 hours nearly half if not less than half of the A & P Appledore Business Plan envisaged. This operation would be less labour intensive and have more specialised skills. In doing so, Mr Speaker, over the last couple of months, last September/October, the Company did a survey on the physical layout of the yard and the company felt, and I think the Government agreed, Mr Speaker, that the reduced operation could work with two docks No.1 and No.2 Docks, with a reduced berthing space ie with maybe the South Mole for our reduced operation and we would continue to do afloat repairs on ships at anchor and voyage repairs which we started in 1988. Let me at this stage, Mr Speaker, stress that the policy of the Government on shiprepairing is unchanged. It is still believed by the Government that shiprepairing is an important element in the package which Gibraltar has to offer as part of the Port. It is one part of that package and I think in its own diversification of the economy the port of Gibraltar is an important element within that economy and therefore we felt, and continue to feel that shiprepairing, if it could be maintained, would be an important element of that package. I think it is important to say this Mr Speaker, in order to stress that it is the intention of the Government, if at all possible, to continue to repair ships in Gibraltar. But obviously Mr Speaker, it is not the intention, and it has never been the intention of the Government and never will be the intention of the Government to repair ships at a loss to Gibraltar, because we felt and we continue to feel that this is counter-productive. By offering shiprepairing as an element of that package the ability to do that is the ability to diversify the package and attract more people and attract more money to Gibraltar. If by providing shiprepairing as a part of that package, that part loses more than the rest of the package put together then it does not make sense to continue with the shiprepairing. But, as I say, because of the fact that we feel shiprepairing is an important element, we felt that it was important to give the yard a chance to succeed with a reduced labour operation and with a reduced physical structure. The reduction of the physical structure of

the yard, I think, comes well in line with the Government's own thinking. I think we mentioned very early on after getting into Government, and I think in fact it is mentioned in our Manifesto ie the creation of an industrial park within the GSL area, so by reducing even further the yard, the industrial park, the ability of the Government to utilise it, is even further enhanced, so I think, this in fact comes in line with and compliments the decision of the Government which I am sure you all know is viewed successfully by a lot of people, the creation of an industrial park within the GSL area. Therefore, Mr Speaker, what we had during 1989, a period of very high activity up till June 1989, a period of high activity sustaining exactly the same losses as were sustained during 1988 with one, I would say minor, although like everything else in life "minor" depends on from which side it is looked at. The operation in 1989 was suffering the same losses minus the cost of A & P A which was established during 1988, and although we broke the contract with A & P in June 1988, the effect of those contracts, the effect of contracts which had been put in place by the A & P Appledore Management still were there until the very last day of 1988, when we were able to break the Peininger Contract which in fact expired on the 31st December 1988, and was in the region of about £4m. This operation is related directly to A & P Appledore, but I mean, it is clear that in the first six months the losses sustained in the operation were in line with the losses sustained during the operation in 1988. And therefore, Mr Speaker, taking into account that for the second part of 1989, the Government and GSL was embarked in a restructuring, which again let me stress, had to be done in a way that did not provide market ing difficulties for GSL since it was the Government's intention to continue to run a reduced operation in the hope of attaining viability and therefore September/October and November were used, Mr Speaker, to run down the operation, both in manpower and physically, in a way that would not create market ing problems. Again, in this area we have been very successful, the proof of that, Mr Speaker, is that having attained, or very nearly attained, the reduction in labour and having very nearly attained, because we have now put into action the physical reduction of the yard, Dock No.3 is not now being utilised and the cranes in the main wharf are shortly not going to be utilised. Once we had attained that, we reactivated the market and the market immediately reacted to GSL and if anybody cares to look at GSL, you will see that again, today, there is activity in GSL. Albeit not the activity that was there in October of last year, because we felt, and we continue to feel, that we cannot run a labour intensive yard and therefore what we are doing now and what we will continue to do during the early part of 1990 is having completely divorced GSL from everything but shiprepairing, having reduced its manpower and reduced its physical size and therefore reducing substantially its overheads, we are going to give GSL a chance to prove

that within the confines of those parameters it can attain commercial or economic viability. Let me say that in order to arrive at the 1 January and strive for that independent entity, GSL, to look purely at shiprepairing and because the Joint Ventures are now fully fledged and independent entities working totally separate from GSL, GSL has, or will be, I mean it is doing it at the moment, been giving up all its shares in the Joint Venture Companies. We felt that these companies were now of age and did not need either the back-up on operations or the blanket of GSL to run totally independently. They are now independent entities, working independently, and have to make it or break it independently in their own commercial world without GSL. Therefore, Mr Speaker, I think to end and, as I say, I would be more than happy in summing up to answer all and any questions related to the accounts or anything else in the operation. But I think to end my contribution the last phase of GSL Mr Speaker, is to allow the yard the ability to run for a further six months with its own business plan with a reduced operation both in labour and in manpower and to prove to the Government its ability or otherwise to attain economic or commercial viability. It is too early, Mr Speaker, as this in fact has only just started, it is too early to say whether this will or will not be achieved. The Government will in early June or late May be looking, even before that, because it depends on what the Management Accounts show on a month to month basis. We will be looking at the operation, but I must stress, Mr Speaker, that the Government policy on GSL is unchanged. GSL has to pay its own way. If the reduced operation does not provide viability, then we will have to further trim the operation and if it is shown clearly that shiprepairing is not a viable alternative for Gibraltar, Mr Speaker, in that package that I mentioned before, then unfortunately the situation is one that we will have to look at diversifying into another area, because shiprepairing will not be continued by the Government. Having said this Mr Speaker, I have to stress, as we have done in the past, that GSL and I think one of the few points that have been agreed on across the House when the AACR was sitting on this side of the House, Mr Speaker, one of the few points when we discussed GSL and that we always agreed on was that GSL was more than just cranes and docks and buildings. That GSL had people and therefore having said that our policies are unchanged, I have to also stress that whatever the Government does will be done in a system that will protect the employees of GSL, in a way that they will not suffer any hardship whatsoever. I think, Mr Speaker, that that about wraps it up, except that peculiar although it may seem, Mr Speaker, GSL has done a lot of work over the last eighteen months, the Board, the Management and the employees of GSL have done a tremendous amount to take up the challenge month after month, structure after structure, system after system in trying to accommodate themselves to the everchanging role of GSL in the Gibraltar

economy. I have nothing but praise for them all, Mr Speaker, because they have shown even within the last couple of weeks, they have shown their ability to try and change their structure, change the ways that they operate in order, Mr Speaker, to try and attain that viability which GSL needs and which Gibraltar needs within that GSL package and Mr Speaker, I would like to end on that note of praise to all the employees of GSL, thank you Mr Speaker.

Mr Speaker proposed the question in the terms of the motion moved by the Honourable the Minister for GSL and Tourism.

HON P C MONTEGRIFFO:

Mr Speaker, in opening the debate from this side of the House, I think it is necessary to say that the accounts have been presented against the background of a high degree of uncertainty and concern amongst, certainly the workforce, and all the people whose future is directly linked with GSL. And that we on this side of the House suffer from a major disadvantage which the Minister has partially remedied and which is that we are looking at the situation as at December 1988, without really having much detail as to the position of the yard in 1989 and the position at which the Government finds itself today. However going on the basis of the Minister's statement, Mr Speaker, the Accounts barring the first three months are the first GSL Accounts under the GSLP, if I can call it that. It covers the time of the programme of rescue for the yard which the GSLP promised the electorate that it would implement. It must therefore be seen in the light of whether it is working or not working and in that respect, Mr Speaker, the GSLP manifesto which outlines in a brief form what it was that the GSLP plans were, quite clearly that what they envisaged as being the way ahead for the yard was, apart from doing away with A & P Management contract, a process of diversification with the setting up of the Joint Venture Companies which would in fact add support to the group by creating a whole infrastructure of supporting operations. I think it is important to say that, Mr Speaker, because throughout the Minister's contribution, and I do not want to be unfair, he has wanted to give the impression that for the whole of 1988, even after they came into office, the strategy of the Government was one of staying on with the A & P Business Plan and seeing whether the A & P Business Plan with the Government's own input could be made viable. My understanding certainly always was that that was not what the GSLP was promising, that the A & P Plan, as the Minister has actually hinted, had been identified since 1984 when they were on this side of the House as not being viable, and it seems odd to me that the Minister should therefore say that what they did initially, for a period of about 1 year until about February 1989, was to take stock afresh of the situation and to continue with the Business Plan albeit by trimming costs and trimming expenses.

This, Mr Speaker, is something which already various years ago the GSLP had identified as having no future and I had always understood that in fact the moment the GSLP came into office their intention was to radically re-assess the APA Business Plan and that the diversification programme, in a sense, was part and parcel of that, although, I understood that, there were other reasons for that as well. But that certainly there was no question of saying "Well the A & P analysis of what is possible for the yard, in terms of turnover and in terms of manpower may be possible, and we are going to have a go at doing it with our methods". That, Mr Speaker, is not the situation and I think it is important therefore to see, and I am not here to defend A & P Appledore by any stretch of the imagination or the way that the yard was run, but I think that 1988 should not be regarded as the year when the GSLP tried to make A & P Appledore's plan work. It should be regarded as the year in which the GSLP started to make its own plan work and whether it succeeded or not is another matter. But I think that is the way that it should be looked at. The whole idea of the Joint Ventures, as I understand it, Mr Speaker, was also important because we had got ourselves into a situation of continuing losses in the yard and where unless some method was devised of assisting the yard, in a way that was not in breach of the EEC Directives on the matter, we were going to shortly find it impossible to keep employing anybody there and to that extent the Chief Minister, in his contribution last year in the debate on the 1987 GSL Accounts hinted, only hinted, at the problem. But I think that those of us who at least knew what the Directive said understood what the Government was trying to do. I still have some worries about the way ahead and the Minister has not indicated how the operation may have to be funded over the next six months and my concern is, to deal with that aspect, Mr Speaker, that there is a reference in the Accounts this year, as there was last year, to the Government agreeing to provide finance for the operation of the yard as may be necessary and I imagine it is an undertaking which the Auditors will require in a situation where effectively there is almost insolvency in the Company, because the Company cannot pay its debts. I am concerned, Mr Speaker, that care should be taken about the way in which that is done to ensure that we do not have a problem and to which I do not want to make any further reference to but I think it is also important in looking at the yard and the position of the yard, Mr Speaker, to place in context the criteria for viability to which the Government itself has referred to now. My understanding again, Sir, and I think it is important because there has been very little about the Joint Ventures mentioned in the debate so far or in the Minister's contribution but I think it is important to talk about the Joint Ventures because they are an integral part of the restructuring programme. There was a basic distinction drawn, Mr Speaker, between the basis of viability for GSL, which the Chief

Minister again in his contribution last year, if I remember rightly, pegged at two levels. The level of pure profitability and the secondary level that even if the Company was not profitable, if there was a general contribution to the economy or indeed if the cost of running it down was more than of keeping it going then the Government would see that as a sensible alternative. An analysis with which I would not quarrel. On the other hand as far as the Joint Venture Companies were concerned, a totally different approach was envisaged and that approach which in fact was reiterated by the Honourable Minister Mr Pilcher, I think, in a question last year back in November 1988, where in answer to a supplementary, he made clear that the GSL Joint Ventures would be regarded as purely commercial entities and would have to run on those lines. There would be no element of subsidy for those companies, they would have to operate on their own. It is clear from the Accounts, at least from 1988, that the companies have not provided an income flow for GSL as might have been hoped for, if nothing else when they were initially set up, and that the money that GSL has loaned to the companies, as a part of the restructuring programme, has at this stage represented an outgoing of cash, which this House voted for, without at this stage, there being any recompense to the Company. I am interested and we have had much too little detail Mr Speaker, except for a brief reference that the Minister made about the selling of the GSL shares in each of its various Joint Venture Companies. I am curious because I do not know as to what extent there is going to be a repayment, in capital terms of GSL's investment in those companies, because the whole reason for the Joint Venture companies was to in fact diversify the group and it is all very well now to say that the Joint Venture companies can stand on their own and that therefore GSL has to shed itself of them but there was never any question, Mr Speaker, as far as I have always understood it, of GSL subsidising the Joint Venture companies or vice versa. The Joint Venture companies were to be profitable entities which would bolster GSL's cash flow position, nothing else and certainly GSL's profitability by GSL receiving income that the Joint Venture Companies would generate. Now clearly that strategy has been abandoned by the Government, or so it would appear from what the Minister has told us. Does the Government no longer see the jigsaw of the Joint Venture companies pumping money in, as profitable entities to GSL, as a part of the equation? Because if that is so it represents a major departure from how the diversification plan was going to work? The Government may now feel convinced that GSL, within its own more reduced operation, can achieve viability without an inflow of profits from the Joint Venture companies. But that is a different analysis to the analysis which, I believe it was making, certainly a year ago when we were in this House debating the 1987 GSL Accounts. I would ask the Minister or any other Member of the Government when they make their

contribution to give us more details about what is intended to happen to those shares because public money has gone into the investment of GSL in those shares, ie through the £3m we voted in this House largely to acquire the shares in those Joint Venture Companies. Now if the Joint Venture Companies are going to be sold, is it to outside entities? Are the bidders interested in the yard? Because there has been a fair amount of talk about bidders interested in the yard and that may be one way out of the situation, the difficulty the yard finds itself in? Is the sale of the Joint Venture Companies part and parcel of that? Or is it local businesses that are going to acquire those shares? I think we really need to know that because otherwise we are very much in the dark and we have unexplained an important element in the whole programme which the Government had put together for rescue of the yard. I think, Mr Speaker, to that extent therefore, what we are witnessing today is a massive reassessment of Government's approach to the yard. Because what the Government was saying in 1988, when it came into office, was diversification, income flow from the Joint Ventures and its own marketing strategy and its own management structure. Now today what it is saying is, "we are not able to sustain levels of turnover of the type that A & P Appledore had projected", and which I had never assumed that the Government had accepted as being part of its programme, it cannot sustain levels of that type of turnover, it cannot sustain levels of the type of employment that the yard had and that even the Joint Ventures structures which were part and parcel of an income flow to the company is going to be modified so that the company will have a purely arms length relationship with companies in the industrial park that the yard will become without any greater element of support in terms of ownership, which the original plan appears to envisage. In that respect, it is frankly a failure of the previous diversification policy, an honest recognition of that, if I may say, but still a failure of the attempt to achieve viability at a certain level with a programme of diversification using the Joint Ventures in the way that I have indicated. So I think we are very much at a new fresh page, as far as GSL is concerned, with a new strategy being embarked upon and certainly with the wishes of everybody in this House, I think, that that strategy should see better success. The position at GSL itself, going into the Accounts briefly, does not have to be repeated as far as the loss situation is concerned. The Government, at least back in November 1988, was clearly quite optimistic about a break-even point around July 1989 which has not been achievable but I have said something on that already. The specific issues on the Accounts which I would like to highlight, Mr Speaker, are as follows. There is still reference in the Accounts obviously, and there has been later mention of this in questions in this House, as to the amounts outstanding in respect of Pay As You Earn and Social Security. I think the figure in

1988 is about £1.17m, for both Pay As You Earn and for Social Security. I am concerned, Mr Speaker, in that I do not know how the Government intends to redress that problem but certainly under the Directive which is hanging over our heads in this respect, I think, some provision has to be made for that debt which I would not want it to be regarded as a type of Indirect Subsidy which could land us with problems. I think it is important to address and there are ways of addressing the problem and the restructuring programme which the Government brought to this House and that we voted on in my view is totally in accordance with the EEC Directive, there is no problem with funds being put in for restructuring and what I am saying is that if there are certain problems like Pay As You Earn or Social Security they can best be corrected as part of a proper restructuring programme that costs money or can be financed in some other way than that I would think would be a proper and legitimate way without infringing the Directive and I would ask the Government to seek to ensure that it is done that way so that we do not fall foul of the provisions that would otherwise trap us. I think it is important also to try and deal with the matter because we cannot have a dual situation of the Government trying to chase Pay As You Earn payments in the Private Sector, and in fact I think a Press Release was issued again in October 1988 saying that the wrath of the Attorney General would be unleached on all those who had not paid, when the Government and GSL has that problem. The second aspect which I would like to highlight, Mr Speaker, is the question of the revaluation of the fixed assets which the Minister again referred to. I find it a little curious that the reference in the Accounts "to the assets being valued on an existing use basis". I do not know on what basis it was suggested that that reference, page 16 paragraph 10. "During the year the valuation of all tangible movable assets was carried out by professional surveyors, Messrs Walker Walton Hanson, Byard Lane, Bridlesmith Gate, Nottingham, on an existing use basis". I am not really sure what "existing use basis" he is supposed to mean. The Minister has not really given us sufficient explanation, in my view, for the reasons why the devaluation was deemed necessary although I am prepared to accept, if this is the explanation, that it was to give a more accurate picture of the value of the company. But the reference to existing use, I do not think, is a normal accounting practice. In any event it has struck me as being something which perhaps could be clarified further. It seems also that in revaluing the assets one thing that has been done is that it has made the company cheaper to sell, cheaper to acquire. I do not know to what extent that is part of the Government's thinking, because one thing the Government may want to simply say "I want the Accounts to reflect reality because I believe in reality and why are our Accounts artificial" and which I would again have no quarrel with. But it seems to me that this may be the forerunner to a sale or a possible sale. Because

somebody coming in is going to be able to bid a lower price and politically the Government is going to find it easier to accept if a valuation of the assets puts the Company's Balance Sheet at £3m odd as opposed to the £10m odd which the 1987 Accounts would have indicated. I think that if there is possibility, Mr Speaker, a possibility of the Government inviting an outside entity to have a role in owning and/or managing the yard that that should be expressed here today because we are turning over a new leaf in GSL and, I think, the workers need to know what Government's thinking is and I do not think that any commercial sensitivity would be jeopardised, and there would be no commercial difficulty in my view, if the Government simply indicated that its thinking includes that type of possibility and that over the course of the next few months it is looking, if it has not already looked already, at people who would be interested, within the context of investing in the industrial park generally, to have a role within GSL. Turning to the question of the Joint Venture Companies, Mr Speaker, I have already indicated the need in my view, for an explanation of what is going to happen to those and I look forward to the Government replying to that. But I think it is important to say that without the Joint Venture Accounts, I think, this House is groping in the dark to a greater extent than is desirable. The funds which this House voted to GSL to pump into the Joint Venture Companies is only barely recognisable in these Accounts as very small items. That public money that has gone into Joint Venture Companies, in the acquisition of those shares, means that this House should have sight of those Accounts, and I think that if GSL today, or rather in 1988, was different to what it was in 1987, because it has spawned a whole network of Joint Venture Companies, then this House cannot look at the position of the Yard without looking at the position of the Joint Venture Companies. I truly believe that a disservice is being done to this House by the Government in this respect by not having tabled here Joint Venture Accounts. We just do not know how they are performing, we do not know what they have done with those funds that were pumped into them as part of the restructuring programme by GSL, public funds approved by this House and we cannot really make a meaningful comparison and assessment of the performance of the company in other years when the Joint Venture Companies were not there, with 1988 and with the Joint Venture Companies actually undertaking activities which in the old days were part of GSL's own activities. I therefore call on the Government, Mr Speaker, and we have said so before, to make public those Joint Venture Accounts, especially now in the context of a sale. How are we going to assess, if not the desirability of a sale, then whether the terms of a sale are appropriate and whether the people are getting value for money. The Government will say, Mr Speaker, "we are the guardians of that responsibility" and I will respond that they are partially the guardians but that I think, that this House also has

a responsibility to look after those monies that have been voted and if those monies have trickled their way to Joint Venture Companies then, I think, it is an entirely legitimate reason for us to see those Accounts in the context of what is going to be the disposal of those shares at a later stage. I therefore call on the Government to make those Accounts available, the 1988 Accounts or at least the first Accounts of those Joint Venture Companies that are available. Because some have started during the course of 1988 and therefore they would not have been trading for a complete year. This should not be commercially embarrassing for those companies and would certainly be of assistance to this House in helping us understand the true picture in which the yard finds itself. I highlighted in the case of GSL, Mr Speaker, the question Pay As You Earn and Social Security, and again without reference to the Accounts we do not know to what extent the Joint Venture Companies are also in default with Pay As You Earn and Social Security Contributions. If there is an element of default the problem is more serious than we envisaged because the Government has isolated the shiprepairing facility and therefore you are only looking at that. But if there are debts in the whole group then that is very serious and would require all the more care in the type of restructuring programme to be adopted. Would not any sale then possibly even have to include treatment for the Joint Venture Companies before they are made saleable? How else would the Government intend to dispose of those shares? With that type of liability still hanging over the company or other various companies? The situation appears to be therefore, Mr Speaker, one of uncertainty. Because whereas I am prepared to recognise a new leaf and the Government's acceptance of having tried the strategy, off cutting its losses and starting on a new one. I would have expected today a rather more firmer indication of where we are going rather than just the statement that the yard is now much more trim than it was before and therefore we will let it go for another six months hoping that it will break even. I cannot, or I do not want to, believe that that is the extent of the Government's plans. I want to believe that there is more but that the Government, at this stage, does not want to reveal it or may not be able to reveal it. But if there are, and I reiterate, outside interests looking at GSL then that I think should be indicated now because it would give the people at GSL an element of hope that there may be some positive thinking that has been done as opposed to just an extension of six months which may end in us being here in July, with the Minister still having to state that the yard is not viable as it is at present and that a further look would be required at some later stage. Finally, Mr Speaker, the Minister has, I am glad, made reference to the workforce at GSL and has praised their attempt to adapt and to rise to the occasion and I do likewise but I would simply want the Minister, or some

Member from the Government, to perhaps put a little more flesh on an issue that has been raised in this House before and which is the question of the type of guarantees of employment which the Government is prepared to make to those workers. I mention this point again Mr Speaker, in the context of sale of the Joint Venture Companies. Who is going to acquire the other 50%? What type of guarantees will Government be seeking from the purchasers of that 50%? The treatment it will give the workforce and their terms? Their continuing terms? To what extent is the Government going to seek those guarantees from any entity which may have an interest in acquiring part of GSL. I think that if it is the Government's intention, as I hope it is, to guarantee employment to those workers then there is no better opportunity than a clear and unequivocal statement of those terms in this House. So in conclusion, Mr Speaker, all in all today we are witnessing, I think, the failure of the original diversification plans that the GSLP had proposed. We seem to be witnessing the dismantling of the GSLP network.....[Laughter] Mr Speaker, that was a Freudian slip. The dismantling of the GSL network of Joint Venture Companies and the commencement of a new strategy where the role of the Joint Venture Companies is being changed, modified completely and where the yard for the time being, at least, is just going to be run, possibly on the basis of a more specialised operation, and with a much smaller workforce.

HON M K FEATHERSTONE:

Mr Speaker, I am going to speak on the Accounts. I will leave the political side of GSL to my colleagues. As a shareholder in GSL, and we the public in Gibraltar are all shareholders, I can only say that results for the year ending December 1988, fill me with gloom, dismay, despondency and despair. After allowing for monies received from other operating income, including the Joint Venture Companies, of £221,000, the operating loss was nearly £3m £7.904m to be exact. Notably the cost of sales is £2.5m greater than the turnover. This means obviously that the amount paid on wages and materials is far too high for the work processed or else the work is being done at too cheap a price. There is no point in having a ship a week or a ship every three or four days if it costs you £100,000 to do so. This loss of £2.5m in the cost of sales compares very unfavourable with the previous year's figures when a profit of £1.6m was produced. Administrative expenses are very high at £4.7m. They only include half a year's fees to Appledore, yet they are higher than the previous year which included a full year of Appledore by £18,000. It seems that with the restructuring that is taking place there does not seem to be very much diminution of the overheads. This is something that has got to be addressed very carefully indeed. There was a permanent diminution

in the value of assets of £6m. This was done up by a group of independent surveyors at a cost of £30,000 and was accepted by the Company. We would ask the Minister to inform us what was so devalued and why was the diminution acceptable to the Company? What was the special situation of the Company as stated by the Directors? Turning to the Balance Sheet. The assets of the Company declined from £10m at December 1987 to £3m at December 1988. We wonder if this downward trend has continued into 1989 and whether today if the company has any assets at all. It is a question of whether the company is solvent. The Minister has said the losses continued on the same scale until June 1989, so this would seem that the £3m has been used up and the Company is now trading in a state of insolvency. This I think is against Company Law. Over £700,000 was owed by the JVCs (Joint Venture Companies). We hope they are good debtors or is the tax payer merely being used to support the policy of Joint Venture Companies in all directions. Also, Mr Speaker, is the £280,000 owed by all the Joint Venture Companies? And is the £2,080 in credit equally divided among them? There is a list of the holdings in Joint Venture Companies roughly of a 50% basis. Who is or are the other shareholders? Is it the Government? If so we expect to see in the Estimates some Balance Sheet for the JV Companies. Mr Speaker, Bond Instrumentation shares were sold during the year. Who to? How much was realised by the sale? All these are things that are not in the Accounts and they are things that we feel the public ought to know about. It is also stated that it is intended to sell the shares in most of the Joint Venture Companies listed in the Accounts. Who are these shares going to be sold to? Is our socialist Government going in for wholesale privatisation? Are queues of people lining up to buy these shares? Have we got chartered flights from Japan and Hong Kong coming to buy these shares? Is this going to be the first flotation on the Gibraltar Stock Exchange? How much is expected to be realised by these sales? Will the Minister please give details of these wonderful opportunities to take over the Joint Venture Companies when he replies. We hope this is going to bring in several million pounds and put the company on a good footing. Debtors show PAYE has increased from £335,000 to £1.17m. Obviously nothing has been paid throughout the year. How is this allowed to happen? Any small company in Gibraltar which gets two months in arrears with its PAYE gets first a polite note and then a much more threatening letter from the Income Tax Authorities. Do such letters and notes go to GSL? Do they take any notice of them? Have they come to any agreement with the Income Tax Authorities? Have they paid anything in 1989? Is the figure today perhaps £2m? Is this ever going to be paid? Or is it going to be something that the taxpayer is going to have to give GSL as a hidden subsidy. We are told on occasions by the Chief Minister that this PAYE money that is being withheld is money being

withheld from the actual workforce, because they have had the money deducted by the employer. Well, how is it that it is a bad thing for any normal employer to do and yet is reasonably acceptable if done by GSL. The emoluments of Directors do not seem to balance. Nor does the number of Directors in the notes of the Accounts agree with the report of the Directors. The Principal Auditor has commented that the £2.8m advance to the Joint Venture Companies would be repaid before December 1989. Has this been effected? There is only twelve days to go. Is this money going to be paid back or is it going to be carried over into the following year? It is noted that the Directors do not recommend any dividend, well to do so would have been the height of irony. The Joint Venture Companies have lost £46,000 during the year of which £23,000 is attributable to GSL. How was this £46,000 made up and which were the companies which lost money and how much? There is a bank overdraft of £1.1m. How is this secured? Is there any possibility of the bank foreclosing? This figure worsened during the year by £800,000. The Government has given a commitment or so we are told that funds would be introduced during the year, this is presumably during 1989 to provide adequate funds to finance the Company's operations. Well nothing has been brought to this House. Were any funds introduced? Was this necessary? Perhaps we could have some details on that. All in all a reappraisal of GSL marketing policy seems to be necessary. The turnover must be substantially increased and underpricing must be avoided. Overheads such as administration must be severely pruned if the Company is going to come anywhere near viability. We hear that the Company is getting smaller but there is a break-even point where if you get too small you are not going to be able to do the work and your overheads are always going to be far too high for you to be able to meet viability. Finally, Sir, I would like to query why it takes twelve months for the Accounts to be presented. In the UK such giant companies as ICI can produce their Accounts within six months. Let us hope that next year GSL will produce the Accounts for 1989 by June at the latest. Thank you Sir.

HON A J CANEPA:

Mr Speaker, I did not have an opportunity to have a word with the Chief Minister before we started proceedings this morning and since I think we would like to see an orderly debate, perhaps he might give an indication of the Government's intentions. On this side of the House there are certainly another three Members who will probably be taking part in the debate and if we have some idea of what the Government's intentions are then perhaps it would be possible to have an orderly debate. I think it would be pointless if three of us were to get up and give a joint speech and then just have Mr Pilcher reply.

HON CHIEF MINISTER:

Mr Speaker, Mr Pilcher will be replying to everybody. I may become involved in some points. I think so far the points that have been raised by the Honourable Mr Montegriffo, affect wider policies and which I think require an answer. But certainly on the Accounts and things like that if these are the points that are going to be raised there is no reason for anybody else to say anything.

HON A J CANEPA:

Mr Speaker, is the Chief Minister saying that he is the only one apart from Mr Pilcher that is going to take part in the debate?

HON CHIEF MINISTER:

If at all, Mr Speaker.

HON LT COL E M BRITTO:

Mr Speaker, I will be dealing in general terms with the accounts and also in detail with the aspects of the Joint Venture Companies. When one sees these Accounts and the explanations that we have heard, so far, from the Honourable Mr Pilcher this morning, it is clear to me that there has been a complete failure in the target set by the GSLP for GSL attaining viability. If we look at the GSLP manifesto, at the time of the election, very succinctly we are told "We will put into effect plans to halt the decline of GSL by a restructuring based on our original idea of diversification adapted to the circumstances of today". More importantly, "The restructuring plan will have an immediate impact on the loss making situation". Similarly, the Honourable Mr Pilcher's speaking in this House on the 29 April 1988, told us "the bottom line for GSL is that it has one year to become economically viable, and therefore a very demanding programme has been set to cut back in one year, losses ranging from between £2m to £4m over the last years. The Government has set aside £3m this year in order to restructure GSL in a way which we are confident will get the company moving towards the breakeven". Mr Speaker, I put it to you that neither of these two targets have been achieved and that what in fact we are seeing today although the Government has not had the political honesty to come out and say so clearly, what we are seeing today is a change of tactics in the way that the Government intends to deal with GSL. But it would have been much better to come out and say so and then tell us why that is necessary and what the new policies are to be. I think, Mr Speaker, that this failure is all the more regrettable because if we consider the background against which the Government has been working in GSL during 1988, as opposed to the situation prevalent in the yard prior to March 1988 and I highlight three areas or three points which should have contributed considerably

towards the Government having made a much better showing and producing much better results for the first nine months that the yard has been controlled by them. Firstly they have had industrial peace and total union cooperation which one would have thought should have gone a long way towards improving the problem, or solving it. Secondly there has been a reduction, in the overheads due to the termination of the Appledore contract, although three months of the Appledore charges are included in the Accounts, but there are nine months of charges which have been eliminated. And thirdly there has been a reduction if one looks at page 13 of the Accounts, in manpower and consequently a reduction in overheads. However despite these favourable conditions, or should I say these more favourable conditions under which the company has been working over the year in question, because if we look initially at the Profit and Loss Accounts on page 7, we find, first of all, that the turnover has dropped from the previous year by about 43%. The Honourable Mr Pilcher has gone to great pains in producing his little bit of paper to show us and to justify various points, including the turnover figures, and he has in particular pointed out that the figure for turnover was on target with what A & P had projected and the drop from the previous year was mainly due to the loss of RFA contracted work. But I think that that is an over-simplification of the problem and it is very easy to produce two figures like that and compare three years against one year. The three years under the previous management included the RFA work because if it had not included the RFA work, as has been deducted in order to draw a comparison here, presumably the level of commercial work would have been greater. It is however not possible or it is not the correct comparison to draw and say "we will just extract the figure for RFA work and compare the turnover". I am not talking about the losses, Mr Speaker, I am talking about the turnover. That is why I say that if the situation had been different over the previous years then maybe the the targets for turnover would have been different as well. The main point however about this "turnover figure" is the fact that it has been achieved as has already been pointed out by my colleague the Honourable Mr Featherstone, by having a gross loss of £2½m and it is pointless to sell as much as you like, as has already been said, if at the end of the day you are losing money on the exercise. Secondly, if we look at the note on page 12, Note 2 Administration Expenses; here we are told that these Administration Expenses include the fees paid to the former managers of A & P Appledore. Now one would have expected the figure for Administration Expenses in the Accounts to have come down and yet we find for the figure for Administration Expenses for the year we are talking about has remained virtually unchanged. Similarly on page 13, Note 6, staff costs under Administration and Commercial we find a reduction in the administration personnel. Again one would have thought that both these items would have reduced the Administration Expenses of the company. The fact that it has not done, I think, bears some further

clarification from the Minister when he exercises his right to reply. Finally, we have the operating loss for the company which has more than doubled to £7m. Once again, Mr Speaker, the Minister has gone to great pains to justify this by showing us his exercise on the last three years. The whole exercise which he gives us on this bit of paper hinges on the figure of £4.89m of capitalised works under the previous three years and again I put it to the Government that it is not the best way of going about things to produce a set of fully audited Accounts for us to study and analyse and then at the last minute produce a little bit of paper with an unaudited and therefore unconfirmed figure of £4.89m which seeks to reverse the whole picture presented by the Accounts.

HON J E PILCHER:

Mr Speaker, if the Honourable Member will give way. All he has to do is check the 1985 Audited Accounts, 1986 Audited Accounts and 1987 Audited Accounts and he will find the information there.

HON LT COL E M BRITTO:

Mr Speaker, I am unfortunately not in the custom of walking around with all the previous year's Accounts with me. If I had had some indication of this previously, then maybe we would have been in a position to do so. But to be given this bit of paper at the last moment does not allow us to carry out such checks. Carrying on with the Accounts, Mr Speaker, if what I have said was not enough then there are clear indications of cash flow problems within the Company. Firstly if we look at page 8, we see that Creditors have increased by about 60%, we see that the Bank Overdraft is up by almost £1m and we see from page 18 that PAYE and Social Insurance are not being paid. I will not go into the merits or demerits of that as it has already been covered by my colleague. But all I would say is that it is a clear indication of cash flow difficulties if these two items are not being paid. Mr Speaker, the Accounts without doubt present a bad picture. But in any case the point at issue, that to a very great extent they are academic, as they show the situation at the end of last year and all I can say is that if the same tendency has continued, I shudder to think what the situation can be now. Let me now go onto the particular issue of the concept of the Joint Venture Companies and remind the House, Mr Speaker, that according to their manifesto and according to the various public statements made by Ministers in this House, it has always been, I believe, that the Joint Venture Companies were set up to halt the decline of GSL and to reduce losses at GSL. Well obviously they have done neither. In fact if you look at page 17, it is quite clear that the Joint Venture Companies, in the period in question, made a combined loss of £46,000. We are told now, and again I am beating ground that has already been covered, that the shares in the Joint

Venture Companies are to be sold but without being told to whom or when, and the Government has already been asked to give some clarification on this. I would take the question one stage further and ask them to confirm or deny whether in fact it is the intention of the Gibraltar Government to buy the shares that GSL holds in the Joint Venture Companies rather than putting up the shares for sale to outside entities. Mr Speaker, these Joint Venture Companies were set up with public money, voted in this House, £2.8m to be exact. Although this money is still in fact owed by the Joint Venture Companies and was still unpaid at the beginning of December 1989. Now because GSL is not charging the Joint Venture Companies any interest or at least there is no indication in the accounts that they are. What in fact is happening is that Government, through GSL, is subsidising these Joint Venture Companies and these Joint Venture Companies as we all know are working in the open market, in the private sector and competing directly with private sector companies. Now private sector companies obviously if they borrow money have to borrow from the banks at commercial rates and we think that this is a clear and unmistakeable case of unfair competition, of companies being subsidised when they are in direct competition to private sector companies. Incidentally should we not ask whether the Joint Venture Companies themselves pay PAYE and Social Insurance? Or are they also being allowed to leave large amounts outstanding like GSL? Mr Speaker, the way the Joint Venture Companies are treated in these Accounts is clear evidence of the lack of open Government which Members' opposite promised the electorate but are failing to honour. These companies have been set up with public funds and we have seen that they have been subsidised by Government by way of interest free loans and yet these Accounts give us hardly any information at all on these Joint Venture Companies. We have for example no indication whether they are paying Rent? Or whether they are paying Municipal Charges like Rates, Water, Electricity etc? In fact there is hardly any accounting information at all except for two figures on page 17 which tells us that they lost £46,000 in the year. That is all that we get, Mr Speaker. We are therefore not satisfied with this state of affairs because we think that it is scandalous that public money should be used by Government without public accountability of how it is being used. The information given to us on the Joint Venture Companies today in these Accounts is totally inadequate. We have said in the past and we say it again that these companies because of their connection with Government should present public accounts and we still feel that way and we repeat that today. At the very least if the Government have genuine commercial reasons, and we stand to be convinced that this is true, but if the Government were to have genuine commercial reasons for not being in a position to publish these accounts then the very least that they should undertake to do is to let us have sight of those Accounts in commercial confidence even if we are unable to use that information publicly in debate in this House.

But at the very least we would be able to have a more informed opinion on the true state of affairs. Thank you Mr Speaker.

HON A J CANEPA:

Mr Speaker, whilst the Accounts for the year ending 31 December 1988 which have now been presented to the House may not be academic in themselves because they show the company's financial situation for the year 1988, and in that sense they are not academic, they are real, the debate that we are having in the House today, the whole exercise, is indeed largely academic. And I say that because of the timing of it, it comes less than a fortnight, with Public Holidays in between, of the end of the next Financial Year 1989, and the Minister has said very little about the financial position, or how the financial position of the company has developed during the course of 1989. No doubt the situation today is worse than revealed by the Accounts that we are debating. That is the result of constant procrastination on the part of the Minister because he was going to originally make a statement in June, before the end of the summer recess, then it was immediately after the summer and it is only now, right at the end of 1989, when these Accounts have been produced that he has done so. The Minister in making what he has described as a general review of the situation at Gibrepair from the 25 March to the end of 1988 and then the position in 1989 has said in essence very very little. He has skated very nimbly around many of the matters which are raised in this document. My colleagues who have spoken already have indicated some of them and I shall be making reference to others. The position in essence at the political level is no different to what it was, as the Minister has told us, when they came into office. There was a problem to be looked at, the problem to be looked at was the state of Gibrepair, that is still the problem and he has already told us that that is going to be the problem in June 1990, they are going to do exactly the same thing, they are going to look at the problem again and we are going to have a repetition of the scenario of the events that we have seen in the last year or so. The work carried out by the yard since the 25 March 1988 has been in the context and against the background, as the Minister himself has phrased it, of good relations and cooperation with the unions. They certainly have that, there has been very little industrial unrest only a slight hiccup while the Minister was sunning himself in Barbados. Was the weather that good? Only that slight hiccup, so they certainly have that, yet the position of the yard, the situation, is hardly better than in the past. In fact during a period of twelve months of industrial peace between June/July 1986 and July 1987, perhaps the position of the yard was better because it certainly made an operating profit, a small operating profit during those twelve months of industrial peace. The Minister spoke about giving the yard a year to arrive at viability, commercial or economic. He has repeated that, the problem, the position remains the

same, that is what is going to be done, apparently over 1990 and the matter would be looked at in June, there will be pressure from us for the Minister to make a statement and it will all slip back. Eventually the Accounts for 1989 will be produced in November or in December next year and I predict Mr Speaker, that we will be debating the same scenario in twelve months time. In 1990 we will be considering the Accounts for 1989 in twelve months time. My colleague, Col Britto has made reference to this rather clever magician's trick that the Minister has pulled out of someone's sleeve and produced this little bit of paper this morning and whilst the Minister, who is the Chairman of GSL no doubt has the Accounts for 1985, 1986 and 1987 at his fingertips and knowing what he was going to do, because obviously if the Company's Accountants have prepared this set of figures for him, he has the answers that reflect the position and that can be gathered by an examination of the Accounts. I think he can hardly expect my colleague on my left who became a Member of this House in 1988 to have all those figures at his fingertips, that is very unfair. The research would have been done if some indication had been given that this bit of paper was going to be produced. Really, as I say, it is a magician's trick because it is said in the context of what is an unreal situation and it is unreal because whilst we all know why the yard had guaranteed RFA work during the initial years. It was in order to give the yard a good start, but if there had been no guaranteed RFA work in year two or year three that is not to say that you are entitled to deduct from the Accounts for those years the sum, the expenditure, the turnover in respect of RFA guaranteed work because no doubt that gap would have been made up by some commercial work. It might not have been as much as the actual extent of the sales in respect of RFA guaranteed work, it might not have been to the same extent, but I think that to deduct the whole amount entirely does not show the correct situation. Now the Minister has told us in some detail that in May and June the Company had set itself a plan of action, he called it the final restructuring, he used the word final, but then I think from what he has said later on, that is not likely to be the case, because the Minister has given some indication that there is going to be further restructuring in 1990. Perhaps he can clarify that, Mr Speaker, because I made very careful note of the words, and what the company was doing in May and June, was described by him as being a final restructuring exercise. The Company has arrived at the conclusion, Mr Speaker, in the middle of 1989 that it can work with two docks No.1 and No.2 and that it only needs the Berths at South Mole. I would like to ask the Minister to tell us what they intend to do with dock No.3. Is that going to be filled up to create bigger space for the industrial park? What is going to be done with a dock that is a valuable asset in itself? I think we really need to know the future of that. Also what is going to happen about the other Berths because if they are only going to

use those at the South Mole, what is the thinking of the Government, what is their policy in respect of these other Berths. To what extent does the availability of these berths come into the general shipping package, or port package, that the Minister mentioned but about which he did not give any details? He just said that shiprepairing was part of that package. Is there any intention to use these Berths to improve that package, to develop that package? I think again, Mr Speaker, we need to know. The Minister also said that during the first six months of 1989, the company had had the same losses as for 1988, but he did not say whether those were total losses. Did the company suffer during the first six months of 1989 total losses the same as in 1988? Or was it losing at the same monthly rate as 1988? Again would he please amplify that and explain. During the period September/October/November of 1989, the yard was further run down, further reductions in man power and in the physical side of the yard and the Minister has explained that the Government's policy is not to have a labour intensive yard, but are these the same objectives for 1990? Is there going to be a continuation of those objectives? And my colleague, Mr Featherstone, gave an indication of that, I think, he asked the question "What is the bottom line?" "How far can the yard be reduced?" Because the yard at the moment is employing 400 to 450 men. What is the bottom line? Does the Government have a figure in mind, do they know, given the nature of shiprepairing and given the nature of the assets, what eventual target to have, not just an economically, not just to have a viable company in commercial or in economic terms for Gibraltar? Is the yard going to be able to be operationally viable if the numbers continue to be reduced? What is the bottom line 190, 200 men or are we going to end up with a handful of men? A repetition of the scenario and when there is a handful of men the Minister will say "sorry chums you have not made it and we have to close down the operation". By then many more millions of losses will have been sustained by the yard and by the Gibraltar taxpayer. So these are questions, Mr Speaker, that I think that the Minister should also address himself to. We must stress, Mr Speaker, our views about the Joint Venture Companies and the lack of information that would enable us to have a true picture of what the situation is at Gibrepair. For the Minister to talk about in his statement, he said that 1988 was the first year of the yard being run on a purely commercial basis. What he means by that is purely commercial because there is no RFA work but if the Joint Venture Companies are not paying rent, if they are not being run on a proper operational basis and they are being subsidised directly or indirectly, then the whole thing is not running on a commercial basis in the true sense of the words. There is an unfair commercial trading on the part of the Joint Venture Companies and therefore of the parent company Gibrepair. Let me now turn to the report, Mr Speaker, of Spicer & Oppenheim. Any accountant, I think Mr Speaker, would say reporting on the Accounts and having regard to

the fact that they have been drawn up on a going concern basis, any accountant would say that this is a qualified report on the Accounts, and why? Probably because any accountant looking at the Balance Sheet would see that there are uncertainties about the Company which do not enable the Auditors to arrive at conclusions. I think, Mr Speaker, that that is a fair comment to make. Now on page 10 of the Accounts, we are told that the Government has indicated that during 1990, and the Minister has spoken about this, "that a review of the company's performance is going to take place before further funds are committed". Would he clarify whether the further funds that are mentioned here are further funds in the future, further funds in 1990, after the review of June is undertaken and not before, that further funds are not going to be committed before that review is undertaken. Is it the future review that is being referred to here on page 10(b) "Basis of the Accounts". Will the Minister clarify that point Mr Speaker, when he exercises his right to reply. I want to come now, Mr Speaker, to what for me is the most scandalous situation revealed by these Accounts and that is what the Company owes the Government. The Company owes the Government as stated on page 18 of the Accounts nearly £1.2m for 1988 in respect of PAYE and Social Insurance Contributions. In 1987, Mr Speaker, the Company owed in respect of PAYE and Social Insurance £335,000 and that was virtually nothing since it may have been a month's PAYE and a month's Social Insurance Contributions. This at a time when the yard was employing 800 because we had a workforce of 800. The yard has been scaled down to 450 or 400 today and yet that situation is worse. To my mind, it is scandalous. It is scandalous because it is money that has been taken away from the workers and money that has not been paid over to the Department of Labour and Social Security and these workers have got rights. If a worker becomes unemployed and makes an application for Unemployment Benefit he needs to have paid 30 contributions, I think, in the last year and in reality these will not have been paid over. The Government or GSL are still keeping the money. The Minister has not said whether, today in December 1989, the Company still owes in respect of PAYE and Social Insurance amounts for 1988 and not just for 1989. To what extent have those for 1988 been paid off. Today in December 1989, have they been paid off or are they still owed? Employers in the private sector enter into agreements with the Commissioner of Income Tax and I think we have had some indication that this has also happened in the case of GSL and there is an agreement with the Commissioner of Income Tax. But what about with the DLSS? Will the Minister, who is the Chairman of the Company, say what is the position? Are there still amounts outstanding for 1988 and if so when are these going to be paid over? I think it is no wonder, Mr Speaker, when one sees the scandalous situation revealed by these Accounts in respect of these matters, it is no wonder that the Minister earlier in the year refused to answer a whole series of questions from the Opposition about the amounts that were owed by

the Company in respect of PAYE, in respect of Social Insurance, Electricity, Water, Telephones? No doubt, Mr Speaker, that the position today for 1989 is worse than what is revealed by these Accounts. The Government, Mr Speaker, takes a tough line with Companies in the private sector generally and in particular in respect of those companies who have taken out exemption certificates when sub-contracting. Sometimes these are in arrears to Government in respect of Social Insurance, PAYE and what have you. Is the Government taking a different attitude to GSL than what it does to these other companies? This again Mr Speaker, amounts to what I think is unfairness, unfair trading practice in respect of GSL and its related Companies. I said earlier, Mr Speaker, that the Minister has spoken about having industrial peace and having cooperation, yes they have had industrial peace. Industrial peace that we did not have and yet they are failing because when they were in Opposition the Union, with the Chief Minister as its Branch Officer, was claiming a 40% increase for the workforce but earlier this year, in 1989, they did not even want to pay 9%. That was the only industrial action that they have had in 21 months. Because they did not even want to meet a 9% claim. I think, Mr Speaker, that in spite of these beneficial factors, that losses should have increased from £4.1m to £7.9m, even though the workforce has been reduced from 850 to 400, points to, without doubt, failure. It points to incompetence on the part of the Chairman and I am appalled, Mr Speaker, to see the Directors speak about a detailed Chairman's statement since the Chairman's statement consists of twelve lines. That is the length of the statement.....

HON J E PILCHER:

If the Hon Member will give way, Mr Speaker. The Chairman has spent 45 minutes giving the details in this House which is much more than he ever got, when he was in Opposition, listening to the old jefe, the Financial & Development Secretary, who made all the contributions on GSL in the previous administration. So I do not have to write it on paper, Mr Speaker, I am here to defend the position.

HON A J CANEPA:

That is not the point, Mr Speaker, the Directors are not here in the House today. The Directors, in the Report, are saying that the Chairman's report is a detailed review. Mr Speaker, does twelve lines amount to a detailed review? They have not had the benefit of hearing the Minister, here in the House for 45 minutes and then talk about a detailed review. The Minister does not even tell us where the Directors are concerned. He does not explain why there have been resignations? Why did Mr Dickie McCarthy resign? He has not said that. This is why I say he has skated very cleverly around many of the pitfalls that there are in the Accounts. I do not know why there is a discrepancy, again perhaps the Minister will explain Mr Speaker, why it is

that on page 14 of the Accounts, the word "Diversification" is used. I am referring to the Note of the Accounts on page 14 Mr Speaker. The word "diversification" is used in the Accounts but the Auditor in his Report speaks about "Restructuring". In order that we can understand in future the Accounts better, would the Minister explain whether "diversification" and "restructuring" really amount to the same thing or do the Accounts speak of one thing "diversification" and is the Auditor speaking about something different? Would the Minister please clarify that. The Principal Auditor signs his Report, Mr Speaker, on the 5 December 1989 and he says in paragraph 3 "As it is expected that the £2.8m advanced in 1988 to related companies from funds voted by the House of Assembly for restructuring Gibraltar Gibrrepair Ltd will be repaid to the company before the 31 December 1989". That, Mr Speaker, was on the 5 December and obviously, it had not been paid on the 5 December and today is the 19 December, there are twelve days to go will the Minister when replying tell us whether the £2.8m will in fact be paid before the end of the calendar year? Would he also clarify whether a recommendation which the Principal Auditor refers to ie "The company accepted a recommendation to offer for sale on the open market stores which are unlikely to be required". Who made that recommendation? Has it been acted on? Because we are not aware of any offer of sale on the open market of these stores and if presumably the company accepted the recommendation, why has not any action apparently been taken yet? I think, Mr Speaker, certainly that the Statement and the Accounts are totally inadequate. We will not be in a position, no one is, and maybe this Government who complains that when we were in office only the Financial and Development Secretary used to speak in the debate but I remember myself, on numerous occasions, having to take part in the debate but still they complained that we did not give answers. But what are the answers which this open Government is giving, Mr Speaker? What is the real truth of the matter? What is the real position insofar as the Joint Venture Companies are concerned? This is the picture that emerges all along. I wonder, Mr Speaker, whether when the shares are put on the market, whether all the juppies that Mr Featherstone referred to and who are queuing up in all the places visited by the Chief Minister, whether they are really going to get on to those charter planes. I think that the Chief Minister might have to phone Wall Street and ask Michael Douglas to come over and pick up the shares because I cannot see from the picture that has been revealed anybody else doing so. Therefore, in conclusion, Mr Speaker, what one sees is a picture of gloom and despondency. The Government having to continue to keep the operation ticking over, as it has been doing, because it does not seem to have any choice. The Government is not able to guarantee people that become redundant employment or that there will be no further contraction in the yard or that further losses sustained by the yard will result in further pumping of public money into the yard. The reality is, Mr Speaker, that Members opposite contributed and produced psychosis and they are

responsible for a psychosis of failure being brought about in that yard and which has conditioned many, because they were determined to see the yard fail, to think in those terms. They have no desire, particularly those of them who were active in the TGWU, to pull through in order to improve what was a bad situation, and therefore what is happening today can be summed up in one phrase and that is that the GSLP Government is being hoisted by its own pettard.

HON CHIEF MINISTER:

Mr Speaker, I think the first thing I have to say is that it is scandalous that the Leader of the Opposition should have made the last remark that he has made. It is fair enough that he should try to take it out on us for the trashing we gave him in the last general election, but I do not think he should try and take it out on the workers in GSL. I do not think I have any psychosis of failure at all and he is hardly in a position to preach to anybody else on what it means to have a psychosis of failure although he may be an expert on the subject. In fact, the workers have tried very hard to make the impossible work and we have tried very hard to make the impossible work and because it is impossible we have not been able to do it. We have not got a magic wand and we cannot perform miracles and what we have done is explain why it is in fact such a difficult task to make commercial shiprepairing viable in Gibraltar. Let me say, Mr Speaker, that it seems that the Honourable Mr Montegriffo understands the situation better, without having had the benefit of having been in Government before, and having had access to the detailed information from within the company that Members opposite have had, than anybody else that was in Government in 1984. I am astonished that that should be the case because certainly I could have understood that Mr Montegriffo or that Mr Britto in his own contribution should have questioned the differences in the contribution to the profitability of the company and the turnover of the company of the naval work, but nobody that was involved in Government and in receipt of the PEIDA Study should question that. Because PEIDA said specifically in 1983 that the yard in order to have a chance had to start with a cross subsidy from naval work and therefore if you take out the naval work and you substitute it with cheaper work you leave a gap that you feel but that does not make the loss smaller it makes the loss bigger. Surely anybody can understand that, surely the Honourable Member understands that. If he has two products in a shop and he is selling one at a profit and one at a loss and he stops selling the one that is profitable and he substitutes it by selling the one that is making the losses, his losses get bigger, they do not get smaller. Now if he did not understand it because he is making an assessment and because we have just given him the figures, certainly Mr Featherstone should have understood it, because he was told that by PEIDA in

1983 in Government and by A & P Appledore in 1984, when they made the submission. All that we have agreed to do now, because we are in Government, is produce for the information of the taxpayers, that so concerns the AACR nowadays, the information that they refused consistently to provide this House with because they said that the breakdown between naval work and commercial work was confidential to the company and could not be made public. Well we have made it public and we have demonstrated by doing so that the problem is that the yard never had a chance of operating at a level of a £20m turnover which was the level predicted originally. When we took over in 1988 the Business Plan for 1988 had been scaled down. When we went to an election Mr Speaker answering the point made by the Honourable Mr Montegriffo on how is it that we went into the Election saying we were going to scale down and then now we seem to be saying "we tried to keep the volume to the original target". Well in fact in February 1988, we did not know that the target was £10m because we were working on what was public knowledge and on what had been provided to the House of Assembly and which was a yard with a turnover of £20m. That was the supposed level at which the yard would break even. When we took over we found that the Business Plan, approved by the AACR administration in January 1988, and produced by Torsten Anderson, was that the end of the redundancies in March would produce a capacity for selling something like 700,000 manhours and therefore producing a £10m turnover. What we did in July when A & P Appledore left was try and see whether a £10m turnover could be achieved. What we found was that it could only be achieved by supplementing the workforce that had been left behind after the redundancies with a great deal of casual and sub-contract labour and a great deal of overtime and in fact the accounting systems that were in place did not accurately show this until well behind. I am assured Mr Speaker, that Members opposite in Government are well aware of that deficiency of the accounting system, that that was part of the reason why they put a default notice on A & P Appledore because of the fact that the computer was not giving the result it should be giving. That that was the reason why Price Waterhouse was brought in to look at the management system, that that is why they put in a former Principal Auditor as Financial Controller and that therefore the system that we were trying to make work had not been working before we got in and that this was well known to Members opposite that were in Government. So nothing that we have told them today is news to them. I believe that whatever explanations we give the Members opposite, they will still not listen because what they want to see is that we are incapable of running the yard efficiently, although in particular the contribution of the Honourable Member opposite, the Leader of the Opposition, frankly is incredible by the number of times in which he has contradicted himself. I mean on the one hand he seems to join his

colleague Mr Featherstone in wanting us to declare the yard in flaw of company law, insolvent and consequently be closed down and everybody be sacked. Because the guys are psychotic and clearly the best thing to do with them is to cure the psychosis by sacking the lot. On the other hand he comiserates with them and with the taxpayers who are subsidising them although he seems to understand that they themselves, the taxpayers are paying from their PAYE contributions. So the reality is of course, as he well knows or he ought to, because he himself had argued along those lines here in the past, that when we are talking about the first stage of the target that we set GSL, which is economic viability as opposed to its commercial viability, what we are talking about is if the yard for example contributes flm in PAYE and if the yard was to be closed today and there was no alternative employment for those people then the loss to Government revenue would be flm. If the yard in fact loses less than that, then you can definately demonstrate by simple arithmetic that the cost to the taxpayer is more to have a yard closed than to have it open. Because in fact the taxpayers who are meeting the loss are the taxpayers who are working in the yard. Now that is the first stage that we set ourselves when we came in and we have not yet got there. This is why we are still cutting back, to see whether it is possible to achieve that, without getting to the stage of saying right having now demonstrated that the cost to the economy is greater if the yard is closed than if it is kept open it still has to meet the normal business criteria because if all it does is make a net contribution to Gibraltar's economy and no more than that, then at some stage you have to say to yourself "Well, look the 300 people or 400 people or whatever the numbers that are there could be making a contribution which is even more valuable if they were doing something else rather than repairing ships". So even then that may not be enough to justify their continued existence. But if we do not even get to stage 1, then it will have to be closed. It is not a question of doom, gloom, despondency or so forth. We did not want this business, Mr Speaker. We tried to persuade the Members opposite not to take it on but they would not listen to us. Now having inherited it we have a responsibility to the people who work in the yard, to the taxpayers, who have had to fork out a lot of money, regrettably, because we think it was a serious error of judgement on the part of the AACR to go down this road, we have had to try and see what we can salvage from the damage and I am glad to say that the Honourable Member opposite is totally incorrect in saying that the people in the yard have got a psychosis of failure. On the contrary they have a psychosis of success, they were fighting to stop the AACR from handing the yard to A & P Appledore and they did not have to fight to do that any more because we came in and we threw them out. They have been working to try and make the yard viable, and which the analysis which we have produced today, shows was asking the impossible. Frankly if we had had as much information

now, with the benefit of hindsight, as we had when we took over in April last year, I think, we would have probably not given the yard as long as we have done. We would have started the rundown earlier and faster and we would not have allowed the yard to try and bring in fl0m of work. But it has taken us time and we have had to bring in additional help from outside to try and unravel the system that was there and the system that was there was no accident, Mr Speaker. The system that was there, was there because A & P Appledore had a Management Contract which gave them a flat fee and gave them a percentage on turnover, so they were interested in turnover irrespective of the losses, but they needed to camouflage the losses in order to justify their Management Fee and of course if you say "If I do not have any work for anybody then put him on the Slop Barge". Then the Slop Barge finishes being the most expensive Slop Barge in the western world. It is worth its weight in gold, on paper, because whenever you have people on idle time then you put them on the Slop Barge. I believe, Mr Speaker, that Members opposite knew that that was happening even then. I am told by some of the people who have been there in the past, and are there today, that there were already rumblings being made about these anomalies even at the time but the situation is that we have had to go into the matter in a great deal of detail to uncover this and we do not want to hide the truth from the people in the yard. At the end of the day it is not in their best interest to be occupying nonjobs, artificial jobs, which make a negative rather than a positive contribution to the economy of Gibraltar. Because the economy is going to go through very difficult times in the next couple of years and therefore we do not want, and we are not prepared, to have a situation where every time the MOD cuts back the Government steps into the gap and takes over the liability from the UK taxpayer to the Gibraltar taxpayer. Because then we finish up crippling the private sector as well and I do not think anybody in the private sector has any doubt about the commitment of Gibraltar to developing a viable economy and a prosperous economy in which the private sector can flourish. So all these pieces about unfair competition and what are we doing with the shares and are we going to sell them in Wall Street. All that is a lot of nonsense, but of course the greatest nonsense of the lot, Mr Speaker, is the question that the Honourable Mr Featherstone wants answered. The Hon Member wants to know who did we sell Bond Instrumentation to and how much did we sell it for? Why have we done it? What were the assets worth? Well then the answer to all those questions, Mr Speaker, is that we did not sell Bond Instrumentation. The Hon Member sold the Company when he was in Government. This happened before the 25 March and that is the greatest and the most ridiculous question he has asked of all the ridiculous questions that he and the others, Mr Speaker, have asked. This typical example of how somebody comes to this House, having looked through Accounts that he does not understand, having failed to do

his homework the way I used to do when I was on the other side, with a prepared Statement which he then reads out irrespective of anything that the Minister has said in his opening remarks. He then sits down and that is the kind of contribution to a debate about something which is very important to Gibraltar's economy and which affects a lot of people that are concerned and which makes the whole thing meaningless. Because Mr Speaker, what does it matter whether we come here or not if we are going to get somebody on the other side saying "Why have you sold Bond Instrumentation?". And it turns out we did not sell it, the Hon Member did so what is the point of the exercise. I think, Mr Speaker, that the questions that have been addressed to the Government which the Government has got to take cognizance of and which deserve being taken into consideration in our approach to how we develop the yard have all been asked by the Honourable Mr Montegriffo. I do not think the AACR, the Official Opposition, have in fact said anything other than to say that we are no better than they were and are probably worse. Which means really that their sole concern about GSL, its losses and its future is whether they can use it as a stick to hit the GSLP. They are looking simply to what is going to be their vote catching formula for 1992. That has been their sole response to the Accounts of GSL and therefore it does not matter what they think because they do not really care. I think Mr Montegriffo, has taken a totally separate line and let me say that I appreciate that he has looked at the thing constructively, even if critically, and even if there are things he does not agree with us, he is not simply being negative but trying to understand how we are re-gearing our strategy in the light of experience. And he is quite right, Mr Speaker, he is quite right. We came in with certain ideas of how to do certain things and not just here let me say, Mr Speaker, but also in the setting up of Joint Ventures, in the restructuring of the Civil Service, and in everything that we are doing. Because we are doing new things that nobody has ever done before us, and therefore we cannot go back and say "fish me the file of what I said in 1945", as Sir Joshua used to do when he was the Chief Minister. What we say is well if there are problems which demonstrate that we have got it wrong and since we are only human beings, and we do not pretend to be anything else, very hardworking human beings, but only human beings, then if somebody says look you are making a mistake, we say stop before the mistake gets any bigger and let us reconsider what we are doing and if we are making a mistake then we stop doing it and we do something different. There is nothing wrong with that, and that is not a sign of political failure, it is a sign of political honesty. Now we in fact came in with certain ideas, we made a certain assessment, we found that the Business Plan was £10m, we thought it could be achieved and we were encouraged, obviously, to think so because they themselves wanted to have a yard that could do £10m and we wanted to give them the benefit of the doubt and the opportunity to prove

themselves. We found that the accounting systems produced management accounts which required subsequent revision which really meant that the original accounts were meaningless. The information that was being fed to us on which we were frankly encouraged to proceed down that road was deficient in a number of areas, partly because of the allocation of labour costs, which has now been changed, but if you have a situation where you are charging a ship for the work done on the ship and you have a situation where while somebody's welding, there is somebody sitting down who should be painting but is waiting for the welder to finish and you do not count the sitting down time of the painter as part of the cost, because you put him to paint a shed and you count that as the value of the shed having been increased, then when you look at the cost of the ship, you say "Well on this ship, I am only losing x" but when you go back and you say wait a minute, if they keep on painting the shed at this rate it is going to finish up being worth more than the Slop Barge and you put the cost of the idle time of that painter as waiting time which the Naval Dockyard always used to do, because they used to have people put on waiting time on a vessel, but that did not mean the Naval Dockyard was less efficient, it meant that their accounting systems were more accurate and if the painter cannot paint until the welding is finished, then that waiting time is part of the cost of repairing that vessel. We have now done that and what we have found is that when we do that then, in fact, the losses as the structure produced for 1988 shows were running at a situation where effectively for every £1 of work that we were producing we were in fact charging as £1 and it was costing us £1.85, because that is what it shows. And we have now gone back and found that in the first three years if we apply the same analytical process to cost allocation for 1987 and 1986 and 1985 as we do, then the yard was losing 92p on every £1 of work. Of course that 92p was the global figure without desegregating the profitable from the loss making. Once it is segregated we find that it rises and it reaches £1.23 so effectively we have a situation where until 1987, on every commercial vessel done in the yard since the Irenis Fantasy on the 1 January 1985, the yard spent £2.23 and charged the customer £1. That is the scale of the disaster that there was, which is even bigger, I think, than the Government was aware of at the time when it was there because it has taken us a long time to get it uncovered and that all that we have managed to do by cutting overheads, by shifting people, by reducing them, by getting rid of A & P Appledore, all that we have managed to do in that equation, which may look quite significant but it is still not good enough, is to bring that down from £2.23 to £1.85. If you look at it fine, OK £1.85, so now you say "great I am now losing 85p on every £1", well who wants to lose 85p on every pound. If you look at a situation where you say, let us say that every £1 of sales of the yard were to make a contribution of 30p or 50p to the Gibraltar economy, taking direct taxation and indirect

taxation and the multiplier effect. If that was the case, then you could say: "Well, right, if the contribution is 50p, once I have got the situation down to a level where every £1 of sale is costing me £1.50, I am breaking even economically because I have got £1 of sales and 50p of subsidiary economic activity being generated and therefore the economy is paying out £1.50 and receiving £1.50". Well, we are not there and we do not know whether we are going to get there. We hope to get there but if we do not get there, we have been honest with our people in the yard and we have said to them: "Look, you have to get out of repairing ships because it is not in Gibraltar's interest to have a number of people losing money that we need for housing; for schools; for hospitals; for roads; for improving our telephone system; for improving our electricity; for the infrastructure that will enable the wealth creating private sector to flourish". It does not make sense to take money away from that sector and pump it into something that loses money. But we have to give it a chance and they have tried hard to make it work and we owe it to them. Therefore we said, now that we have cleaned up the balance sheet, now that we have taken out all the inflated values, now that there is no way of hiding anything, we can now tell down to the penny whether, in fact, you are going to be able to break even or not be able to break even and we are going to see whether in the next six months having separated out the Joint Ventures from the main group with GSI totally on its own because we will have the Accounts of GSI totally on their own. Let me say that, in fact, the Joint Venture Company Accounts, of course, have had very little impact and that is the answer to the Hon Member opposite. The reality is that we took the decision in September, 1988, and there was hardly any company functioning before November and there is only one month of activity involved in these Accounts. Now we do not produce Annual Accounts for one month of activity. So the reality is that the first Annual Accounts of these companies will be thirteen months or fourteen months Accounts and will be for December, 1989. They all started life in November and the bulk of them did hardly anything in November other than set up shop. So that, in a way, explains some of the reduction in manpower, in the numbers employed not being reflected in reduction in the wages and salaries, which I think was a point raised by either Mr Featherstone or Mr Britto, not by the Hon Member opposite but, in fact, if the explanation for the supposed anomaly which I think is what Mr Featherstone raised on why this development had gone down in numbers employed from 700 to 400 and we had not gone down in wages by the same proportion. Well, the answer is that, of course, that happened in December and there is in these Accounts eleven months of wages of 700 people and one month of wages of 400 people. But the Accounts show the year end numbers employed but the annual salaries. So the people that are

missing here are the people, for example, if one looks at the Administration and Commercial where there is a substantial drop, in fact the explanation for that drop is that there were something like forty Security Guards in 1988 who were in GSI until November and became part of the Security Company in December. So in December they disappeared as numbers but until November they were still being paid through the Administration Costs and therefore the overheads are still at £4.7m.

MR SPEAKER:

Could I ask the Hon the Chief Minister if he is going to go on for much longer?

HON CHIEF MINISTER:

No, I will just wrap up, Mr Speaker. I am, in fact, checking the notes that I have made in case there is anything that I have not answered. However, if I have missed anything my colleague, Mr Pilcher, will be able to pick it up. The question of qualified accounts which the Member opposite mentioned, in fact the Accounts are not qualified. When Accounts are qualified the Accountants say that they are qualified and the Principal Auditor says that they are qualified. So we cannot understand why he thinks they are qualified Accounts because this is something that it specifically spelt out when it happens. I believe, Mr Speaker, that the question of the existing value of the assets which the Hon Mr Montegriffo raised is one of the things that we have been looking at and is, in fact, the discrepancy between the asset value per share and the nominal value of those shares. It is not a question so much of whether if we wanted to sell the company, which we have no plans to do, but he asked for a specific answer. The answer is that we have no plans to sell the company. But certainly if you wanted to sell a company it would look very bad if you were to say to somebody: "I have a company that is worth £24m but its assets are £3m". Therefore when it comes to valuing the company in terms of Government Accounts and Members opposite know that what happens is that the Principal Auditor does not put in the Government Accounts what the nominal value of the share is but what the real value of the share is. Now even the £3m is an exaggerated figure because in fact the assets have been valued on the basis of their continued use and on the basis that the company is a going concern. If you were to close down tomorrow and have a forced sale then you might only get scrap value for the slop barge and not the £300,000. The same would apply to the cranes or to anything else. So the reality of it is that GSI today, in terms of equipment, is worth very little and those are its assets. The physical assets of the yard do not belong to GSI, they belong to the Government of Gibraltar and the

Government of Gibraltar will only allow those assets to be used for repairing ships. If it can demonstrate to the satisfaction of itself, the Opposition and Gibraltar that that makes more sense than using that area for something else and we believe that it is a good thing to have if we can have it and if we can make it pay for itself, because it does compliment bunkering, ship chandlery, pilotage, towage and all those things are complimented by the existence of the shiprepair yard. But the fact that they are complimented means that it is worth having if it is not costing you your shirt. Because if it is costing you your shirt then, we are sorry for all those other activities, but I am afraid that we feel that it is better to use the land for whatever else will provide profitable business and well paid employment and which is what it is really all about and what we want to achieve and what I am sure the House will want us to achieve.

MR SPEAKER:

The House will now recess until 3.15 this afternoon.

The House recessed at 1.15 pm.

The House resumed at 3.20 pm.

HON G MASCARENHAS:

Mr Speaker, not very much new has emerged during the debate this morning at least certainly not new to the areas where we knew that shiprepair was suffering and will continue to suffer from and I sincerely hope that the remedies of the Government over the next six months will find solutions to them. But something that did arise this morning, and it is a pity that the Hon the Chief Minister is still not here, but I suppose he will be told by his colleagues when he comes, is that the only new thing that has emerged this morning is that for the first time in twenty-one months the Chief Minister has shown a frightening kindness to my ex-colleague in the Opposition, Mr Montegriffo. I wonder if that is due to the fact that he secretly harbours Social Democratic views or is it perhaps that Mr Montegriffo no longer poses the threat that he used to when he was sitting with us.

I will deal mainly with some of the points which the Hon the Chief Minister raised this morning. We on this side completely agree, he went a little bit further than this, but we completely agree that there is a net contribution to the economy from shiprepairing in the future and that

this should continue to be so. However, if the Government, or a future AACR Government or any other Government for that part, were to consider that the area could be put to better use, the land and the resources, we would completely agree. The Hon the Chief Minister well knows, Mr Speaker, that there was no alternative to commercialisation at the time. I was not a member of the Government when the decision was taken but I know from conversations with my colleagues and having followed the matter when it was discussed in this House, particularly on that 5th July, that there was no choice. In fact, I will go as far as saying that there was no choice on Appledore, they were more or less dumped on us. The Hon the Chief Minister, however, knows perfectly well that in 1984, Mr Speaker, and it is something that the Chief Minister conveniently forgets, we fought an Election precisely on that issue. We proposed commercialisation on the Appledore proposals and the GSLP fought the Election on the fact that that was doomed to failure. I think I have to explain here, Mr Speaker, what my colleague, the Hon Leader of the Opposition, was trying to say when using the words "psychosis of failure" was precisely emanating from that point. That there was an Election campaign fought on the question of commercialisation and they, the two opposing factors, because the third factor was completely alienated in that Election because of their change in stand, at least that is my view today and I think Members opposite will concur with that, there were two opposing factors, one side was saying commercialisation "yes", and the other side was saying commercialisation "no". The psychosis of failure emanates from that, in that the GSLP said that it had to fail and not perhaps of will because we had industrial action and we had the failure of the A & P Appledore Management to get it right, that is my view, but because of these two factors Members on the other side were conditioned to this failure. That, I think, is what the Hon the Leader of the Opposition was trying to say this morning. We do not want to use shiprepairing as a stick because there is no doubt that we want it to succeed. We believe that shiprepairing is part of that Port package. It is part of the Port capacity

of Gibraltar. Gibraltar for years has been deriving benefits, economical benefits and social benefits from the Port. It has been like that ever since Gibraltar has existed. Mr Speaker, now I want to turn to Mr Pilcher's contribution this morning and frankly I felt that he was very disappointing in his presentation. Perhaps one has been led, because of the media attention, to shiprepairing and the importance to the economy, that there would be a more hot debate this morning. But unfortunately Mr Pilcher was very low key this morning and contrary to when he sat on this side when he used to speak of shiprepairing he was very eloquent in those days. I sincerely hope that he will redeem himself when he exercises his right to reply. Nobody underestimates the job that Mr Pilcher has had with GSL but the accusations that have been levelled at the Opposition this morning and the justification that Mr Pilcher primarily has tried to find to justify the situation of shiprepair frankly leaves a lot to be desired and I am not minimising the situation there Mr Speaker. Undoubtedly there is a mountain to be climbed and I sincerely hope, the whole Opposition sincerely hopes, that that mountain will indeed be climbed in the future. On the question of the Joint Ventures, again, I have to repeat the stance of the Opposition on this vital issue and we have not heard sufficiently to be able to gauge what the position is. The numbers of people who will be directly, in the future, I am talking about, directly employed by shiprepair, we have no indication of numbers, nothing has been said. I have heard figures of 160, 200, this has not been confirmed by the Minister this morning. We do not know how many actual numbers are involved in the Joint Ventures? We do not have that information, let alone the financial situation, so I sincerely hope on those matters he will be able to enlighten us.

MR SPEAKER:

If no other Member wants to contribute to the debate, I will ask the mover to sum it up.

HON J E PILCHER:

Thank you, Mr Speaker. I am in a bit of quandary now because I do not know whether to continue to play it cool in my normal patient way or to start shouting because I honestly do not know what it is that the Honourable Mr Mascarenhas

wants of me. Let me start by saying, Mr Speaker, that I think that in the Honourable Mr Mascarenhas opening remarks lies, I think, the problem related to the perception of the AACR as to what it is that the GSLP is going to do. Mr Speaker, it is not a question, and the Chief Minister is now here, and I think I can talk on his behalf. It is not a question of us having decided this morning that the Honourable Peter Montegriffo should be praised and when he was in the Official Opposition that he should be criticised. From this side of the House we presented, or I presented a general Statement of what has been happening at GSL in 1988/89 and what we hope it to be in the future. Now the assessment made by Mr Montegriffo we felt was a logical assessment, not devoid of criticism because there was criticism in his contribution, but we felt was in keeping with the logical statement made from this side of the House. It is not a question, Mr Speaker, that we decided "Well in this particular case we will praise Mr Montegriffo". Mr Montegriffo will be praised when we feel he should and he will be criticised like everybody else, Mr Speaker, when we feel he should. Because as, I think, the Chief Minister mentioned we believe, whether the Opposition agree with us or not, in honest Government and what I said this morning, Mr Speaker, and which, I think, the Honourable the Chief Minister stressed, was that we are in fact reassessing our position on GSL. This is precisely the point that I was making this morning. I explained the reasons why we are reassessing. I took the House albeit in a very short way, if not we would have had to be here for a couple of days if every single move that the Company made was to be discussed here, but I think in very general terms, I took the House and I hope I took the people of Gibraltar through a series of steps which the Company took and which have led us up to February/March of last year to realise that it is not possible to run a shiprepairing operation in the way that it was being run, in labour intensive situation, and expect to earn money. That I think is the position and it is a very very clear position. It is not a question of playing it low key or a question of redeeming myself and getting all het up about it. That is the reality of the situation. I think the Honourable the Chief Minister has gone virtually through all the points raised but there are a couple of points which I think I need to stress or perhaps the Chief Minister forgot to mention them. First of all although he mentioned it, I think, I need to stress it again because I think it has come up on various occasions during the course of the debate this morning. In the 1988 Accounts which you have in front of you the Joint Venture Companies have very little effect because most of the Joint Venture Companies were in fact put in motion in December 1988. Only two of them started in November 1988 and therefore it is not a question of us not wanting to present the financial position. The Audited Accounts, as the Chief Minister has said, will not be ready until the end of this year ie until they are thirteen, fourteen or fifteen months old. It is worthless and hopeless,

Mr Speaker, to present Accounts here for a Company that has been trading for a month. I think I also need to stress the question of the revaluation of the assets which I think, was raised by the Honourable Mr Montegriffo. There are only three possible scenarios for the revaluation of assets, there is a going concern, there is the market value or the replacement value. Obviously that replacement value was far too high, I mean, most of the equipment that we have we will not be replacing. The market value which in fact is £2m less than the asset worth of the Company as stated in the Accounts, the going concern value is the value which is normally used by Companies who are trading in order to assess the value of those assets. Again although this, I think, was stressed by the Chief Minister, I felt rather surprised, particularly from the contribution of the Honourable the Leader of the Opposition, because more than anybody else, he should be aware that the Business Plan that we were talking about this morning and which is the A & P A Business Plan as amended and about which the Honourable the Chief Minister spoke, was presented to the Board by the A & P A Management in December 1987, at the same time as the redundancies were being processed in 1987. That was the Business Plan presented on the grounds that after the redundancies had happened, once you got into March, that Business Plan could be achieved and the turnover would be about £10m.

HON A J CANEPA:

Mr Speaker, if the Hon Member will give way. That Business Plan was not approved by our Government. It went to Council of Ministers and the only thing that we approved was a redundancy situation and which the Honourable Member will remember that I made a statement even though we were very close to the Election. I made a statement giving an opportunity to people to have a voluntary redundancy situation, but nothing else that was contained in the Business Plan nor in the plans which they had for restructuring and which involved pouring into the Yard many more millions of pounds, none of that we accepted and he knows that we made it public. We did not think that it was fair with the General Election that we should give them our approval.

HON J E PILCHER:

I accept that totally, Mr Speaker, but the Business Plan, I think it is the awareness of the Honourable the Leader of the Opposition that that is the Business Plan that was tabled by the A & P A and which came on the back of the redundancy process. So operationally, the Yard, the Management and the Board were saying that that was a feasible Business Plan that could be put in motion after the redundancies had been achieved. After that the Yard should not have any problems whatsoever in attaining viability under that Plan. Obviously, the AACR Government did not

put the Plan into action because of the points raised by the Honourable Member but pumped into the Yard £2m at the time, although no decision had been taken on the way forward or the way back. It was just a question of pumping back £2m to keep it alive without taking any decision whatsoever. As regards the comments made by the Honourable Mr Featherstone, most of the comments were in fact tackled by the Honourable Chief Minister. I was a bit confused however when he stood up and said that he was a shareholder of GSL. Did this happen on the 25 March or does the Honourable Mr Featherstone not accept that as from the 1 January 1985, he was a shareholder and if so, why did he not ask all those questions of the A & P Management. Perhaps if he had done so he would not have been confused by the piece of paper I handed to him this morning. Because the information on that piece of paper should have been known to him if he had bothered, as a shareholder, to ask A & P all the questions that he asked us this morning. Because the little piece of paper that I gave the House this morning is only a compilation, after a determined analysis of the Company through 1985, 1986, 1987, the period when he and his Government were responsible for the running of the Yard. Of course the difference was, as we all know, that the AACR wanted to and did keep political distance from the Yard and obviously as a result of that political distance they did not know what was happening in the Yard. As a result we have had to pay for this through 1988 and 1989, Mr Speaker. The Honourable Mr Britto, I think, totally failed to understand the comments that I have made and failed to understand the relationship between the commercial work and the MOD work. I think that at one stage he said, "obviously you cannot take that into account because if RFA work had not been done, then obviously the Company would have had more facilities to do more commercial work". Precisely, does not Mr Britto understand that the piece of paper that I presented to him this morning means as the Honourable the Chief Minister said, that for every £1m of turnover that A & P would have done through 1985, 1986, 1987, the Company would have lost £2.23m, so if in fact instead of doing £50m of commercial work given this year's rate of £9m, it had done £30m, it would not have lost £20m, it would have lost £40m. Because that is the ratio which is the purpose of the exercise of the Accounts. That was the purpose of establishing what was the real loss element of commercial work. I now come back to the various points and if I do miss any out I hope Honourable Members will point it out. I think the Honourable the Leader of the Opposition spoke about the situation, again turning to the piece of paper, and about the Accounts that it was not up to the other Members of the House in 1985, 1986, 1987, who were not here to understand these things. I accept that Mr Speaker, but he was a Member of the House and he was a Member of the Government and he was to a point ultimately responsible to shareholders that the Honourable Mr Featherstone, today, is saying are the owners of the Yard,

the people of Gibraltar, and he mentioned, I think if I am not mistaken, the name of Michael Douglas, who is I think the son of Kirk Douglas and who starred in the film Wall Street which is all about sharks in America and what they do with Accounts etc. It is a pity that the film came out in 1989, Mr Speaker, because he should have seen it in 1984 before he gave the Management Contract to A & P and they were not American sharks, they were British sharks. He also mentioned procrastination by the Minister. At least, I think, that at one stage he said that. I do not need to comment about this because certainly I do not need to prove to this House whether I procrastinate or not I do all the proving that needs to be done to my employees in GSL, to the Board of GSL, to the Management of GSL and to my fellow Ministers. That is one element about this Government, not only myself, but of everybody in it that no one can point a finger and say "They do not work". When I went to Barbados there was no industrial action at GSL and perhaps that shows that I should not leave GSL because when I do there is industrial action. So perhaps that proved how important I am within that network. It proves why the network was not working before. Because nobody on the other side of the House which used to be on this side was prepared to do that. I think one of the points raised by the Honourable the Leader of the Opposition which I think was a valid point was when he mentioned the final phase and he wanted to be clear what I meant by the final phase. What I meant by the final phase was having taken a decision to reduce the Yard in manpower and to reduce the Yard in its physical size, it is a final phase because it is the only phase left. What we are now doing, as far as GSL is concerned, Mr Speaker, is we have reduced the size of the workforce, we have reduced the physical size of the Yard and we still need a couple of months to put things into stream as far as the physical layout is concerned but it is, as the Chief Minister has said, to work through the next six months and to see whether we are able to arrive at viability with the amount of workforce that we have and with the physical space that we have. If we do not then we will have to keep reducing down to zero if necessary, Mr Speaker. That is why this is the final phase because there will be no other phase after this one. We will continue to look at the viability of the Yard with the existing numbers, with the existing structure and see whether it is possible to arrive at economic viability, as explained by the Chief Minister, or commercial viability. It is not a question of saying "Well in three months time we are going to do another exercise". It is a question of seeing how we can tally the amount of people that we need to employ with the overheads of the Company and with the work that we attract and we have to match them. If we do not match them then we will see a smaller and smaller and smaller operation until we get down to zero. I think another question that he asked was what will be happening to Dock No.3 and the Wharfage Berthing space left over. No decision has been taken by Government on this and I expect that it will

go to marine related use but at the end of the day I think the basis of the analysis which the Government has to do was in fact mentioned a moment ago by the Honourable Mr Mascarenhas who said that he did not have any quarrel with looking at what was best for Gibraltar and what was best for Gibraltar would then be something that he could support and I think that is basically the position of the Government with the added basis, which I think I mentioned this morning that we believe that the Port is an important package for Gibraltar. We would therefore like to be able to use that No.3 Dock and the area of Berthing for marine related activities. But at the end of the day it will be a question of what is better for Gibraltar and for its economy. The Honourable Mr Canepa also mentioned whether we were sure about the number of employees and as we reduce the number of employees whether we were sure we could be operationally viable? This is the study that has been undergone by the Company and I assure the Honourable Member opposite that the reduction in the number of workers that we have had over the last two to three months enables us to continue to run the Yard operationally. Again with the underline theme that it has to be less amount of work because we cannot cope with the amount of work as provided for in the previous Business Plan and certainly we expect it to be more balanced and more related to expertise, rather than to labour intensive activities. I think one of the points again which highlights, and I do not want this to sound as if I am trying to use this motion to hit at the previous Government, but it is sad to hear the Honourable the Leader of the Opposition saying why have we not given an explanation on the reason why Richard McCarthy had resigned from the Board. Does not the Honourable Member know, I am sure he does, that Richard McCarthy was a Member of the Board by virtue of the fact that he was Convenor of the Yard and when the Yard decided to remove him as a Convenor, he automatically resigned from the Board and the new Convenors were appointed to the Board. Let me just explain, for accuracy Mr Speaker, that what the Board did when Mr McCarthy left was rather than appoint a Director in his place, what the Trade Union Movement decided was that they would have the three convenors of the Yard, the ACTSS convenor, the IPCS now IPMS convenor and the T&GWU convenor on the Board. However not as Directors, they would be there just as observers with every single right except voting rights. That is the way that they wanted it and that is why Richard McCarthy's resignation was not, at the same time, accompanied by the appointment of a new Director. The other reason, because there is nothing to hide Mr Speaker, the other resignation if I am not mistaken was the resignation in 1988 of Mr John Bassadone from the Board and the appointment of Mr Otilio Viales. This was requested by Mr Bassadone because he felt that there was a vested interest in the business that he had with GSL and he felt he was in an awkward situation within the Board of GSL when he had to declare a vested interest. This happened on various occasions and he felt that it was better

if he were not to be a Member of the Board. He resigned and the Board accepted his resignation and then Mr Otilio Viales was appointed. I do not know if that was in 1988 or 1989. Another question was the matter of the loans by the JVs to GSL. All those loans will be repaid by the end of the year, by the 31 December 1989. So the comment that the Principal Auditor made was made in the knowledge that that would happen by the 31 December 1989. It is the intention, Mr Speaker, of the Government to clear the books and to start the GSL operation on the 1 January 1990 without any strings attached to shiprepairing. Hence the fact that GSL is remaining as an independent entity and will work as an independent entity. I think another question was the question of the dead stock, Mr Speaker. The Honourable the Leader of the Opposition asked why it was that a decision had been taken on the dead stock in late 1988 and he had not seen anything at all related to the selling of those stocks. The decision was taken late in 1988 before they approved it and the dead stock was in fact agreed on. There was then a full exercise done by the Company to establish every single element within that dead stock. That dead stock was isolated and the Board subsequently decided that the best way to dispose of that stock was to sell it as and when enquiries came through. We felt, as we still feel, that to put this out to tender would in fact not attract the amount of money that we wanted if bought in bulk. There are still a lot of enquiries coming in for special elements within that dead stock and we will eventually have to go to tender once we have established that there are no more requirements for specific elements within that dead stock. But at the moment we are still getting a lot of enquiries and we feel that it is better if there is more money to be obtained that way, than if we put the stock for sale in bulk. I do not think, Mr Speaker, that I have left any question unanswered. It is not a question, as I have said when I started Mr Speaker, of us coming here and saying, or giving excuses, for why it is that GSL was making losses last year. That has not been the purpose of this exercise. The purpose of this exercise is to come here and explain to the House why it was that in March/April last year we felt that the operation as we had deemed it possible to run was unsustainable and therefore, Mr Speaker, we have had to reassess the situation. We have reassessed through 1989, the losses which is a point perhaps that I have left out. The losses through the first six months of 1989 were the same, taking into account the monthly losses, so we are talking about the same monthly losses from January to June 1989, and then we are talking about losses at this stage not very easily identified because, as I explained in my initial contribution, from about June to the 1st week in December the whole operation was on a virtual hold pending the restructuring, pending the redundancies, pending the re-deployment and therefore we felt that that holdback of the situation would mean perhaps a loss of another £2m, but at this stage we are not able to identify that totally. We will be in a position to do so once the Accounts of GSL

for 1989 have been audited. But we feel that given the levels of losses over the last months of 1988, and the sustaining of those losses through early 1989, we are talking about another £3m for the first six months and at least another £2m for the six months when the whole operation was on hold pending this restructuring and pending the reducing of both physical and labour resources. Because, as I have mentioned, it is not a question of saying "I stop today and I start tomorrow". The shiprepair market is a market where you have to be very careful and therefore it has taken some time to do all that was needed without creating any major problems in the market. I think the proof of that, as I said in my contribution, is that once we input into the market again, and we are now activating and we have work already through December, through January and into February.

HON LT COL E M BRITTO:

If the Minister would give way. Mr Speaker, Mr Pilcher said two minutes ago whether there were any questions that he had left unanswered, I did ask a specific question whether he would confirm or deny that it was the intention of Government to purchase the shares held by GSL in the Joint Venture Companies and I wonder whether he can answer that?

HON J E PILCHER:

Yes Mr Speaker, I can confirm that at this stage as GSL is releasing the shares of the Joint Venture Companies and since GSL is 100% owned by Government and since the Joint Ventures are 50% in most cases 50% owned by Government, and 50% owned by GSL, in the separation of GSL, initially it makes sense to release those 50% shares back to the Government who is the 100% owner of GSL. So at this stage it is and that is what has been happening over the last couple of weeks and the next couple of weeks is to release.....

HON G MASCARENHAS:

You cannot have any more Joint Ventures?

HON J E PILCHER:

No, it is single Ventures.

HON A J CANEPA:

The charter flights are all being cancelled.

HON J E PILCHER:

No, there are still some Joint Ventures in the pipeline.

HON J C PEREZ:

We can put them in the market, anyway.

HON J E PILCHER:

To end Mr Speaker, I have to refer back to the closing statement made by Mr Mascarenhas, that in 1984 an election was fought. He is right, an election was fought on the grounds that the people of Gibraltar's only course of action was to accept the A & P Appledore proposals. We did not accept, at the time, that that was the only way forward for Gibraltar and if you remember before 1984, I am now referring back to the times of the famous Steering Committee, the Government Steering Committee, to look at the commercialisation of the Naval Dockyard when the GSLP at that stage had the Honourable, the now Chief Minister, as its only Member, withdrew from the Committee in 1983 because we knew at that stage that it was a big farce and it was a situation in which the AACR was being drawn in by the British Government and we did not want any part of it. We said this in 1984 and today unfortunately, and it does not give me any advantage in saying so, but today I think everybody has realised, not only the Members opposite, but the whole of the people of Gibraltar, that that decision in 1984 was the wrong one. And what was deemed to be the only way out for the AACR is what we were left in 1988 and that is holding the baby.

HON G MASCARENHAS:

If the Hon Member will give way. Mr Speaker, there was an election in 1984 and we were voted in. Basically by explaining the psychosis of failure I was trying to explain that we had on one side the GSLP saying that it was doomed to fail and on the other side the AACR saying that that was the way forward. An Election was fought on that and we won.

HON J E PILCHER:

But, Mr Speaker, I want to try and take The Honourable Mr Mascarenhas back to 1984, not because I want to say to him "I told you so", and obviously with the benefit of hindsight, that is easily acceptable, but if Mr Mascarenhas would cast his mind back to 1984 when we went to an election saying that the £28m should be used for Gibraltar and that part of that money could be put into a smaller and more reduced operation with other activities being funded with part of the £28m. This is what we are going to have to do today, after A & P spent the £28m plus another £4.5m, because by the time we came in, A & P Appledore had spent £32.5m. I am not for a moment saying "I told you so". What I am saying is that, unfortunately, today if the people of Gibraltar and if the AACR had taken our advice in 1984, we would not be in this situation today.

HON G MASCARENHAS:

If the Hon Member will give way. I was not a Member of the Government at the time but I was a Member of the Executive

and I was involved and I knew what was going on and the situation facing Gibraltar was very simple. There were 1,100 employees in the MOD Dockyard and the alternative that the Honourable Members opposite were exposing, at the time, was a much smaller Yard which would have led to unemployment. The AACR were not prepared to support that because we wanted the highest labour intensive alternative possible, at the time.

HON J E PILCHER:

Mr Speaker, unfortunately perhaps we can all redeem ourselves and start arguing again. The Honourable Member opposite does not know what he is talking about, because they got it wrong there as well, I mean, we were saying quite clearly "all that Gibraltar needs is a reduced operation therefore use part of that money for shiprepairing and use the rest of the money for diversification to create more jobs". In any case we were saying at the time that the package that the AACR was looking at and the scenario that the AACR was painting was the wrong scenario, and we were right because.....

HON A J CANEPA:

Mr Speaker, if the Hon Member will give way.

HON J E PILCHER:

No, Mr Speaker, let me finish the point way. What I was saying was that the Honourable Members opposite had assumed that when the Dockyard closed we were going to have mass unemployment and we had to find employment for 1,100 people and that was again wrong. Because when Her Majesty's Dockyard closed down and A & P started in order to come up to a workforce of 800 they had to import about 400 workers from Portugal and Spain. So they were wrong there as well. When we came in on the 25 March, we did not have the £32.5m and we did not have 1,100 Gibraltarians workers. We had 400 Gibraltarian workers. The rest of the money had been pumped in for A & P to produce work for 400 or 500 expatriate workers from UK, Portugal and Spain. So on both counts they got it wrong. They got it wrong on the scale of the operation and they got it wrong because they assumed that the closure of the Naval Dockyard was going to create mass unemployment, which it did not. And in 1984, we were arguing those two points.

HON A J CANEPA:

Mr Speaker, if the Hon Member will give way. The position that we were in in mid 1983 and let us remember that the Dockyard agreement was concluded in mid 1983 and that there was a period from November 1981 to 1982 and the first half of 1983 of considerable study, was that there was no question of the British Government giving us one penny for

diversification. It was only at a very late stage, close in March or April 1983, that the British Government took the decision to accept a commercial Yard and not a grant aided situation which was what the British Treasury was advising the Government to do. They were being told "Do not put £28m or £30m into Gibraltar for the shiprepair yard or for anything". A grant aided situation is what the Treasury advised and we were not having that. There was no question therefore of saying "Give us £14m or £15m for a reduced scale operation in the Yard and give us the balance for diversification". It was a non-starter because the money would not have been there. The British Government was not prepared to negotiate that sort of a deal. Now, we had to consider that against those realities and against the fact that we had a pedestrianised opening of the frontier which was bleeding the economy. The economy had not been bled when the frontier was fully closed but the partial opening of the frontier was leading to a deteriorating financial position for Gibraltar and for the Private Sector in Gibraltar. So not only were we looking to employ everyone at MOD and at the time there were not 400 there were 700. It was as a result of the voluntary redundancies which came in subsequently to the Dockyard Agreement that the figure came down to 400. So prior to that we were talking of about 800 workers and in fact the A & P operation was supposed to build up to 1,250, and in a situation where we had a partial opening of the frontier, and economic problems that were multiplying we welcomed the opportunity of having 1,250 people employed because other people in Gibraltar who would otherwise have gone on the market of unemployment could be soaked up there. That is the position. The frontier then opened and everything is now history, but that was the situation in late 1982/1983 and those were the realities that we were facing and because the Government is the exercise of limited options we had to take a decision on that option.

HON J E PILCHER:

I am glad that the Honourable Member believes that Government is the exercise of limited options. Unfortunately, that is not the way that it was explained either to the electorate or to ourselves at the time. I remember, and I respect the Honourable Member opposite because I am sure that he is voicing his own impression at the time, and I am not for one moment saying that that is not correct. In fact, I remember when we were discussing these things in this House and the Honourable Member opposite was perhaps the only vociferous person within the AACR. I however remember the then Leader of the AACR, saying in television, in public, that this was the best option for Gibraltar and he said this of Gibraltar Shiprepair Limited and he went further and said that provided that there were ships from Her Majesty's Navy then the Shipyard would never have to close. In 1984 he went further and during the Election it was said that not only was this the best way forward but that shiprepairing would become a pillar of the economy of

Gibraltar. He said the same for the Naval Dockyard and he said the same for the pensions and he said the same subsequently on the Anglo Spanish Agreement on the Airport. The pensions question we have been able to wrap up and GSL, I assure you, will not take that long for us to resolve and eventually we will move on the Anglo-Spanish Agreement and we will eventually be rid of all the problems that we have inherited from the previous AACR Government Mr Speaker. I think the only thing left to say, Mr Speaker, is that I honestly think that everything possible is being done to try and create a system where shiprepairing would be an integral part of the package offered by the Port of Gibraltar, and I think the Honourable Mr Mascarenhas himself said the Port of Gibraltar, the package that we offer is bunkering, ships registry, crew changes, shiprepairing. I mean it is a very comprehensive package and are not offered in many other places in the world and it is one of our strong points and one which we, as a Government, must try to maintain. We will however not do that at the expense of other areas which the Chief Minister mentioned such as housing. We are not here to try and keep that package going just because we feel that it has to be kept going if it is losing money and it is not paying its own way in the economy. I think with what we have done, by reassessing the position, we are going to try and do now what we were advising the AACR to do in 1984 and that is to try a reduced operation and try an operation which would not be as labour intensive and I hope we can succeed. If not we will be back here in six months time or seven or eight or nine or ten with our usual honesty and say that it is not possible. But we will not, Mr Speaker, keep political distance from the Yard in the hope that the problem will disappear because it did not disappear in 1985 or in 1986 or in 1987. So the only way is to face the problem and if that means, Mr Speaker, having political difficulties from time to time, well so be it. I am quite prepared to do that provided that at the end of the day it is our problem and we have to solve it. Thank you Mr Speaker.

The House noted the Accounts of Gibraltar Shiprepair Limited for the year ended 31st December 1988.

PRIVATE MEMBERS' MOTION

HON LT-COL E M BRITTO:

Mr Speaker, I have the honour to move the motion standing in my name which reads: "This House considers that Gibraltar's housing problem can best be alleviated by active promotion and implementation by Government of Home-Ownership."

Mr Speaker, the motion states a reality and then arrives at a conclusion. The reality is that Gibraltar has a housing problem and the conclusion to that problem is that it can

be alleviated by increasing the level of home-ownership. Although I do not expect either of these proposals to be controversial, I also have no doubt that there will be disagreement on the best way of achieving the desired increase in the number of Gibraltarians owning and occupying their own homes. In trying to find solutions to any problems, it is invariably a worthwhile exercise to go back to the root of the problem and to analyse the original cause. The start of the build-up to today's housing difficulties can be traced back to the years immediately after the second world war. At that stage the Colonial Government had done very little to house Gibraltarians and when the evacuees started returning the only public housing available was Harrington Building. Whatever other housing was available was all privately owned. By December 1945, over 12,000 Gibraltarians had returned home, but it is not always remembered that it was the shortage of housing that delayed the return of the last parties of evacuees as late as 1951. This period coincides with the emergence of the AACR as a political force. The Party had been established by Alberto Risso and others in 1942. Then headed by Joshua Hassan, it won all the elected seats in the first ever City Council elections in 1945 and the ruling majority in the first ever Legislative Council Elections in 1950. As the major political force of the day, the AACR spearheaded the post war effort to improve Gibraltar's housing needs. Initially great efforts had to be made to provide temporary accommodation in Nissen Hut camps which were built wherever there was an empty space. At the beginning shortages of building materials, which persisted for some time after the war, slowed down permanent buildings but the first major post war estate of 472 flats was built by the AACR at the Alameda and is still popularly known as Humphries. By 1969, when Spain closed the land frontier, over 2,250 flats had been built and over 350 others were under construction. These included such major AACR housing projects as Glacis, Laguna and Moorish Castle Estates and others, more minor ones, such as Shorthorn Farm, Vineyard, Coelho Buildings and others in the South district. In retrospect, Mr Speaker, it is clear that the closing of the land frontier by Spain on the 22 June 1969 and its consequent but relentlessly increasing adverse effect on the Gibraltar economy was one of the major factors contributing to the drastic slowing down of the post war housing building programme. Although with the help of ODA funds the IWBP initiated Varyl Begg Estate which was completed by the AACR in the mid 1970s. This was to become the last substantial grant of British Government aid for housing purposes. The loss of financial support from Her Majesty's Government for new housing as well as the economic drain caused by the unilateral pedestrian opening of the frontier by Spain can be said to have been the two other major contributing factors to the deterioration in Gibraltar's housing problem to its present level. It has been said that in the period June 1969 to February 1985, these three major factors made Gibraltar's economy gradually stagnate, although it did not actually fail. It is an inescapable fact that during a very demanding period successive AACR Governments had to weigh

up priorities very carefully when facing difficult decisions in meeting Gibraltar's short term social and infrastructural needs such as health services, education and the municipal services in addition to having to find funds to meet the expense of long term development such as new housing. In the changing situation brought about by the opening of the frontier and the consequent increase in financial confidence in Gibraltar by potential investors, the last AACR Government had the forward vision to realise that the new way to tackle the housing problem was to encourage building by private developers and to promote the concept of home-ownership. As a consequence of this new policy initiated in the early 1980s, we have seen the birth of housing developments negotiated by the AACR and financed by private funds and intended for homeownership. These have included Vineyards, North View Terrace, Brympton and the Montagu Basin development, now known as Phase I of the Westside development. Apart from other smaller schemes under the redevelopment of old Crown Properties by tender. The AACR were clearly committed to homeownership since well before 1988. The present Government, although their Election Manifesto was silent on the matter, have since made public statements which show that they also see home-ownership as the way forward in the 1990s. With such a consensus it is obviously not a question of "if", but rather a question of "how" more Gibraltarians can be encouraged to purchase their own homes and in so doing leave vacant their present rented accommodation to be occupied by persons on the Housing Waiting List or by people who are not able financially to buy their own homes. Mr Speaker, housing in Gibraltar can be broadly divided into three sectors. Government rented accommodation, rented accommodation owned by private landlords and owner-occupied accommodation. This last one is the newly emerging concept of home-ownership. The problem quite clearly is how to encourage or, should I say, induce those in rented Government and private accommodation, who can afford to do so, to purchase and occupy a new home and to vacate premises which can then be used to alleviate the housing situation. The recently announced £10,000 tax-free allowance which is an extension of the £2,000 allowance given by the previous Government goes some way towards this, but we do not feel it goes far enough. Before we consider more ways of encouraging all tenants of rented accommodation let us look more closely at Private Sector housing. In the first instance we consider that Government should do much more to encourage tenants of privately owned accommodation to buy their own homes. A very large part of the Private Sector housing is rent controlled and because of the relatively low rents of such premises in comparison to Government rent, many owners of such private properties find it financially not viable to adequately maintain precisely those properties which most need to be repaired and looked after. Of course the tenants of such rent controlled properties benefit from the low rent but they also suffer the consequences of living in ever worsening conditions. In any case, few can see any financial sense in accepting a much greater liability of a mortgage as long as they can

carry on paying such relatively low rents. Let me be quite clear, Mr Speaker, that we are not asking for general increases in rent for Private Sector tenants. The answer lies in finding a formula under which the following can be achieved. Firstly, that the present tenant receives sufficient inducement to give up his rent controlled home and leave the owner with vacant possession. Secondly, that the private property owner accepts the liability to accommodate another Gibraltarian family from the Housing List. And, thirdly, that a specified minimum level of repairs is carried out. Such a formula, Mr Speaker, would have the obvious advantages of reducing the Housing Waiting List and at the same time helping to improve the bad state of many pre-war buildings, but its greatest advantage is that it allows Government to accommodate a family on the Waiting List at a fraction of what it would cost if it had to build the equivalent as new accommodation. Mr Speaker, we have worked out a formula to achieve this and once we are back in Government we will implement it to encourage home-ownership. It is a plan that will protect the interests and be of advantage to all three parties concerned. The original tenant seeking to buy his new home, the owner of the private property and the new tenant seeking rented accommodation. It will also achieve adequate repairs and improvements to pre-war properties. Finally Mr Speaker, let us look more closely at some of the ways that Government can help to encourage occupants of not just the Private Sector, but also of Government housing to buy and occupy their own homes. But before doing so I would stress that we are not saying that all the ideas that follow should or even could be applied at the same time. The danger of being over-generous must be avoided as this could mean that better off persons could reap excess benefits at the expense of public funds. Firstly, we think that an independent home-ownership advisory unit should be established, and I say established, Mr Speaker, to make it quite clear, I am not saying that the home-ownership unit that existed and which has existed mainly for market ing purposes should be re-established. We are talking about a unit that should be independent of developers, builders, of the financial institutions involved in house purchasing and should ideally be Government sponsored or part of the Housing Department. The Advisory Unit should exist in order to give prospective buyers and even actual buyers as much information as possible which is a need, from the information that I have, that has been sadly lacking at the moment. Secondly, is the inducement to leave vacant possession. I have already talked in detail about this inducement in the Private Sector, but we think that the plan would need to be modified to include the public sector housing because, again, on present trends, we do not think that enough home buyers tend to leave an empty home when they go on to purchase a new property. Thirdly, is consideration to the working wives of the home buying couple. Now Mr Speaker, most couples purchasing their homes find it is essential for both partners to work to be able to afford the mortgage repayments. We have identified a number of ways of easing the special needs of such working couples and in particular the wives of those

couples with young children. Fourthly, is the question of Banks and Building Societies, especially those UK based and we feel that ways have to be found of convincing these institutions to keep their mortgage lending rates UK linked. We find that it is not acceptable for some of these institutions to pay the same interest on deposits as they do in the UK whereas they charge higher rates on their lending. My fifth idea is not a new one, Mr Speaker. It is the exemption of Stamp Duty for first time buyers and this indeed was a commitment in our election manifesto. The point, and I will not elaborate on it Mr Speaker, is that for the Government the revenue collected from an individual when he is buying his home is relatively insignificant whilst for the home purchaser it represents a considerable outlet at a time when he has a large number of other expenses. My sixth point is a Government rent subsidy. We know that at present the Government has a system of channelling, as a Government tenant, rent to the developer as a subsidy over the 15 months period leading up to the purchase of the house. This must be studied so that it can be extended to private sector tenants and also whether it can continue until the completion date of the building and not just for a specified minimum period of fifteen months. Seventh on my list is the question of a Builder's guarantee and we understand it is the increasing practice in UK that builders of new properties should be required to guarantee the quality of the completed building and to have some responsibility for correcting defects which become apparent within a specified period. For example, water penetration. Point number eight is the matter of re-sale restrictions and although we agree and stress that speculation must be avoided at all costs, in curtailing such restrictions, we also feel that there should a degree of flexibility on this restriction to allow resale in genuine cases, for example, in the case of a family increasing and outgrowing its home or for health reasons. Finally, Mr Speaker, on the question of rate relief we feel that the 10% discount on rates which the present Government abolished could be re-introduced. Thank you Mr Speaker, I commend the motion to the House.

Mr Speaker proposed the question on the terms of the motion moved by the Honourable Lt-Col E M Britto.

HON CHIEF MINISTER:

Well Mr Speaker, the Minister for Housing will be answering on this motion what the policy of the Government is. We want to know if there is anything else that should be taken into account, if there is not then he will answer.

HON P C MONTEGRIFFO:

Mr Speaker, if the Government has something to say, I will wait, but if the Government is only going to reply to the Member I will have my say now certainly on the basis that the Minister can reply. Mr Speaker, in welcoming the motion,

I am a little surprised at the history of the situation as has been explained by Mr Britto, because I see the question of home-ownership as a much more forward looking concept and it may be of interest generally to analyse the problem that we have in terms of housing. I think that in looking at solving the present problem we have the need to create solutions for the future with very little lessons, I think, from the past. I say so little because as a percentage, home-ownership in Gibraltar in terms of the population is a third world country and therefore what success we might have in the course of the next few years as we build up starts from a very low base. Therefore as a result of a very low base and we start from a wholly different attitude and with a wholly unaccustomed population to the concept of home-ownership and hence the need for those special privileges for home-ownership over and above what other West European nations would normally give. To some extent those that already exist in Gibraltar should be looked at and thought given to what extent it should be extended I think, personally, that there is a case for further assistance for home-ownership because in order to move from that low base we are going to have to require something much more dramatic. The Government has a commitment to build five hundred low cost housing and I want to make clear, and I have pressed the Government in the past, that once that commitment is given that commitment should be maintained, but I want to make clear that as far as I am concerned, as far as the Gibraltar Social Democrats are concerned, we are not talking of building five hundred houses and end up with five hundred houses which will be straight Government tenant accommodation as in the past. I think it is important to speak frankly and if the Government is saying as it has said "we will build five hundred houses for renting", well that may be the Government's view but I believe that the time has come to put that type of scenario, that type of analysis to one side and to recognise that home-ownership as at present envisaged although it has limitations will allow people to take a stake in Gibraltar. A stake in their home. It is clear already that the combination of high interest rates and high prices generally will always mean that there is going to be a group of people who cannot buy, even of the type under the sponsored schemes that are available. That being the case, a lot of what the Honourable Member on my right here has said really are additions and although I welcome his ideas and I think they may be the basis of discussion they are largely ideas to enhance that category of home-ownership. Those persons, this category of persons who are young working wives and who need that extra help of a working wife to make their Westside or Brympton flat a possibility require that we go one step further, and certainly my view is that, they need facilities like soft loans which does not exist now. Soft loans is not an unusual concept and it is utilised, certainly, in other countries of Europe. Clearly there would have to be a lot of thought given to how such a loan system would work but let it be clear that as a matter of principle, it must be preferable for a family even on a low income to have a stake in buying

something on a soft loan basis so that at the end of 25 years they are going to be owners of a property. This will allow Government to relinquish their maintenance responsibility which end up being a terrible burden. This third category who do not fall into the category we have previously discussed, because it must be preferable to the alternative of giving unreasonable hope to people who cannot now buy by saying "eventually there will be flats for rental". Even if that was a possibility, I do not think it is good for Gibraltar. I think the link between, and I think this is something again that the Social Democrats will argue, the link between home-ownership and our pride and our commitment to Gibraltar is nowhere stronger as an argument that here in Gibraltar itself because of the peculiar threats that we suffer from. And therefore as a matter of policy, every single Gibraltarian that can own a flat, with all the assistance the Government can give, must be truly a top priority of any administration. I do not mean it just as a political gimmick but because as far as I am concerned I do not like the idea of building flats for renting. I say that because I want to give people, particularly young ones, all the help they require to own their flat since that would strengthen their commitment to Gibraltar. In that respect if we can elaborate on the ideas that Col Britto has mentioned about helping working wives stay in work by offering them facilities such as help for their children and that is an area that I would like to see perhaps greater emphasis on. But we must really, I think, make an effort not just to tinker with the present system and say "we scrap Stamp Duty for first time buyers or we introduce the rates rebate again", but really consider whether there is a way and I recognise the difficulties of introducing a third category of soft loans for people who will not be able now to make use of present commercial facilities for lending, but really look at a substitute for the alternative of building flats simply for renting which, I think, does nobody any favours. It does not do the average Gibraltarian any favours and it does not do the Government of the day any favours, or any other Government in the future, because it saddles us with a bill that Gibraltar then finds difficult to pay. Therefore I welcome the motion, Mr Speaker, but I welcome it in the context of an attempt to argue at this early stage in formulating our policy on home-ownership to make clear that the way that I would like to see this is that when we have sometimes paid lip service to every Gibraltarian owning his home, that that should become a reality by making it effectively the option which would be made a reality by introducing a possibility for that third category. We will look at it not only as the best way, but effectively almost as the only way, subject to some extreme cases for which there must always be recourse, and in which case the simple vacation of Government flats makes sense to provide a pool from which to alleviate that type of case. I would like to see this as the only way, not as a matter of cohesion, but as a matter of principle, because once we get our people paying for a flat in Gibraltar for a dwelling here, then that is going to invigorate them, it is going to give them

a commitment and a stake, which I do not doubt they have already, but which I think would be enhanced considerably. Thank you.

HON J L BALDACHINO:

Mr Speaker, before I start my contribution, I must say that it must be the Honourable Mr Montegriffo's day, because I agree more with what he has said than what the AACR Opposition spokesman on Housing has said.

HON P C MONTEGRIFFO:

Would the Hon Minister like to join my party?

HON J L BALDACHINO:

Mr Speaker, I think it would be better if he crossed over and joined us! I do not want to go into details, Mr Speaker, on the initial part of what the Honourable Mr Britto has said because what he has done is justify AACR policy and try to explain why the AACR did not build any houses from 1984 to 1988 ie the period that I have been a Member of this House. I would however like to clarify certain points that he has made. In 1964 during the Leg Co period of this House, the Honourable Sir Joshua, who was Mayor at the time, and Mrs Ellicott, had said that the housing problem in Gibraltar required the Building of one hundred flats. Therefore to go back, Mr Speaker, does not serve any useful purpose because what we are trying to do, and what the Government is trying to do, is to find a solution to the housing problem since we have taken office. Let me say Mr Speaker, that we have really lost out on home-ownership. Home-ownership should have been started when parity was agreed in 1978. Because Mr Speaker, prior to parity, people's wages were so low that the acceptable thing was to share a flat. It was after 1978 that people had more money in their pockets and therefore they wanted to become more independent, especially the younger generation. Let me also say, Mr Speaker, that the Honourable Member in defending the motion and I am talking about Col Britto, appears to think that it was the AACR who had discovered home-ownership. However, Mr Speaker, home-ownership in Western Europe has been going on for years, probably before the formation of the AACR in Gibraltar. So really, Mr Speaker, when the Honourable Member speaks about home-ownership, let us make it clear and I want it on record, that it was a concept that was brought forward by private developers and it was done because they saw that there was a market for it and it would have happened whether the AACR had been in Government, the GSD had been in Government, the IWBP had been in Government or the GSLP had been in Government. It would still have developed. On the question of Brympton, Mr Speaker, let me tell the Honourable Member, because he has mentioned it as if it was something that the AACR did, that when we came into Government, I had to re-negotiate the Agreement because the previous Agreement was exactly the same Agreement that

had been agreed for Vineyards. And let me tell the Honourable Member that when Vineyards was brought to this House by the AACR in 1984 or 1985 I welcomed it because we thought that to build houses and for people to be given the opportunity of home-ownership especially for those on the Housing Waiting List was a good thing. We however had reservations and I used the word "reservation" before the then Honourable Chief Minister, Sir Joshua Hassan, did when he went and negotiated something in the United Kingdom, and it has proved to be correct. Also in 1986 or 1987 I brought to the attention of the then Honourable Members on this side that there were some things in the Agreement they entered into with the developers that did not favour the purchasers, and at that stage, I think, it was the Honourable Leader of the Opposition who then corrected many of those things. This Mr Speaker, I hope will not happen with Brympton and Westside because in the re-negotiation there are certain safeguards for the people who are buying there. In other words the price of the houses that they have now signed will not be increased and that in itself, Mr Speaker, gives confidence to people to buy. Also Mr Speaker, the Management Company for the two projects has already been set up and are discussing matters at the same table with the developers and a representative of the Government, on my behalf, so therefore if there is any conflict of interest, which obviously there will always be, it can be tackled there and then and not have the problems we had at Vineyards with Press Releases from one side to another. Because at Vineyards all that there was was just an Association. So the purchasers are involved from the very start in how the project is being carried out, in other words, they can now visit the site whenever they want and if they see something is not being done correctly they can now bring it to the Management Company and discuss the matter. That in itself, Mr Speaker, is a base, because it creates the confidence for people to buy. The £10,000 Mr Speaker which the Honourable Member says is just an extension to what they had and let me say that it is a very big extension because it is five times more than what they had, but I suspect Mr Speaker, that what the Honourable Member will still say that we have not gone far enough. I do not know how far they went then, because if ours is five times more than theirs, and not only that, Mr Speaker but it is completely different to what they had. It is completely different in essence because it is so flexible and there are more people who can apply. For example, people who apply for small plots of land and who would then release Government accommodation could not apply for the £2,000. Now under our system they can now apply for the £10,000. I do not know why they had to be excluded if they were also going to become home-owners as well. Not only that Mr Speaker, the £10,000 can either be claimed by one of the spouses or be divided between them, 50/50 and if they are friends, each can claim an equal portion or whatever they are paying for the flat. It even goes further, Mr Speaker, because you can claim whenever it best suits the individual, obviously young couples, who have to pay a deposit and then 1% for the fifteen months means that

they will claim immediately because before there was no allowance and once they move into the flat they would have the normal allowance on the mortgage. We even went further Mr Speaker because I remember when the Honourable Member brought the £2,000, I think they even excluded the people who had bought in Vineyards and I brought this to their attention, of the then administration, saying that they had been the pioneers and they were being kept out from claiming. We have gone back, Mr Speaker, back to July 1988 because that was our first Financial Year and therefore people who bought in Vineyards and are now paying their mortgage can also enjoy the £10,000 the same as somebody who bought in the Watergardens or in North View Terrace or any of the other places. Therefore to say that what we have done is an extension of what they had, Mr Speaker, is going a bit too far, what we have done is gone right into every detail and we have tried to cover as much as possible to be as flexible as possible and to give the advantage, the most advantage, to the people who are buying. And let me tell the Honourable Member that a lot of people have seen this as a great relief. The Hon Member also mentioned, although I was not too clear exactly what he meant, but I think it was "why don't give people who are going to release Government-rented accommodation rent free allowance until the period when they move into their own houses". The answer, Mr Speaker, is very simple we are giving them 15 months rent relief because they are paying 1% for 15 months and then they do not start paying until they move into the flat. It is normal, Mr Speaker, that people should pay rent if they are not paying for something else. I think this policy is totally logical and that is why we have not extended it. The Honourable Member opposite also mentioned the restrictions placed on re-sale and that certain people should be entitled to sell. Well, Mr Speaker, people are entitled to sell at Brympton and Westside but with a 7% increase. What we do not want to have is the speculation. That is something that the Government will not tolerate but people who suffer hardship will be able to sell with conditions. This is something which must be done very carefully so that there are no loopholes. The conditions that apply are that they will have to hand the flat to Government and Government will find them a buyer with a 7% increase per year on the price paid. Also, Mr Speaker, it should be realised that we are a third country as far as housing is concerned and I will try my utmost as long as I am the Minister with responsibility for Housing to see that conditions and opportunities improve. It is also true, Mr Speaker, that whatever we give to improve home-ownership there will always be people who will not be able to afford purchasing their own home. It is also a fact that Government is the largest landlord. It has 5,000 flats and it is also a fact that there are people living in those heavily subsidised flats who can afford to buy and I do not know despite whatever incentives we offer them if those persons are prepared to move. After all they are only paying about £20 odd a month for a 3 RKB. So in fact, Mr Speaker, in

some cases it does not matter how much allowances we give. It must also be realised, Mr Speaker, that home-ownership is not something that can be tackled in isolation because the position of the Government's economic resources must also be taken into account. The Government's present housing stock must be maintained and it costs the Government £2million to subsidise Government rented accommodation. Now if those £2million were not paid on housing subsidy then the Government could use it for home-ownership. There are still, Mr Speaker, persons living in very poor conditions and in sub-standard conditions because there are still flats in Gibraltar without toilets or running water. All these problems must be re-addressed and it all forms part of a Housing Policy. The Hon Member said that the Private Sector could help, well I agree with him in that but let me remind him of one thing, Mr Speaker. Not everybody who lives in a pre-war controlled dwelling in the Private Sector pays a very low rent. Because all the young couples presently getting married are probably paying more for that accommodation than if they were living in a Government rented flat. Therefore, Mr Speaker, if he is using that argument of low rents as an excuse for landlords in the Private Sector not repairing their flats then that is no excuse. I agree that there are some that pay a very low rent and that because of these low rents their landlords cannot repair their flats is completely incorrect. Because there are landlords who have an agreement under Section 15 and those can afford to fix their flats. When the Hon Member said that not many people would give up their rented accommodation and buy, well I will give the Hon Member some information and tell him that between Westside I & II and Brympton the Government will be getting back in the region of 100 flats. Let me also tell the Hon Member, Mr Speaker, that when we came into Government the Housing Waiting List stood at 1,685 and there are 400 persons who have bought at Westside and Brympton and therefore today the list stands at 1,200, although at present those 400 are still on the Waiting List and have not been removed and when we allocate the 100 flats that are coming back to Government from Westside and Brympton the list will stand at 1,100. So therefore the commitment that I gave this House will be achieved before the end of our first term in Office. Let me also tell the Hon Member, and although the Motion is on home-ownership, as I have already mentioned home-ownership is part of the Housing Policy and with the Prefabs at USOC this Government has already built, and I can inform the Hon Members that the Prefabs are being allocated today, so with these Prefabs the Government has built or is in the process of building 106 flats in 1½ years. No Government, Mr Speaker, has before achieved that record especially since all the funds have been provided by this Government there has been no ODA money. I say this, Mr Speaker, because the Hon Member in his Opening Speech claimed all the credit for all the housing that the AACR had built but this was achieved with ODA money and in 1981 when ODA money stopped coming in they built very little. In fact between 1984 and 1988 they built 80 flats and lost 100 so they were minus 20, Mr speaker. To end, Mr Speaker,

this Government thinks that home-ownership will go a long way to alleviate the Housing problem and the Government within the climate of their economic development programme will keep on reviewing the position to see if further help can be given to people buying their own homes. With reference to the Hon Mr Montegriffo's point of preferring that people own their homes rather than renting them well I disagree on one point and that there will always be a need for rented accommodation for a certain category of people. We might not need all the Government's 5,000 housing stock but some will always be required. I however agree with him that every effort should be made for people owning their own homes. In Westside II we have the option to buy, to keep within our Election Manifesto, and we might never exercise the option, Mr Speaker, because it might not be necessary to purchase the 500 and we will be looking more into home-ownership and try to help people in the category which at present cannot afford to buy. I think that covers all the points raised, Mr Speaker, and the Government will be supporting the Motion. Thank you.

MR SPEAKER:

If no other Member wishes to speak I will call on the Hon Mover of the Motion to reply.

HON LT COL E M BRITTO:

Thank you Mr Speaker. I will first deal with the points raised by the Hon Mr Montegriffo and then with the points raised by the Minister. The Hon Mr Montegriffo seemed to feel that the introductory remarks in presenting the Motion and recalling its history were not necessary and expressed surprise. Let me state quite clearly that this fairly lengthy historical introduction was deliberate. I wanted to establish and put on record the efforts of my party with regard to housing since the war to date and to knock on the head the glibness with which Members on the other side of the House tend to discuss what has been done in the past and simply accuse this Party for every fault on anything that happens at any given time. Secondly, the Hon Mr Montegriffo was unhappy that the ideas that he mentioned that in a certain way they are limited to younger couples rather than at a larger market. This is certainly not the intention, Mr Speaker, because in the plan that I mentioned for Private Sector housing, and we are fairly confident that the ideas that we have put together would work, the majority of persons in the Private Sector housing are of the older generation. In fact in a fair number of cases they are occupying larger premises than they require if you equate people or couples to bedrooms. That, Mr Speaker, is the thrust of our Private Sector plan. That is why I said it would be modified accordingly for Government housing where the distribution may not be quite the same. Finally, Mr Speaker, the Hon Mr Montegriffo dealt on the more social aspect, if I might call it that, of the third category of people who are not

in a position to make use of present lending facilities and was advocating soft loans. I think, Mr Speaker, that one must be realistic in this and accept that Government has a fair number of commitments on the money that is available. And also the fact that the number of flats available is limited at this stage and therefore although I agree in principle with what Mr Montegriffo is saying on the needs of this third category, I think one has to take this in stages and it is wiser to concentrate on those people who can afford to buy now and in the longer term help this other category. At the moment it should help those who can afford now and put those who cannot afford at present, into the flats that they vacate and then look at the longer term solution where everybody is in a position to buy. But to try to achieve everything in one go is to move too fast too quickly. I will now turn to the comments of the Minister for Housing, the Hon Mr Baldachino, and let me say that I do not want to be overtly critical but I am disappointed by his contribution in that to me anyway it sounded more like someone exercising his right to reply, than someone making a contribution on the motion. I think, Mr Speaker, that Members opposite are deliberately misunderstanding what I am saying. When I say the right to reply to the motion that is what I am doing now and not exercising his right to speak, which is what I would say other Members have done. But as I say I was honestly disappointed, because I found his contribution on the whole to be defensive. The motion does not try to be aggressive, it does not try to be critical in any way. The Motion says as we all know that the housing problem can best be alleviated by active promotion and implementation of home-ownership and I have tried to make my contribution as positive as possible on how this can be done and I therefore would have hoped that the Hon Minister would have been able, in an equal way, rather than try to disapprove or say that the suggestions that were put forward are not good enough. I would have preferred to have seen some more original thinking on the part of the Minister and some newer suggestions on what could be done on the future. I will now give way, Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, we recognise that this motion is not in fact a motion that censures the Government and in fact the Honourable Member has said that he recognises that it is a complex matter and that there are competing demands on Government resources. I think that certainly from my point of view, and I am talking of the Minister's point of view, although the Honourable Member listed the number of areas, I do not think he has actually made any specific suggestions and in any case, even if he had made them here, I do not think it is something the Minister could have on the spot responded to. But certainly any ideas that he or any other Member of the House have and wish to put to the Government we will be quite happy to look at. We do not mind getting any suggestions that might improve the situation from anybody.

They are welcome to put any ideas they want.

HON LT COL E M BRITTO:

Mr Speaker, I accept what the Chief Minister has said, but I do not think he quite addresses the point that I was making. I was expecting more original thought on the part of the Minister and not just trying to knock some of the suggestions we were making. I thought he would produce ideas on how the Government intended to improve home-ownership themselves.

HON J L BALDACHINO:

If the Hon Member will give way Mr Speaker. A quarter of his contribution Mr Speaker, if not half was based on history and therefore I could have answered all the points he raised in his history. I can also go back in history because I have read all that has happened during that period of time. He in fact was not introducing anything new to what most of the Members here already knew. Now in my contribution I even went further, Mr Speaker because I told them what the Government had done and I also said what the Government was prepared to do but there were other factors involved. The Honourable Member I think, was of the opinion that housing and home-ownership were isolated from everything else that happen in Gibraltar and that it is not so. The political will is always there irrespective of whatever Party is in power but if the financial resources are not there then you cannot provide what is required and you have to wait until the financial resources are available. Now, Mr Speaker, in a situation like the one we have of an acute housing problem we should not give hopes to people and then find out that they were false hopes. And I know, Mr Speaker, because I am in that Housing Department every day of the week and I know the people who come in and they all want to see me because I know the problems that they have and I am never going to give anyone false hopes. So if the Honourable Member was expecting me to say in this House what the Government intends to do then that is something I could not do because I cannot do it and I will not do it. When I am ready, Mr Speaker, and when I am sure that I can deliver, and not before, then I will announce things but I am not prepared to say in this House something that will not then materialise.

HON LT COL E M BRITTO:

Mr Speaker, the Minister went on to say amongst other things that parity in 1978 would have been the ideal time to introduce home-ownership and let me say that in fact although I did say so in my main contribution that home-ownership commenced in the early 1980s, I should have said 1979 rather than 1980 because that is when the AACR launched the concept of people buying their own homes which they were already occupying and parity was introduced in 1978, so there is not much in

it. He also was critical of the AACR's claim of launching home-ownership and having been the pioneers of home-ownership which the Hon Member said was already known and established in Europe for many years. Yes no-one is disputing that Mr Speaker, but the fact remains that here in Gibraltar, it was initiated and launched by the AACR. One could equally use the same argument on the question of Reclamation. The GSLP takes credit for the Reclamation Programme in Gibraltar and one could equally say that it has existed in Europe and elsewhere for many years and that therefore the GSLP should not take credit for it. But we are not saying that, Mr Speaker. The Minister was also claiming credit for correcting, from the experience of previous sales like Vineyards, correcting the purchase Agreement for subsequent projects like Brympton and quite honestly, Mr Speaker, this is nothing more than we would expect the Government to do. It is obvious that it is a learning process and anybody on that side of the House, being the present Government or any other Government, it is their obvious duty to learn from previous mistakes and correct things for the future. I do not think, Mr Speaker, that there is anything funny in it quite honestly. Any mistakes that may have been made, and I am not at this stage saying that mistakes have not been made, were not deliberate mistakes and I am sure that the people who are suffering from those mistakes do not find it funny at all, but they were certainly not made on purpose. They were not made to hurt anybody. They were made through inexperience, because just as Members on that side of the House, Members on this side of the House were new to the concept of home-ownership. Just as the developers were, and just as the builders were. The purchasers themselves were also new to the concept so everybody is learning, including the Government and including the Opposition, and that is why mistakes were made. But the important thing is to learn from those mistakes and that is why, Mr Speaker, I was proposing an Advisory Unit. Because although people who are there professionally obviously learn from the mistakes and have the experience at hand, the new purchasers coming up through the pipeline do not have the benefit of that experience and they are the ones who do not know what type of policy to take out with the Bank or what type of mortgages are available, which is the better Building Society to go to etc etc. They are the ones, Mr Speaker, who need the advise and that is one of the things that can be perfected in the light of experience. Mr Speaker, the Minister said that I had said £10,000 tax relief was not enough and that we always say that more could be given. Well let me clear that straight away, Mr Speaker. What I said was totally misunderstood. I did not mean that £10,000 as an amount was not sufficient and that the amount should have been higher. What I meant was that a £10,000 allowance by itself was not enough and that other ideas could be used or could be brought in to supplement that £10,000 allowance and which would help to promote the concept of home-ownership. Finally Mr Speaker, the Minister brought himself down slightly on the question of private sector housing rent-controlled properties and again there was a slight

misunderstanding on the points that I made and although I do not intend to go into the matter in any great detail, but just to stress that my feelings at the moment are that the tendency is to give too much priority and too much importance to public sector occupants and that people in the private sector are not getting the same degree of priority. And to point out that the private sector market is relatively untouched at the moment for home purchasers, mainly because of the rent-controlled aspect of it. Although I accept the Minister's point that under Section 15 quite a number of properties that are now decontrolled there are still by far the greater number of pre-wars that are rent-controlled and therefore by implication people on low rents cannot easily be induced to take on a mortgage. However by the same implication there is a large and untapped market of potential home-buyers who with the right formula and the right combination of inducements could be brought out of the private sector housing, and as I say, could achieve the three objectives of creating new housing for rent for people in need and also improve the older properties. That is all Mr Speaker, thank you very much.

Mr Speaker then put the question on the terms of the motion proposed by the Hon Lt Col E M Britto and on a vote being taken the motion was carried unanimously.

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that this House do now adjourn sine die and at the same time as is customary when the House meets in December, I wish to take the opportunity to wish yourself, the staff and Members opposite, in both parties, a happy and friendly Christmas and of course to say that it always seems somehow, I think, that when we come to this particular juncture to have at least an item of the Agenda where the House is able to agree and I am glad that this has happened once again with the motion of the Honourable Member opposite that we have just voted upon and that I am sure that whatever our differences, over the next few days at least we will be able to meet each other in friendly circumstances.

HON A J CANEPA:

Mr Speaker, I would like to associate my colleagues with the remarks of the Chief Minister in wishing you in the first place a very happy Christmas and all the very best in the New Year and also of course to extend that to the staff of the House of Assembly. It is perhaps mainly when you are in the Opposition that you begin to appreciate more how much the staff, and it is a very small staff, of this House do for Members of the Opposition and I receive nothing but unfailing help and courtesy and I would like to place on record my appreciation. I would also like to extend our best wishes to the media who of course attend

all our Meetings and report on them and to our recording assistants and of course I must not leave out the Members of the Government, all of them, we do wish them at the human level and at the personal level all the very best over the Christmas period and into the New Year.

HON P C MONTEGRIFFO:

Mr Speaker, I would like to say something having now had my position formally endorsed by the Chief Minister and say that if the Leader of the Opposition finds it gratifying to have assistance from members of the staff of this House because he finds its assistance of more benefit now that he is in Opposition, I can assure him that that assistance is all the more necessary when one finds oneself alone in the House. I think that only the Chief Minister and no other Member here has experienced this Mr Speaker. I therefore give a sincere thank you to the members of the staff and to yourself Mr Speaker for that assistance which I know will be a continuing assistance. I am very young to the task that I have set myself here in this House, but I certainly join all other Members in wishing everybody in this House and in Gibraltar generally prosperity and good will for the New Year. Thank you Sir.

MR SPEAKER:

In reciprocating the seasons greetings on behalf of the staff and myself, I must say I am bit worried in that it looks as if my post is just about to become redundant by the way the House is behaving and, I think, everyone would wish that the House should also extend its best wishes and prosperity in particular in 1990, to Gibraltar Shiprepair Limited.

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

