

# GIBRALTAR

## HOUSE OF ASSEMBLY



# HANSARD

18<sup>TH</sup> JANUARY, 1990

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Eighth Meeting of the First Session of the Sixth House of Assembly held in the Assembly Chamber on Thursday 18th January, 1990, 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 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

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 9th November, 1989, having been previously circulated, were taken as read and confirmed.

COMMUNICATIONS FROM THE CHAIR

Members will recall that in the July meeting when Honourable Members welcomed the ruling on the personal option to disperse with the wearing of jackets in the Chamber on occasions classified by the Speaker as unbearably hot, climatically of course, the House also showed tacit approval to the expectation of another practical step, the indexation of Hansard. It is now a pleasure to report that the Chief Minister having authorised its implementation, and thanks to the resourcefulness of the Clerk and keen cooperation of the rest of the staff of the House, work on it will commence forthwith. I know Honourable Members will welcome the realization of this long awaited administrative action that will add importance to what has been expressed in the past and what is said henceforth by Honourable Members. The Hansard will cease to be a dark tomb of dead reports and become a live archive from where information can easily be traced by any person interested in the views of Gibraltar's elected representatives and their decisions, where it matters most, and in so doing strengthen the foundations of the sovereignty of the people of Gibraltar as embedded in this august House of Assembly.

DOCUMENTS LAID

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

- (1) The Employment Injuries (Claims) (Amendment) Regulations, 1990.
- (2) The Employment Injuries (Benefits) (Amendment) Regulations 1990.

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.5 of 1989/90).
- (2) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.6 of 1989/90).
- (3) Statement of Supplementary Estimates No.3 of 1989/90.

Ordered to lie.

## ANSWERS TO QUESTIONS

The House recessed at 1.00 pm.

The House resumed at 3.20 pm.

Answers to Questions continued.

## BILLS

### FIRST AND SECOND READINGS

#### THE CONTRACT AND TORT (AMENDMENT) ORDINANCE, 1990

HON M A FEETHAM:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Contract and Tort 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, we are here satisfying one of our obligations to the European Economic Community. A substantial area of activity in the EEC is aimed at looking to fair competition rules and is concerned with consumer protection. The Directive to which this Ordinance will give effect is one such measure. It concerns what are commonly called doorstep contracts and it basically gives the purchaser an opportunity to reconsider and to back out of, for example, an agreement to, say, buy a new carpet where the selling took place in the purchaser's own home. It recognises that saying no may be more difficult where the salesman is sat on your sofa drinking a cup of coffee than when you are actually in his own shop. To give effect to the Directive, we are incorporating it into our contract law, in other words, make a contract for sale in these circumstances and the Directive would apply. Like many Directives in this area, it is very simply written and easy to understand. It leaves one or two things to the discretion of Member States. For example, it gives Member States an opportunity to limit its application. We have chosen not to do this and that is reflected in subsection (2) of the proposed Section 42. Again in the situation where money may have changed hands or work having been undertaken before the consumer backs out of the purchase, the Directive requires that Member States say how such

issues should be resolved. We do this by using the existing provisions of the Contract and Tort Ordinance which adequately deals with the matter. I refer you to Section 3 of the new Section 42. The EEC has a tendency to amend and replace Directives as experience and policy dictates such change. To facilitate the application of relevant changes in the Directives concerned with doorstep contracts, we propose the measures contained in the proposed Subsection 43. In the majority of instances where the provisions of the Directives will apply, no dispute will arise. The transactions which are excluded are clearly set out and in reality there are probably few occasions in which the consumer in Gibraltar needs the protection of this proposed legislation. However, we have an obligation to ensure that our laws adequately reflect the relevant Directives. For this reason, Mr Speaker, I move this Bill. 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, without being completely familiar with all the provisions of Directive 85/577, we nevertheless welcome the legislation. We support it and we will be voting in favour.

HON P C MONTEGRIFFO:

Mr Speaker, in welcoming the legislation, the question that I would like to raise and I may have an indication from colleagues on this side, I am not sure. My understanding is that the Directives are 1985 Directives and we are now in 1990. Is there any reason why the Directive has now become relevant and was not relevant in 1985 or is it just part of a general catching-up process which the Government is involved in?

HON M A FEETHAM:

A catching-up process.

HON P C MONTEGRIFFO:

I am obliged, Sir.

MR SPEAKER:

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



HON M A FEETHAM:

I have nothing further to add, Mr Speaker.

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 SALE OF GOODS (AMENDMENT) ORDINANCE, 1990

HON M A FEETHAM:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Sale of Goods 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, safety of toys is a subject which has been before this House before, it is also a matter of concern in the European Economic Community generally. The Bill before us now gives effect to the EEC Directive concerned with the safety of toys insofar as it is necessary to do so within Gibraltar. The real burden of ensuring toy safety lies with the manufacturers and the bulk of the Directive of 88/378 is concerned with procedures for establishing safe standards of materials, manufacture and inspecting toys both made in a Member State or imported through the EEC through that Member State. In terms of enacting legislation in Gibraltar, that part of the Directive is relevant only insofar as a symbol CE on a toy tells them that that toy has been inspected in accordance with the Directive and found to meet the required safety standard. We can rely on that and on the work being carried out in other Member States to tell us that the toy may be presumed to satisfy the standard of the Directive and of our Bill and will not jeopardise the safety or health of users when used in a reasonable foreseeable way. Information is vitally important and the Bill reflects the requirements of the Directive in respect of the provision of information both about the manufacturer and the about the toy, requiring warnings appropriate to the particular toy or its use to

be attached or included in the package. In the area of the information and warnings, the Directive is clear and requires no local interpretation. We are therefore incorporating that part of the Directive into the Bill. This means that amendments to the Directive which result from experience or improvement in technology can be given effect to quickly and easily by notice in the Gazette. The effect of the Bill will be to make it part of every sale of a toy that the seller warrants that the toy is safe as specified in the Bill and that all the required information or warnings are included. If the toy is not safe or if the information is not included, there will be a breach of contract. The Directive defines what is meant by a toy. That is any product or material designed or clearly intended for use in play by children of less than 14 years of age, but does exclude a number of particular products. This again is likely to change with experience, and so again we are incorporating the changing and improving terms of the definition in our Bill and because of the details provided the Directive and amendments can of course be published in the Gazette. The reality in Gibraltar is that toys imported for manufacture is very small and hardly significant. The most important safeguards are the activities of other Member States in inspecting toys and our own import control system. In advance of this Bill taking effect, a Regulation will be put in place prohibiting the imports of toys that do not meet the EEC standards. It should then be extremely difficult for anyone to sell a toy that is unsafe. However, this is an important area where consumers are particularly vulnerable and worthy of protection and for this reason I beg to move this Bill. I commend the Bill to the House, Mr Speaker.

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:

Mr Speaker, I declare an interest in this Bill. I asked a question about unsafe toys a very short time ago, and I am very pleased to see that the Government has acted so quickly to put the matter into proper perspective and have brought this Bill forward. It has our complete support and we hope that it will be satisfactorily implemented. The only question I would mention is that it is hoped that there will be adequate observation of toys to see that they do conform and that if people do transgress this agreement they may be brought to the attention of the proper authorities.

HON P C MONTEGRIFFO:

Mr Speaker, in welcoming this Bill, the point that I would



like to raise is that I feel that the two areas that should be looked at is the question of importation and the Minister,

I am glad to see, has highlighted that aspect as being an aspect that still requires regulation. The present Bill in fact, as I understand it, is the sole legislation that will now exist. In respect of safety of toys there is a complete vacuum other than this. As a more practical point of view, as the Minister rightly points out, since locally produced toys is an insignificant part of the market, effectively it is going to be import controls that is going to start imposing any type of standards in the toys that our children receive. I do not want to, and I am not able to comment more on that obviously until the rules are published, but one question that I would put to the Minister and obviously we are not responsible for what they do, but is the Minister aware, for the general information, of whether Spain has itself passed the provisions of this Directive? Because whereas I am quite happy to receive the British, German and North European toys, the fact remains that there is increasingly a tendency to import Spanish toys and I think it will be a sort of comfort if the Minister could confirm that Spain has adopted these Directives. Then we would hope that our neighbours take action to actually comply with this and if they implemented it that would make sure that we would be one step ahead.

HON ATTORNEY-GENERAL:

Mr Speaker, can I assist on that point. Firstly, the Directive is not due for implementation until June of this year, so I am happy to be able to say and the Honourable Mr Featherstone I am sure, particularly will be happy to know that for once Gibraltar is ahead of its obligations. If Spain has not yet implemented the provisions of the Directive one can hope that it will do so by the implementation date, in approximately five months time.

MR SPEAKER:

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

HON M A FEETHAM:

Mr Speaker, I do not think I have anything to add. I think all has been answered except to thank the Opposition for their support.

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 PENSIONS (WIDOWS AND ORPHANS) AMENDMENT ORDINANCE, 1990

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.

SECOND READING

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

HON ATTORNEY GENERAL:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill follows the Pensions (Widows and Orphans) (Amendment) Ordinance of 1989, that is, Ordinance No.31 of 1989, which was passed by this House on the 10 November of last year. That Ordinance, Sir, prohibits entry into the Widows Orphans and Pensions Scheme of any person who joined Government Service after the 26 October 1989, and enables any existing participating employee to contract out and obtain a refund of his contributions. The present Bill, Mr Speaker, further amends Section 13 of the Ordinance in two ways. Firstly, by imposing a deadline date of 30 March 1990, that is the last working day, Mr Speaker, of the present Financial Year, for the giving of notice by persons wishing to opt out and claim a refund of contributions and, secondly, to restrict eligible applicants wishing to take that step to those public officers who are currently in Government Service. This further amendment to Section 13, Mr Speaker, is appropriate because of the wide definition of 'contributor' contained in Section 2 of the Ordinance. Sir, 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 A J CANEPA:

Mr Speaker, we have no problem about supporting this measure. I understand the position as it is in Section 13 (1)(a) or (b) of the main Ordinance which are the two cases where a person is not able to benefit from the provisions of the scheme by virtue of the fact that he does not have a wife. If he has never married, he does not have a wife then his widow cannot benefit from the provisions of the scheme and in such circumstances, of course, the right

thing to do is to enable that person to have the option of, on retirement, collecting back his contributions. The other instance is that of a person who when he leaves the Public Service in any case does not become entitled to a pension, let us say because he does not have the necessary number of years of service. If someone retires from the Public Service with eight years service, then the normal practice is that he has his contributions under the scheme refunded, because otherwise he would be collecting contributions under false pretences because he is not able to collect the pension so other than in those two cases it does seem to us that it is the correct thing to preclude contributors who have already left the Public Service who do not come under either of those two categories from saying "we also want a refund" and therefore we support the measure.

HON P C MONTEGRIFFO:

Mr Speaker, in welcoming this there is only one question mark that perhaps the Honourable Mover could clarify. He has mentioned the time limits up to the end of March 1990 for the taking of the option, but I do not feel he fully explained the rationale behind that. I assume it to be the case that the Government would like finality in the matter and say "right we will end up with a close scheme of those who remain and we will weed out quickly", and I do not use "weed out" in a bad word, I mean "we will determine quickly those who want to get out rather than have a messy situation of people potentially being at later stages". That is something I would like clarification on but subject to that point I would be happy to support it, Sir.

HON CHIEF MINISTER:

No, the position is quite simple and, in fact, it was pointed out to us after we had passed the previous Bill and we missed it. But the view was put to us from within the administration that the nature of the scheme is like an insurance scheme and of course if you are contributing to an insurance scheme to protect your widow against your death and you have an open ended opportunity to get the refund of all your contributions then it is a one way insurance system, because if you die the scheme pays and if you live the scheme gives you all your money back. The whole basis of financing of the scheme is on the assumption that those who are fortunate enough to live pay for those who are unfortunate enough to die, and we missed that point initially and it was brought to our notice afterwards.

MR SPEAKER:

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

HON ATTORNEY GENERAL:

Thank you Mr Speaker. I do not think there is anything further I can use here, except to thank all Members opposite for their support for this Bill.

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) ORDINANCE, 1990

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 purpose behind this Bill is to amend the existing provisions in our law relating to the Courts' powers to grant compensation to victims who have suffered injury or loss by reason of the commission of criminal offences. As the law at present stands, Sir, the position is as follows. Firstly, the Supreme Court has power to order the payment of up to £1000 from the Consolidated Fund to any person who is injured or if he is killed to his widow or children if such death or injury has occurred as a result of such person endeavouring to apprehend any person charged with any offence which is punishable by death or imprisonment for a period of at least seven years. You will note, Mr Speaker, that in respect of this provision the word is charge and not convicted. Secondly the Supreme Court can order compensation of up to £300 but the Magistrates' Court is at present limited to a maximum of £100 to be paid by any person convicted of a criminal offence to the person who has suffered any injury or damage to or loss of property as a result of a commission of that offence. And thirdly Sir, the Court can order the payment of up to £50 from

the Consolidated Fund to any person who has shown courage, diligence or exertion in or towards the apprehension of any person convicted of any offence punishable by death of by imprisonment for a period not less than two years. This, of course, Mr Speaker, is a payment in the nature of a reward. Those present provisions are modelled on the UK Criminal Law Act 1967 and do not appear to have been reviewed since then. Mr Speaker, I will be moving certain amendments at the Committee Stage of this Bill and for the purpose of what remains of my address at this stage the second reading of the Bill, I will assume that the amendments I intend to move will be allowed. Clause 2 of the Bill as I propose to slightly amend it will empower the Supreme Court to pay compensation not exceeding £3000 to any person injured or to the dependents of any person killed where such injury or death has been occasioned in an endeavour to apprehend somebody who has been charged with an offence triable at the Supreme Court. As the House is aware Mr Speaker, the most serious criminal offence such as murder, rape and robbery merely by way of example, can only be tried at the Supreme Court, but there are a category of less serious offences which can be tried either at the Magistrates' Court or the Supreme Court such as most offences involving an allegation of assault, theft, criminal damage etc, and the provisions in Clause 2, as proposed to be amended, are modelled upon Section 30 of the United Kingdom Powers and Criminal Courts Act 1973. Sir, Clause 3 of the Bill, as proposed to be amended, will enable the Criminal Courts either upon application or of their own volition to have power to impose upon an offender the compensation order with the object that compensating the person who has suffered injury, loss or damage as a result of the offence. The Courts' powers here arise upon conviction and while the Supreme Court will have unlimited power to make whatever order is considered appropriate the jurisdiction of the Magistrates' Court will be limited to the sum of £2000. The proposed section repeals and replaces the existing section 227 of the Criminal Procedure Ordinance and the new section goes on to specify the factors which the Court, before making any compensation order, is obliged to take into account. Most important of all, Mr Speaker, this House may think, an obligation is imposed upon the Court to give preference to the making of any appropriate compensation order where it feels that the offender has insufficient means to pay both the compensation order and a fine. It will be seen therefore, Sir, that what is intended is that the Court should think first and foremost of procuring suitable compensation for the victim of an offence and think, secondly, a suitable retribution so far as the offender convicted is concerned. Clause 4 of the Bill inserts into the Ordinance three new sections which I really hope Members will agree are self-explanatory. The proposed section 227A creates a right of an appeal for an offender against which a compensation order is made. The prospective section 227B empowers the Court who has made a compensation order to review it and possibly to

discharge it if subsequently there has been civil proceedings in which a material order has been made in favour of the injured person or if he has succeeded in retrieving the property which he initially lost as a result of the commission of the offence. The new prospective section 227C deals with the effect of compensation orders on subsequent awards in civil proceedings. Mr Speaker, Clause 5 of the Bill deals with the Court's powers to reward a person who has been active in or towards the apprehension of any person who has actually been convicted and in exercising that power the Court is obliged to consider what sum is reasonable and sufficient to compensate a person who is deemed worthy of a reward for his expenses, exertions and loss of time effected in or towards the apprehension of the relevant offender. Clause 6 of the Bill creates the necessary flexibility to review the maximum levels of compensation from time to time by empowering His Excellency the Governor after consultation with the Chief Justice to make appropriate regulations. Mr Speaker, this is yet another example I suggest of a Criminal Bill containing provisions which Members may think could and should have been introduced to this House before now. It has the support of all Members of the Judiciary and I do hope also Mr Speaker, the support of Members on that side of this House. Sir, it is my pleasure to 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 G MASCARENHAS:

Mr Speaker, the Opposition will welcome the legislation. It is progressive legislation, perhaps long overdue. We shall certainly be voting in favour.

HON P C MONTGRIFFO:

The only thing that I want to say is that I obviously support the Bill and that this might be seen as a good example of what I might suggest to the Attorney-General, or the Government generally, could become the practice and a mirror for all our Ordinances. Our Ordinances very usefully Mr Speaker, itemise the equivalent English section from which Gibraltar law is taken in the cases where Gibraltar law mirrors exactly an English section. That is of enormous help to people when looking at the law. Because as the Attorney General will well understand, laws always suffer modification and interpretation and when you are enacting something to the UK laws since 1967 it really might mean something very different to what it literally says in this sheet of paper in terms to the way it has been interpreted. I wonder whether the Attorney General could see his way, if not on the margin of each of the Bills, to have a



reference within the Section as is the case in our Ordinances or at least, in perhaps, the Explanatory Memorandum to have a brief note as to the English source of the legislation if that was to be the case in any particular legislation. I think, Mr Speaker, that that really would help us understand better the problems which for example this type of legislation might have given right to the UK over nearly 25 years of implementation there. Now I know it is part of the Criminal Law Revision Act 1967, but I mean it could have taken an impossible memory effort on my part to have devised that and to have guessed it myself. That is the only point that I would like to make.

MR SPEAKER:

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

HON ATTORNEY-GENERAL:

Thank you, Mr Speaker, I am very grateful to the Honourable Mr Montegriffo for his contribution and the thought of doing what he suggested has not escaped my mind, Mr Speaker, but the reason why I have been reluctant to do that, at least so far, is because in drafting Criminal Legislation although I have drawn upon the provisions contained in existing UK Law, the corresponding provisions I have not always religiously followed word for word the exact wording of the corresponding section in the English Statute and secondly Mr Speaker, if one does so and one inserts a marginal note to indicate what precisely the corresponding provision of the UK law is. One gets into difficulties, if in Gibraltar, we subsequently amend that Section. I do take particular notice of the Honourable Member's comment concerning satisfactory details in the Explanatory Memorandum and I will give, certainly, serious consideration to that. Mr Speaker, I am grateful to all Members of the Opposition for their support, I think you will agree that I have certainly have not been inactive in bringing Criminal Legislation to this House in the very short time I have been a Member and I have got lots of ideas yet. 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 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 MAGISTRATES' COURT (AMENDMENT) ORDINANCE, 1990

HON ATTORNEY GENERAL:

Mr Speaker, in respect of Item No.5, the Magistrates' Court

(Amendment) Ordinance, 1990, as communicated to you in my letter of 15 January 1990 it is not proposed to proceed with this Bill. Mr Speaker, on this occasion for the benefit of the Honourable the Leader of the Opposition and anybody else who may be interested I will give reasons. Mr Speaker, I indicated that at the Committee Stage of the previous Bill I had the honour to commend to this House the Criminal Procedure (Amendment) Bill, I will be moving amendments at Committee Stage. Those amendments, Mr Speaker, I can tell the House, will include the provisions that would have been or perhaps will become the Magistrates' Court (Amendment) Ordinance of 1990 and for that reason, Mr Speaker, there is no necessity now to proceed with this particular Bill.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that this House do now adjourn to Thursday 15 February at 10.30 am.

HON A J CANEPA:

Sir, I was under the impression that motions would be taken in this session. I remember speaking to the Clerk about that.

MR SPEAKER:

Well the session as you can see has not been finished, there is more business of the House to follow and what the Chief Minister is doing now is adjourning the House at this point.

HON CHIEF MINISTER:

To the 15 February when we propose to continue with the First and Second Readings of the Bills, Mr Speaker.

HON A J CANEPA:

But that was not my impression Mr Speaker. My impression was that, and I hope that there has not been a failure in communication, because what I communicated to my colleagues was that the House would be adjourning to mid-February when we would be taking the rest of legislation and other matters. I however remember that when I spoke to the Clerk of the House the understanding was that the motions, of which we had been given notice, would be taken now. Particularly the one which is particularly topical now. There may be no point in taking it in mid-February, Mr Speaker. At least that was now it had been presented to all, including the media.

HON P C MONTEGRIFFO:

Mr Speaker, can the Chief Minister at least explain further

the reasons for wanting to adjourn the House totally until the 15 February as opposed to perhaps adjourning certain items of the Agenda, like, for example, the fact that the Attorney-General now has given an indication that on the Magistrates' Court Ordinance, it will be dealt with in a different way? If there are specific items of business which the Government is not able to proceed with at present then that might be the subject of a legitimate or a more understandable delay. But not on the other business which does not depend on the Government being ready. Is there any reason which the Chief Minister should put to us for our persuasion which would militate against our impatience on wanting to have the session go on now?

HON A J CANEPA:

Perhaps, Mr Speaker, I might say something further, because you have been absent, you have been away from Gibraltar, and therefore my means of communication with the Chief Minister on these matters is through the Clerk. If there were to have been difficulties on the matter I would naturally have brought you into it, moreso if you were not in Gibraltar. However, the position was absolutely clear-cut and the motions were going to be debated now and therefore we came to the House ready to debate the motions today and tomorrow. The House would then have adjourned to the middle of February for whatever other legislation was outstanding and for any other business or any other Bills which the Government might wish to introduce between now and the middle of February, as has been done on other occasions. But I think that that is totally unacceptable that the House just winds up its proceedings this afternoon when everyone has come here with the expectation that there are important matters which were going to be debated.

MR SPEAKER:

Well, the understanding was, as the Honourable Leader of the Opposition is saying, that the Leader of the House appears to have made another decision now and as Leader of the House he has the right to do it.

HON A J CANEPA:

Mr Speaker, if the Leader of the House continues to proceed in this manner he might well come here in the middle of February and find that there is no Opposition Members in the House. If that is how he wants to proceed, ultimately the public may judge him. At the moment he is riding high but people may have second thoughts if he is going to proceed in such a high-handed manner without any consultation because there has been no consultation, Mr Speaker.

MR SPEAKER:

Well I have not put the question. What I will do is I

will put the question and then it is up to the Leader of the House to say what he may wish to say. I now propose the question which is 'that this House do now adjourn to Thursday 15 February, 1990, at 10.30 am.

HON CHIEF MINISTER:

Mr Speaker, the House meets when it suits the Government of the day that it should meet and has always done so. The degree of consultation to which the Honourable Member refers never happened before in all the time that I was on the opposite side of the House. I found when we were meeting next when the then Leader of the House stood up and adjourned the House and told the House to when the House was being adjourned. The position therefore is that since we are still on Government business and since there are matters in the following two Bills which require further work on our side and we are not ready to proceed we have decided to interrupt the sitting of the House at this point as we are perfectly entitled to do. We will continue at the point at which we are interrupting business on the 15 February. By which date we hope to be in a position to carry on with the work of the Government and when that work is completed it is then, and only then, that the motions of the Members opposite will be debated. Mr Speaker, what Members in Opposition can do, and it is the only thing that they can do, is to take advantage of when the Government needs to come to the House to carry out its business to put forward the views that they want to put forward and therefore nothing is going to happen between now and the 15 February that is going to alter the subject matter of the motions to which Honourable Members opposite are referring. Mr Speaker, they all refer to historical situations and if he is very well prepared today then I imagine he will be even more well prepared on the 15 February.

HON A J CANEPA:

Mr Speaker, the fact of the matter is that there is no precedent for what is happening today. It has never happened before. The proceedings of the House have never been interrupted suddenly out of the blue in the manner in which they are being interrupted now. If the Government is not ready to proceed with two Bills then those Bills can be left for a later date. To the 15 February or to any other date which is convenient. It is without precedent in all the years that he and I have been Members of this House for the Leader of the House to stand up all of a sudden without the Members of the Opposition knowing anything about it and moving the adjournment of the House and suddenly interrupting the House in this manner. Of course he can do that. He has the majority, he has 71% support from the people of Gibraltar and his Government has 67%. He can do the opposite to what is happening in Eastern Europe and undermine democracy, if he wants to, but to say that that has happened in the past is not the case. It has

never happened and the previous Chief Minister, Sir Joshua Hassan, was always very careful to consult Leaders of the Opposition before taking action of this sort. Of course there was sometimes agreement to take a motion, and sometimes agreement would not be reached to defer it to a later date. But, Mr Speaker, what is happening here this afternoon, and all Members who have been Members of this House over the years know that perfectly well, some of us going back to 1969, even before the Chief Minister and I joined, that this sort of thing has never happened before. Let him not dress it up in any other way and pretend that there is a precedent because there is no precedent and the facts are that all Members on this side of the House came here under the impression that we were going to debate the three motions.

HON P C MONTEGRIFFO:

I have got to express my deep disappointment at the attitude of the Chief Minister. I asked a moment ago for a reason why it should not be possible for the Government to defer its own business and let the House deal with other business and I think the answer the Chief Minister has given basically is that might is right. That "since I can do it I will do it" as opposed to giving any more persuasive argument as to why he should do it. I regret it, I accept the fact that he has the authority to do so, but I think it is a bad day for this House. Secondly Sir, and I finish with this, is that I feel it is an element of discourtesy. I certainly after the dinner that we jointly went to, Mr Canepa, Mr Bossano and myself, I personally sat down at 1 o'clock at night to prepare for what I thought I might want to say on certain aspects of the motion and I think it is important because one has to come prepared and I think there is an element of discourtesy unless there was a very good reason to defer matters of this nature. There should have been an element even as late as yesterday to have said "it is the Government's intention to defer this or that business". I think, Mr Speaker, that it is not the way of conducting proceedings in a civilised debating chamber which this House becomes when we argue and debate things like the areas the motions are addressing and I think it is discourtesy and I regret the decision and I feel it is a sad day for the House.

HON A J CANEPA:

Mr Speaker, what is happening here this afternoon is that the Chief Minister is adopting this tactic in order to deflate from the importance of one of the motions which has been the subject of a public outcry and what he is hoping is that in a month's time, by then, people will no longer care about the issue. That is the reality. He has had plenty of opportunity, it is the simplest thing in the world to speak to me and to tell me that he is going to alter the proceedings but no, he prefers to be high-

handed. If that is the way that he wants to proceed, as he is quite correct in saying that the motions are in a way historical, the one on the televising of the proceedings of the House I can bring at any time. The other one even if he wants to deflate it, it is not going to come on the 15th February, and it is not going to come on the 15th February because I will not be here then to move that Motion and I will then bring it up at the following meeting of the House because if it is not going to be debated today or tomorrow, it does not matter whether it is the 15th February or the 15th March, but as an act of protest against the high-handedness of the Government, we will not be here on the 15th February.

MR SPEAKER:

May I just point out that we have got to follow the rules of the debate. Members can only speak once. I have allowed the Leader of the Opposition because he feels very strongly about this, but I must now tell Members that they can only speak once on this debate. Does any other Member wish to speak? If not I will call the mover to reply.

HON CHIEF MINISTER:

Mr Speaker, I think the reaction of the Honourable Member opposite is clearly because I have spoiled him in the year and ten months that we have been in Government and this is what happens. Sometimes when you are too magnanimous with people they take things for granted. As I have said originally in the all the years that I have been here never once did the then Leader of the House say to me when he proposed to start or when he proposed to finish any meeting and I took the trouble to prepare myself to deal with any situation as it arose, and the position is that he will get less information from now on, not more, since he is taking it the way that he is taking it. So as far as I am concerned the position is that we call meetings of the House when it suits the Government to call the meeting of the House to carry out the business of governing Gibraltar which is what the AACR did for the last sixteen years and what the AACR has to do now that it has been relegated to where it should have been for the last sixteen years, is to accept that it is in Opposition and when the opportunity arises bring to the House whatever they want. If he is not here on the 15th February then, Mr Speaker, all that will happen is that we will have a few less hysterical outbursts on the 15th February than we have had today, but I am sure we can live with that. I beg to move the adjournment of 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 P C Montegriffo  
The Hon Dr R G Valarino

The motion was therefore carried and the House adjourned to Thursday the 15th February, 1990, at 10.30 am.

The adjournment of the House was taken at 5.30 pm on Thursday the 18th January, 1990.

The House resumed at 10.45 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 GSI and Tourism  
The Hon J I 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 I Moss - Minister for Education, Culture and Youth Affairs  
The Hon K W Harris - Attorney-General  
The Hon P J Brooke - 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.

OATH OF ALLEGIANCE OF NEW MEMBERS

The Hon P J Brooke, Financial and Development Secretary, took the Oath of Allegiance.

MR SPEAKER:

I think the House would like me to welcome the new Financial and Development Secretary and wish him an exciting and enjoyable time in the House and fulfilment in his new capacity here in the House.

Thank you very much, Mr Speaker, for your kind words of welcome on behalf of the House. Can I say how honoured I am to take up my new post in Gibraltar and how much I am looking forward to contributing to the deliberations of the House to the best of my ability. Thank you very much.

STATEMENT BY MR SPEAKER ON PARLIAMENTARY PRIVILEGE

MR SPEAKER:

I would like to make a statement on the question of Parliamentary Privilege.

Matters touched upon at the last meeting of the House have given rise to correspondence being addressed to Members which could inhibit their legitimate activities as elected representatives in this House of Assembly. I thus believe it prudent to bring to the attention of Honourable Members and the public generally, the privileges with which elected Members are vested for the purpose of carrying out their duties in this House and by my doing so discourage and dissuade people breaching these privileges and, in the process, unwittingly perhaps, making themselves liable to the consequences of any such acts of contempt.

"Parliamentary privilege" is defined in Erskine May, as "the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals".

Section 36 of the Gibraltar Constitution Order 1969, states:

"The Legislature may prescribe the privileges, immunities and powers of the Assembly and its Members, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom or of the Members thereof";

and Part V of the House of Assembly Ordinance - "Powers and Privileges of the Assembly" - Section 61, states:

"There shall be freedom of speech and debate in the Assembly. Such freedom of speech and debate shall not be liable to be questioned in any court or place outside the Assembly".

Section 62 states:

"No civil or criminal proceedings may be instituted against any Member for words spoken before, or written in a report to, the Assembly or to a committee thereof or by reason of any matter or thing brought by him therein by petition, Bill, resolution, motion or otherwise".

The privileges extended to Members individually are far reaching and legally complex. The subject cannot be examined widely and extensively in a short statement as the one I am making today. Furthermore each situation has to be considered on its merit if and when it arises.

Thus to meet the situation that has obliged me to make this statement I must draw attention to the freedom of speech that elected Members are protected by whilst carrying out functions connected with proceedings in the House.

Members are protected from interference through any form of physical, oral or written intimidation which could be considered to obstruct Members of the House carrying out the duties for which they are elected.

Members who may feel being so obstructed may report the matter to the Speaker, who taking into account the facts and circumstances of the case, will follow up the report as he may deem necessary bearing in mind that the House collectively in its judicial capacity is the Court that will pass final judgement if so required.

As past examples of what may constitute molestation of Members on account of their conduct in the British Parliament, I quote cases embodying this type of contempt:-

- "(a) Challenging a Member to fight on account of their behaviour in the House or any committee thereof or even on account of remarks made outside the House which touched proceedings in the House;
- (b) Writing letters to Members taking notice of speeches said to have been made in the House and threatening to contradict them from the Gallery;
- (c) Sending insulting letters to Members in reference to their conduct in Parliament or letters reflecting on their conduct as such Members;
- (d) Threatening to inflict pecuniary loss upon a Member on account of his conduct in Parliament;
- (e) Inciting the readers of a newspaper to telephone a Member and complain of a question of which he had given notice;
- (f) Calling in a newspaper for the arrest of a Member and describing him as an arch-traitor;
- (g) Sending a letter to a Member threatening him with the possibility of a trial at some future time for asking a question in the House".

It will be noted from the above that conduct not amounting to a direct attempt to influence a Member in the discharge of his duties, but having a tendency to impair his independence in the future performance of his duty, will also be treated as a breach of privilege.

This statement should make everybody aware that when any of the rights and immunities, both of the Members individually, and of the Assembly in its collective capacity, which are known by the general name of 'privileges', are disregarded or attacked by any individual or authority, the offence is called a breach of privilege or contempt and is punishable under the law of Parliament as may be applicable in Gibraltar.

#### NOTICE OF MATTER TO BE RAISED ON THE ADJOURNMENT

MR SPEAKER:

I would like to inform the House that the Hon K B Anthony has given notice that he wishes to raise on the adjournment, matters relating to the question of the non-collection of rubbish on Sundays.

#### DOCUMENTS LAID

The Hon the Financial and Development Secretary moved the suspension of Standing Order 7(3) in order to suspend Standing Order 7(1) to lay on the table the following document:

Statement of Supplementary Estimates No. 4 of 1989/90.

Ordered to lie.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, if I could just explain that the Statement of Supplementary Estimates No. 4 of 1989/90 has been laid on the table because Statement No. 3 of 1989/90, which was laid on the 18th January, 1990, is not being proceeded with. The Bill to which that Statement referred is also not being proceeded with. The House will have noted that a new Supplementary Appropriation Bill has been included in the Supplementary Agenda to which the Statement just laid refers.

#### BILLS

#### FIRST AND SECOND READINGS

#### THE PUBLIC HEALTH (AMENDMENT) ORDINANCE, 1990

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Mr Speaker 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 object of this Bill, Mr Speaker, is to alter certain aspects of the provisions of Part 11 of the Public Health Ordinance that deals with rating. One aspect of the alterations has an important extension of rating policy, the others are largely of a consequential or administrative nature. I should like to start by dealing, first, with the more important change. The Government considers that there should be additional machinery in the rating system to provide incentives in furtherance of the overall planning of Gibraltar's economic development. For example, if and when the development of an industrial park were to take place in Gibraltar, it would be advantageous to have the existing business take up accommodation there even though this might be more expensive for them because of the level of rents and rates. The measures proposed would enable relief to be granted to encourage such movement and cushion the additional expense, the amount and period of such relief being as considered appropriate in each case. The criteria for such relief would, by the nature of the proposal, need to remain flexible to respond to the developing circumstances of Gibraltar. This is the purpose, Mr Speaker, behind the amendment in Clause 2 of the Bill, subsection (3) of section 271 of the existing Ordinance which currently only provides for relief from rates to be granted on account of the property of an individual. The amendments proposed in Clauses 3 and 4(b) of the Bill are simply consequential upon the repeal in 1989 of the Gibraltar Museum and Antiquities Ordinance which was replaced by the Gibraltar Heritage Trust Ordinance. Thus no rates will be payable under the provisions of section 273 of the Ordinance on any building listed in Schedule 1 of the Heritage Trust Ordinance and the Gibraltar Museum continues to be exempt from assessment. I have already indicated to Members, Mr Speaker, by circulation, my intention to move an amendment to the Bill at Committee Stage to delete Clause 4(a) which is considered, upon reflection, to be superfluous in the light of Clause 2. The amendments in Clause 5 of the Bill are



relative to section 282 of the Ordinance and is purely for administrative convenience. As stated in the Explanatory Memorandum of the Bill, it would transfer the responsibility for granting exemption from liability to pay rates in respect of property used for charitable and related activities from the Governor to the Financial and Development Secretary. 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 difficulty from the point of view of the Opposition is that the Bill is not a homogeneous piece of legislation. It has a number of Clauses which make provisions which are not entirely cohesive. Therefore it is very difficult to react to the principles of the Bill, particularly during the Second Reading, when there are amendments already and of which we had notice of a couple of days ago and which are very far reaching. Therefore, our intention, I think, is to go into rather more detail and make comments on each appropriate Clause in Committee. Generally, the Bill as it stood originally was not very disquieting, we saw that in Clause 2 it was the Financial and Development Secretary who was being given certain discretion and we were not unhappy about that. There is now an amendment where it will be in accordance with the criteria laid down from time to time by the Government of Gibraltar that will be the basis on which relief will be given and we want really, in Committee, to hear more on this matter and I am therefore giving notice to the Government that we want to hear a little bit more about the nature of such criteria. What is it that the Government has in mind? We therefore feel, Mr Speaker, that at this stage we cannot support the Bill. We will not be voting against it, we will simply abstain on the Second Reading.

HON P C MONTEGRIFFO:

Mr Speaker, I would just add that I do not object to the comments made by the Leader of the Opposition at all but I would just add that in my view the amendments to the Bill, being as they are, effectively, amount to a new Bill in many respects because it is so far reaching that I do not think really therefore that it is proper that the amendments having been circulated on the 12th February, that is, two or three clear days ago, that the matter should be dealt with as if it were simply an ordinary amendment. I will also reserve my position until the Committee Stage to see stage by stage as we go through the sections what the impact of the amendments are. The Bill as originally published is almost superfluous now, Mr Speaker. It is the piece of paper

which was circulated on the 12th that is in fact what I believe this House is being asked to consent to. Thank you, Sir.

HON CHIEF MINISTER:

Mr Speaker, can I just make clear that as far as we are concerned we certainly do not agree with the interpretation of the Hon Member opposite who has spoken last. We do not agree that this is a new Bill and that the amendments are very far reaching because, in fact, what has happened since the last House when we stopped at this point was that in looking at the way the Bill was drafted it appeared to us that it raised complications which had not been brought to our notice at the time that the drafting had taken place and, in fact, you will recall that I said we were not in a position to proceed with the Bill precisely for that reason, because we were not ready to move on what was there. What we are doing now is, in fact, as far as we are concerned, redrafting the Bill to achieve what we were setting out to achieve in the first instance. It is not that there has been a change of policy since the Bill was originally published.

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have taken note, Mr Speaker, the intentions that have been expressed to seek certain explanations at the Committee Stage of the Bill.

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 P J Brooke

The following Hon Member voted against:

The Hon P C Montegriffo

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 Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

THE SUPPLEMENTARY APPROPRIATION (1989/90) ORDINANCE, 1990

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, as I have already explained when tabling the Statement of Supplementary Estimates No.4 of 1989/90, this Bill is not being proceeded with.

THE GIBRALTAR DEVELOPMENT CORPORATION ORDINANCE, 1990

HON CHIEF MINISTER:

Sir, I have the honour to move that a Bill for the establishment of a Development Corporation to secure the regeneration and economic expansion of Gibraltar and to provide for matters connected thereto 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 CHIEF MINISTER:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, I do not know whether there is a need for me to make a speech to move the Bill because, in fact, before we came to the House, the Opposition had already decided that they would be voting against it because they had already passed judgement on it. It may therefore be that my speech is superfluous and unnecessary and we might even be able to expedite the work of this House if we just publish things and then come here and vote without bothering to discuss it. I do not know whether that has any bearing on the privileges of the House, with reference to the comments

that you, our Speaker, were making earlier, but it does seem to me that it would have been more appropriate for the Members opposite to hear first what we want to do and why and then pass judgement rather than to have jumped the gun. However, it is their privilege to do what they wish and not for me to tell them how to run their business on that side of the House which I run for sixteen years.

The Gibraltar Development Corporation is, in fact, drafted, the Bill is drafted based primarily on the position that exists in UK as regards Urban Development Corporations. In fact, the wording used in the UK establishes the purposes for which an Urban Corporation may be created as one of regenerating an Urban Development Area and where there are powers for the Secretary of State to create such Corporation by Statutory Instrument which subsequently get approved by the House of Commons by resolution. However, since we do not have a situation where there are Ministerial powers to create Corporations by Statutory Instrument, a power which obviously has not brought the Constitution of the United Kingdom crushing down, we have more limited powers than they have and have to legislate to be able to do it. Now obviously instead of a Development Corporation it would have been a relatively simple thing to incorporate a limited liability company under the Companies Ordinance which would not have required legislation in the House of Assembly. However, it would then have required a share-ownership, on the part of the Government, and one of the things about the Development Corporation, in fact, is its autonomy from Government. Although we have made provision here, in fact, to require that in order for the Corporation to do certain things they need to get the clearance of the elected Government. So they require the permission of the Government in order to exercise some of their power. For example, particularly their borrowing. In the United Kingdom, for example, it states that "an Urban Development Corporation, as a body corporate, is totally independent of the Crown and it is not regarded as a servant or agent of the Crown" or, in fact, "its property is not regarded as a property held by or on behalf of the Crown". So therefore the Corporation, as an entity, is one that is given a level of freedom to enable it to do a lot of things that are done by other organisations and other institutions, by local authority bodies, etc. It is a form of public body created by a law. The drafting of the Bill has been based, therefore, on the model in UK. We have looked at the Welsh Development Agency, based on information provided to us by the Foreign Office, with whom we have been discussing the requirement to do something around these lines and the Legal Draftsman has also looked at the model of the GBC Ordinance for information as to how a public Corporation might, in fact, operate.

We see the role of the Development Corporation as possibly developing in a number of different areas. One is the question of the Economic Development Council which is a

commitment we included in our manifesto and which we have not been able to fulfil. The reality is that we have had regular meetings with representatives of trade and with the Unions, but these regular meetings are held independent of each other and primarily to discuss with one side or the other matters that are of interest to them. So they are not brought with the Government into the long term planning process. Although we take their views into account but those views are not cross-fertilised because they are views put in isolation by one side and the other. The whole purpose of the machinery created in the United Kingdom by NEDDY was, in fact, to have a situation where the business community in putting views to the Government would do it in a forum where the Trade Unions would be able to put their own objections face to face, as it were, and that has led over the years when the machinery was effective, which has not been very much in the last few years, because the Conservative administration in UK is not particularly keen on the National Economic Development Council machinery. But in the years of the Labour administration when it was, in fact, a very important part of the planning process, it often led to a situation where it was possible for the business community to understand better the arguments of the trade unions side and vice versa. And, in fact, very recently there has been a situation where the new Chancellor of the Exchequer attended his first National Economic Development Council meeting and found himself in a situation where the union and the business community both agreed with each other and disagreed with the Government. So you have a situation where that forum is possible. Although the Development Corporation in the UK does not have that role, it is a totally separate machinery, in looking at how we need to do certain things in Gibraltar and in the light of the experience of the last two years, we feel that maybe we should be looking at adapting some of the institutions that have been created in UK to do a wider range of things than would be done in UK rather than create half a dozen institutions to do them. So we have a situation where we feel that it is important to set up our manpower planning machinery and the House knows that the training of school leavers is an on-going exercise, the formal machinery of the Employment and Training Board which was something we also wanted to do we have not been able to do. So having looked at the Development Corporation in UK, having decided that we had to find a way of combining a number of different things that we wish to do and try and find an umbrella organisation that would be able to do all of them, and we may find that it is not possible to do all we want with this. In many respects what we have done is copy what we have found in the UK legislation, looked to what there is in Gibraltar in other areas and try and put it together to see if it will give us the vehicle that we need. In addition, of course, in looking at the situation where in relation to Europe there are situations where Gibraltar's overall economic interests may be affected we feel that is valuable, and we are advised that is valuable to have, an organisation which is able to act in defence of Gibraltar's

wide economic interests rather than in a narrow sense. For example, if we look at the situation which arose in 1987 with the Anglo-Spanish Agreement on the Airport and again in 1989 with the amendment to the 1983 Directive, the situation is that if those agreements and those decisions affect the overall economic interests of Gibraltar then there is not anybody other than the Government of Gibraltar responsible for those economic interests. A case in point is when we looked at whether it was possible to involve the company that runs the Air Terminal, in a situation where it would be able to argue that its economic interests were being affected, we were told: "Yes, but it is a very narrow interest. You are going to have to demonstrate how much you are losing per annum in a hypothetical case because you are talking about the revenue of the Air Terminal and nothing else". Where as, in fact, there can be decisions taken that affect a wide of businesses in Gibraltar and there is no organisation that can represent the economic impact globally, this would enable us to do it, we are advised. Therefore in getting forward the proposals, in the Bill, it is not that we are seeking to grant ourselves powers that we do not already have. The fact that we have the power to create the Ordinance must necessarily mean that the Corporation cannot be given powers to do things that we do not already have. Otherwise we would not be able to include such powers in the Bill, by definition. So we cannot charge the Development Corporation with the defence of Gibraltar and we cannot charge the Development Corporation with the handling of foreign affairs and we cannot charge it with any of the things that constitutionally are the prerogative of Her Majesty's Government. Therefore there is no way that we can actually change the Constitution by an Ordinance. The Constitution is a document promulgated by the Queen in Council in the United Kingdom and we cannot change it here. We may be de facto reinterpreting it but we do not need to legislate to do that. We just behave in a particular way and it happens. So I am afraid, Mr Speaker, that all the worries and fears that we have seen surfacing in the last 24 hours in relation to this are no more and no less than all the worries and fears that we have seen surfacing every time we have seen a new piece of legislation brought by us to this House since we were elected on the 25th March, 1989. Now if, in fact, the worries and fears are genuine, and are not just Members opposite making a song and dance because they feel that it is the only way that they can attract attention to themselves, then we will look seriously at any arguments that they put forward and we will see whether those arguments can be taken into account with a view to improving the Bill but not, of course, with a view to negating it. So the Government is open to any suggestion from the other side once they explain to us, in this House, what it is that is upsetting them. I commend the Bill to the House, Mr Speaker.



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 Bill is presented with an explanatory memorandum that is very skimpy and has been introduced in the House this morning by a speech from the Hon the Chief Minister that is equally skimpy. What the speech contained was mostly irrelevant to the real purpose and provisions behind this Bill. The Hon the Chief Minister has said very little to justify introducing such a major piece of legislation which has such far reaching consequences. Of course, Mr Speaker, the concept of the Development Corporation is nothing new, it is a mechanism that has been used elsewhere, it has been used and is being used in Malta. There is a Development Corporation there which initially in the days of Malta's isolation was financed by the Chinese and as the Chief Minister has quoted there is the example of the Welsh Development Corporation. These are mechanisms that have been established elsewhere with varying degrees of success and sometimes failure. But whilst we are not necessarily against the principle of setting up such a Development Corporation for Gibraltar, we really doubt whether the very wide powers which the Corporation, and indeed the Government, are obtaining through the proposed legislation are based on similar legislation elsewhere which have the same impact as this legislation, or a comparable impact elsewhere, is going to have in Gibraltar. Where such legislation has been enacted, such as in the United Kingdom, the object is not in any way to breach the well established Western European style of democracy and we very much doubt whether the practical application and impact which this legislation will have in Gibraltar will not, in fact, do precisely that. We are profoundly disturbed by the provisions of this Bill and we doubt if the GSIP Government continues in the same manner as it has been going, and continues in the same manner over the next two years, with legislation which has similar results as this one will have, we really doubt whether there will be much semblance of democracy left in Gibraltar by the time of the next General Election, other than the fact that people, so far, are able to vote every four years at a General Election to introduce a new Government. In fact, Mr Speaker, I think that the objects of the Bill which were read by the Hon the Chief Minister could perhaps have something added to them. It is not just "to secure the regeneration and economic expansion of Gibraltar and to provide for matters connected thereto" but also to provide "for the further dismantling of democracy in Gibraltar". In many matters, in many aspects of life in Gibraltar this Corporation is going to become the Government provided the Hon Mr Joseph Bossano is able to control the Corporation, even after a General Election which

were to see the election of another Government, he would still be able to control many aspects of life in Gibraltar through the Corporation and which, of course, as is his nature, impels him to want to control matters, ie that he should control Gibraltar entirely. Let us consider, Mr Speaker, the way that the Government proceeds with this legislation. The Bill is published at the end of February, a week ago, we get it almost immediately because arrangements are made by your office, Mr Speaker, to ensure that the Bill is circulated. In fact, we had an advance copy, as it were, because I imagine the Government had difficulties in getting the Bill printed and we were given an advance copy in white a few days earlier. However, as far as representative bodies are concerned, this Bill came out attached with the Gazette at the end of the week, the earliest that anybody is going to have an opportunity to look at this is Monday. That, Mr Speaker, does not give much time or opportunity, in fact, does not give any time at all for any representative bodies to look at the Bill and make representations to the Government. Therefore what happens is that the Chamber, the Trade Union, the Property Owners Association, to name a few, have not had an opportunity to consider the Bill unless the Government in its wisdom decided beforehand to bring them all into the process of consultation. If this has been done before the Bill ever saw the light of day well that is another matter but it would be interesting to learn from Members opposite whether that, in fact, has been the case but I however very much doubt it. I would imagine that the Economic Development Council, about which Members opposite made such a fuss at the time of the General Election and which the Chief Minister has mentioned here this morning, would have been an ideal body to consider this legislation in draft and to advise the Government on its provisions. But, of course, the Economic Development Council has taken something of a back seat and two years after Hon Members opposite were elected into Government it still has not emerged.

One of the most important Clauses in the Bill is that which sets out its objects and general powers and after setting out the powers of the Corporation in subclause 3 of Clause 3 and there are the objects (a), (b), (c), (d), (e), (f), that is six subclauses followed by the powers in subsection 5 (a), (b), (c), (d), (e), (f), (g), (h), (i), that is eight or ten subclauses providing for the powers of the Corporation, which are very wide, and which enable the Corporation to carry out numerous functions, employing people, publishing newspapers and magazines and economic activities, naturally. After that, in case anything has been left out, as if that were to matter, there is then a provision that where anything has been left out "subclause (6) to avoid doubt it is declared that subsection (3)" - which relates to powers of the Corporation - "relates only to the capacity of the Corporation as a statutory Corporation; and nothing in this section authorises such a Corporation to disregard any enactment or rule of law". This

means that if anything was left out it does not matter really because anything that is not covered by these rules is still "OK", the Corporation can do as it wishes. In (4) above, Mr Speaker, "No provision of this Ordinance by virtue of which any power is exercisable by the Corporation shall be construed by limiting the....." Mr Speaker, I am sorry, I looked at the wrong subsection (3). It just goes to show, Mr Speaker, how much time we have had to get familiar with the Bill. Coming back to what I was saying, Mr Speaker, ".....shall be construed as limiting the effect of subsection (3) above". So, Mr Speaker, that subsection that contains, which delineate the powers it is not in any way limited because subsection (4) gives an unlimited power to the Corporation. The Bill, Mr Speaker, also makes provision in Clause 6, subsection (5)(a) and (b) to give power to the Corporation to give financial assistance to joint venture companies. Clause 13, Mr Speaker, provides for money to be lent by the Corporation to persons under certain conditions, loans for building and then Clause 19 provides for Government grants to be made to the Corporation. We wonder, Mr Speaker, and we would like to have some advice from the Attorney-General, if he is able to later on, whether these legislative measures might not be contrary to EEC law on the principle of equality. We would really like to hear the Attorney-General's views on this matter. However, quite apart from this point it is clear to us that taxpayers' money is going to be given to a number of joint venture companies without any public accountability. This is really, Mr Speaker, what we most object to and this is, of course, the pattern that we have seen with the setting up and with the activities of joint venture companies over the last couple of years. Certainly there will be no accountability to this House through whom appropriations, sums of money, are voted for the Consolidated Fund because appropriations are normally made through this House but the Government with this Bill has virtually a blank cheque to dish out taxpayers' money without any public accountability. Clause 6, subsection (5)(c) gives the Corporation very wide powers to employ and to terminate the employment of persons and they are so wide that we wonder whether, in fact, these powers do not cut across the protection which is afforded by the existing labour legislation. And we would ask the Government whether the Trade Unions have been consulted? Have they agreed to this or is it that in fact they have not been consulted and no views have therefore been taken into account? I wonder whether such views matter. I do not know, Mr Speaker, how anyone outside the House is expected to get to know what the provisions of this legislation are unless the Government has consulted them beforehand. Another of the most important clauses in the Bill is Clause 9 which enables land to be acquired by the Corporation. Again, Mr Speaker, very wide powers are being given to the Corporation and we remain to be convinced that the rights to property which are enshrined in the Gibraltar Constitution are not being infringed. Now, Mr Speaker, are the rights of property owners going to be safeguarded? Particularly owners of land

next to an area which is going to be required by the Corporation because it is developing a site and there is land next to that site which the Corporation is interested in. Or for that matter how will people, land owners, get protection, for example, subsection (1)(c) "land .....not necessarily adjacent to the area, which the Corporation requires....." If such area is required or the Corporation wishes to lay certain services, sewage, electricity, water, telephone lines through that land. What safeguards do such land owners have? What safeguards does the general public have? Since the land involved could be public land. Again we would ask the Attorney-General if he is satisfied that there is sufficient provision to continue to safeguard the rights of such persons. Together with Clause 14, Mr Speaker, which gives power to transfer the Corporation undertaking, because the Corporation can set up a joint venture company and create an undertaking, that can be transferred under Clause 14 to the other body with whom the joint venture company has been formed. This could cover, it seems to us to allow, and we have not heard anything from the Hon the Chief Minister to make us think differently, the way that we interpret the provisions of the Bill is that it could allow for a situation in which, let us say, Eastern Beach or any other public amenity like Alameda Gardens, could be vested in a joint venture company created by the Development Corporation and another body and then it can be passed on to this other body virtually as they please. And what is more, the Bill then goes on in subclause (3)(b) to provide for the liabilities to be kept within the Corporation but the assets are passed on, it almost seems to be encouraging, Mr Speaker, the abuse or misuse of assets. There are provisions for planning control spelt out in Clause 11 and effectively they render the Development and Planning Commission powerless, they make it redundant. It can be consulted, oh yes, and we all know the meaning which is attached to the word "consultation" by this Government. In real terms the Government is going to become the planning authority and that is utterly wrong. Incidentally, Mr Speaker, Clause 10 also creates a dangerous situation by granting interests over land which can include highways, and other amenities of general use by the public. We must also ask ourselves, Mr Speaker, whether the Government is, through the Corporation, going to involve itself in the manipulation of political activity, political propaganda perhaps I should say, by publishing newspapers, magazines and so on because these are powers being given to the Corporation. In any case is there any sphere of life, Mr Speaker, in Gibraltar which is any longer sacred for the Hon the Chief Minister? Because as freedom increases elsewhere, such as in Eastern Europe, it is directly decreasing in this Westernmost part, this outpost, of the European Continent. Transport, the Corporation is going to be allowed such far reaching powers over transport that it will be able to disregard the powers of the Transport Commission. The powers of the Captain of the Port, if he still has any left, or if there is indeed such an office any longer being filled as that of the

Captain of the Port. And, of course, the functions of the Civil Air Terminal Authority. Clause 16 regulates how the Corporation may conduct its business, or rather it does not, for its powers are so wide that it may do as it pleases when conducting its business. Again, Clause 21 which deals with guarantees and virtually makes the Government supreme. The House of Assembly, that is, Parliament, is by-passed and that is why we say that the Westminster model of democracy is being breached. But this is now becoming the norm for the GSIP. I have no doubt, Mr Speaker, that where Development Corporations have been set up in the UK their role, the impact which they have on the rest of the country is in no way the same as is going to happen here in Gibraltar where the relationship with parliamentary activity, with political and economic activity, is far more accentuated given the size of our community. In conclusion, Mr Speaker, this Bill is obviously very much the Hon Mr Bossano's baby, it is yet another step, a very large step on this occasion, investing more and more power in the Government to enable it to manipulate and to control not just the economy but the ever increasing tendency which it has to do the same in regard of every vital aspect of people's lives. And this baby which the Hon the Chief Minister is creating in the House and which it is going to pass through the House in two days, it will become law by tomorrow, not by today because in Committee we are not going to allow the Bill to be taken as a sign of protest, we will vote against it being taken today. So it will have to be taken tomorrow and it will be seen before very long for the very serious, for the menacing monster, that it is to economic life in Gibraltar.

HON ATTORNEY-GENERAL:

Mr Speaker, there are two points the Hon the Leader of the Opposition raised which he asked me to endeavour to deal with and I will do so to assist this House. When any piece of primary legislation, which has to come before the House, Mr Speaker, is drafted in my Chambers whether by me personally or by someone else, two considerations, of course, arise first and foremost. Firstly, would the legislation be contrary to any existing and applicable EEC law provision? Secondly, and perhaps more importantly, Mr Speaker, would it conflict any of the fundamental rights and freedoms afforded by Sections 1 to 14 inclusive of the Gibraltar Constitution Order. Mr Speaker, those considerations, of course, were given in the drafting of this Bill as they are with every Bill which is prepared in the Attorney-General's Chambers. And I am not aware, Mr Speaker, of any provision of EEC law which the Bill conflicts with in any way whatsoever. If the Hon the Leader of the Opposition has any particular EEC Directive in mind which he thinks conflicts with the provision of the Bill then I invite him to direct my attention, specifically, to that provision and I will gladly give further consideration to the matter and hopefully be able to further.....

HON A J CANEPA:

If the Hon the Learned the Attorney-General will give way, Mr Speaker. There will only be time to do that if the Committee Stage were not being rushed through this House. If a sufficient and reasonable period of time were being given during which such a study could be made.

HON ATTORNEY-GENERAL:

That, Mr Speaker, is a matter entirely for the Chief Minister over which I have no control and do not propose to comment in any way whatsoever. The next point which the Hon Member raised was does the provisions of the Bill in Clause 9 in particular conflict with the principles of the Constitution. Mr Speaker, I had very much in mind when the Bill was prepared the provisions of Section 6 of the Constitution, I think that is what the Hon Member had in mind, which deals with the fundamental rights of protection from deprivation of property. Now, Mr Speaker, you will have noticed, I am sure, that Clause 9(1) of the Bill uses the word "acquire" the Corporation may acquire. It does not say the Corporation may "seize", "acquire" is the word that is used and used quite purposely there because under section 6 of the Constitution it is lawful, and I quote "the taking of possession or acquisition - is lawful - if it is necessary or expedient in the interests of defence, public safety, public order, public morality, public health - and perhaps significantly, Mr Speaker - town and country planning on the development or utilisation of any property in such a manner as to promote the public benefit; and (b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property". And, of course, Mr Speaker, the Constitution provides that proper and adequate compensation must be promptly paid and Government, I am well aware, has those provisions very much in mind and if the Corporation ever did exercise its powers of acquisition compulsorily under the provisions of Clause 9 the, of course, Mr Speaker, it would have to pay adequate compensation to the person from whom the property in question was acquired. I hope I have satisfactorily covered the points the Leader of the Opposition has raised.

HON P C MONTEGRIFFO:

Mr Speaker, the explanations that have been given by the Chief Minister in introducing this Bill really is, with the greatest respect, totally inadequate when the actual provisions of the Bill are looked at closely and when what is important, an analysis should be made of what exactly the words say as opposed to a limited interpretation as to how these words can be used. If the main object of the Bill, which the Hon the Chief Minister has explained is creation of what is supposed to be an autonomous body to represent

Gibraltar's interests then it is very much a case of using a sledgehammer to crack a nut. And it would seem therefore, from the point of view of an objective onlooker, that the explanation does not really explain as far as it should what it is that the Bill is doing and why the extensive powers it is seeking from this House to approve are required. The Hon the Chief Minister has said that the intention is to create an autonomous body which will represent Gibraltar's interests. Well, what does the Hon the Chief Minister mean by 'autonomous', Mr Speaker, because it is all very well for him to say that it is not a limited company the shares of which will be invested in the Gibraltar Government. But somebody has to own this Corporation and as a matter of law, I challenge the Hon and Learned Attorney-General to clarify the matter, the Gibraltar Development Corporation can only belong to the people of Gibraltar represented by the elected Government of the Crown. Because at the end of the day there is land that is going to be acquired by the Corporation, there will be contracts that the Corporation will have, there will be the delegation of responsibilities that are Government responsibilities and who is the owner of this? The Government is but then how can you say that it is autonomous? Who the hell are you kidding? With respect, Mr Speaker. Are you kidding the European Community? "Mr Commissioner this now is not the Gibraltar Government responsible for transport, it is a Corporation but we have nothing to do with it, you know, all that happens is that we own it". Secondly, who pays for the Corporation? The Government is going to pay for the Corporation. There is direct provision for funding of the Corporation from the Consolidated Fund. The one that pays, Mr Speaker, calls the tune. And we know very well that the Government is going to pay and we know very well that the body to whom it is going to be responsible is the Government itself. Thirdly, we know and the Hon the Chief Minister has pointed it out, that there are many areas that the Corporation is supposed to take directions from the Government as to what it is supposed to be doing. Well, if the Government controls the Corporation then where is the autonomy? Again, who are we kidding? Fourthly, although the Chief Minister has not said this and I would ask him in his reply to make this clear, who is going to be the members of the Board of the Corporation? I assume it will be Government Ministers and I assume it will be Mr Pilcher, Mr Feetham, maybe the Hon the Chief Minister himself. If it is going to be Ministers well then forget it because this is then really a circus. All we have done is make GSIP Government into GSIP Gibraltar Development Corporation. What I am trying to say, Mr Speaker, is that if the only legitimate, or main reason, that has been put to this House is creation of an autonomous body that will allow Gibraltar to argue a case with more force, say in Europe, because it is not Government but an autonomous body that is transparent and it would not kid anybody. Yet the Chief Minister says that he has advised that this vehicle would be of enormous use to Gibraltar in representing Gibraltar's interests this way. If the idea is

that it is supposed to be autonomous, and he demonstrated to be autonomous, I do not see how we have a chance in hell of proving that that is the case when this is controlled, run and paid for and have on its Board of Directors Government Ministers. If the reverse is the case, Mr Speaker, and in fact there are to be no Government Ministers on this Board, and I cannot imagine for a moment that that is going to be the case, but let us assume that that is the case then that really is one of the most serious threats to public accountability which we have seen in Gibraltar. Because what it would amount to, Mr Speaker, is a very, very large delegation of Government's responsibilities as "defined domestic matters" to the Corporation which is charged with formulating a policy, subject to directions, but it is charged with formulating a policy, which is given powers to act in certain respects, very wide powers, and if Ministers are not on the Board then that would be a complete and utter negation of democracy. Because it would mean that individuals chosen by the Government, not elected and therefore not answerable in any electoral sense to the people, would have power to spend huge amounts of money, formulate policy which rightly belongs to the Government of the day, constitutionally. That then, Mr Speaker, would be the end of constitutional Government as we know it. I cannot assume for a moment that, in fact, the intention is to have members that are not Government Ministers, I cannot begin to suppose that that is the case, but if it is then God forbid, we really have then thrown a lot of our democracy out of the window. As I say, I do not think this is so, but I await with anticipation when the Government replies that Ministers will, in fact, be on the Board and that it will be Government through the Corporation, so to speak and if that is the case, that will explode the myth of a so-called autonomy which is supposed, as I say, the purpose explained by the Chief Minister of bringing this Bill in the first place, I also think that it is important to explain to people that the Agenda of this House does indicate that this Bill would go through all its Stages at this Session, I am not sure whether there has been a change of heart since the Agenda was circulated, then I have given up reminding the Government of open Government, the extent to which people are willing to hear me say that repeatedly must be getting tired but really gentlemen what has happened to that commitment? I am not going to reiterate it, Mr Speaker. The Members opposite have buried it a million times and I cannot resuscitate that corpse. But even if you had no commitment to open Government, a Bill of this magnitude, it is a major Bill, affecting the way Gibraltar is run, to present it to Members on this side of the House and to the general public, effectively, last Thursday and to be asking us, as reasonable parliamentarians, and the citizens in the street to let this go through in seven days is a completely absurd situation. I know, Mr Speaker, that the Chief Minister thinks the House is an obstacle because things take time, but the House exists as a check. There must be checks and balances, one cannot do what one wants today because things

must be explained and I may agree or not agree but you must tell me. This is what Parliament is all about, parliamentary democracy, and people out in the street also have to have a chance to know about it and to make representations. The Chief Minister has criticised us for, us generally on this side of the House, for having pre-empted the debate by going public but, Mr Speaker, if the intention is as published in the Agenda is to take this Bill through all its stages today and tomorrow what does the Chief Minister expect that we are going to sit down here and wait for his explanation then come out at lunch time with two Press Releases, try to mobilise support and then try and block this before we come here tomorrow morning. Mr Speaker, I am the first who works to three in the morning if I have to get things done, I am the first to admit to being a workaholic, if necessary, but unless you are at war and have to do extraordinary things this is not the way things are done in parliamentary democracies. Mr Speaker, you have the Bill published, it is quite common for people to comment on a published Bill and the effects of it and to suggest that there is any type of inpropriety in commenting on this before it comes to the House is absurd especially in the circumstances that I have related. What this Bill is now doing, Mr Speaker, in my view, and the Hon the Chief Minister has not, I am afraid allayed those fears at this stage, is wrenching away, not from this House in particular, although there is an element of this, from Constitutional Government areas of responsibility which are reserved to it. If one looks at exactly what the Bill sets out the Corporation to do, in order to allow it to regenerate Gibraltar, whatever that means it could be some sort of battery, the object is to be achieved by having land and buildings into effective use. What land, what buildings? Encouraging the development of existing and new industries, that is everything from shiprepair right down to the Finance Centre Industry. Encouraging commerce, tourism, creating an attractive environment, that is everything from sweeping the streets to painting the houses to planting trees, ensuring that transport and social facilities, education, health, everything is available to encourage people to live and work in the area and to travel to and from the area. That really, Mr Speaker, is a massive taking away of defined domestic matters from the elected Government to the Corporation. It is a delegation of a huge amount of responsibility. Because if the Government chose tomorrow to say from now on tourism policy, the policy of the Finance Centre, those matters which are now covered by the Tourism Agency, by a Financial Services Commission, the Crown Lands Department gets privatised all that will now come under the umbrella of the Gibraltar Development Corporation which will be responsible for formulating policy and for coordinating the activities of all these areas, in all forms within the ambit of the powers it has, and Government then has the right, under another part of the law, to vote as a block vote. So it can come to the House at Budget time, as I predict will happen, there will be an item that says "Gibraltar Development

Corporation - £40m" and the Government will say that the Corporation now is charged with the following tasks previously the responsibility of Council of Ministers, effectively, to this Corporation because delegation of those functions has taken place. We will then vote those £40m and I will get up and ask: "Yes, but of those £40m the £2m that is going to the privatised Crown Lands Department, how much is going to be spent on furniture because the present furniture is in very bad condition?" Someone will then get up and say: "That is not for me to answer, Mr Speaker, this is the policy of the Corporation and the Corporation will decide". We in this House, Mr Speaker, will vote the £40m and then it is up to them. That, Mr Speaker, is what this Bill is about. This Bill is about wrenching away formal responsibility from the elected Government to a Corporation which, I assume, is going to be run by Government Ministers but which will not allow, therefore, the political responsibility and accountability to affect the Corporation the same way as an elected Government, in Council of Ministers, is responsible. Just to give you an example, Mr Speaker, as you well know, Minutes of Council of Ministers are copied to the Governor, constitutionally the Governor gets to see decisions taken by Council of Ministers, at least he should, Mr Speaker. He gets to see decisions taken by Council of Ministers because, whether we like it or not, and we are not going to go into that now, the UK has a Constitutional role still in the running of Gibraltar and that Constitutional role is enshrined in our Constitution. If you have a Corporation which takes decisions and issues minutes but it is not Council of Ministers then the Governor does not get to know at all. Not only that, it does not allow me to ask Members opposite, as a politician, what decision have you taken at Council of Ministers? Because you will say: "No decision has been taken at Council of Ministers, I have taken it as a Director or as a member of the Board of the Corporation", like you will not tell me now about Gibraltar Painting Services Limited, "do not ask any questions about it because it is not the Government deciding things, this is a joint venture company", it does not matter that the Government owns it 100%, "it is not the Government, therefore do not ask me for explanations". It is one thing for a painting section to be "joint venturised" but another thing to have as an objective virtually and I have to express this as an argument, I must insist on this, the wholesale transfer of defined domestic matters to the Corporation. You can end up with a situation where if the Board ends up being Mr Bossano, Mr Pilcher, Mr Feetham, Mr Baldachino and one other Minister, a minimum of five, to have a quorum, you sit down as the Board of the Corporation, you then have a block vote voted by this House from the Consolidated Fund, politically, and then you decide how to spend without having any need to bring Accounts here. There is no mention in the Bill about Accounts being brought to this House of Assembly. There will be no Constitutional responsibility as a Council of Ministers to be answerable politically, you can say "I am doing this as a Corporation, do not look at me for any



explanations, judge me in four years time". It is not the first time we have heard that, Mr Speaker. That is not the way to run Gibraltar, it is not the way to run any democracy, because democracy does not allow you to do what you want without telling us how you are doing it, with whom you want to do it, for four years, and then we decide whether we like it or not. It is about constantly telling people what is being done and that is why there are checks in the Constitution precisely for that.

If you transfer things to a Corporation why elect a GSIP Government or a GSD Government or an AACR Government? Because really you are being run by the Gibraltar Development Corporation, they are the people running the show, Mr Speaker. With this style of governing politics has gone out of the window. The Chief Minister has sought to limit its application to a smaller area, representing Gibraltar in Europe, or outside our frontiers generally. But quite frankly, Mr Speaker, that is a distortion of what the Bill actually says, the Bill is huger than that. This is not a Trade Promotional Association or the Chamber of Commerce and the Trade Unions forming a body representing the views of people, as an advisory body, this is Government through the Corporation, period. Potentially that is what it is. Do we want that in Gibraltar? Do we want to change, effectively, the way we are run to such an extent that instead of Council of Ministers what happens, or Ministers, in a political capacity, deciding what happens you put on another hat and you say all these responsibilities which empower you under this Bill are to be transferred to this Corporation and we will act under the Corporation, obviously in another guise, in another manner. I just do not think that this is what democracy is all about, Mr Speaker, nor what Gibraltar wants. This is the issue facing us. How do we wish to be run? In a mature manner, democratically with the right to demand information from the Government or in a Mickey Mouse situation where you are not told anything? Mr Speaker, to come to this House with a Corporation equivalent to a Development Corporation done in Teeside, a limited inner city development is, with respect, not accurate. It is misleading because it goes much further. The repercussions, constitutionally, go much further. If I could briefly go through the Bill, Mr Speaker. There are a number of things which demonstrate, at least to me anyway, that this is one of the worst drafted pieces of legislation I have seen coming before the House in my two years in the House. And even if the Government is hell bent on proceeding with this, this is very badly put together. Let me give you an example, Mr Speaker. The main section, section 6(2), the section which basically says that in order to achieve the objects of the Corporation, Mr Speaker, the Corporation will have power to make use of land, to develop industries, etc, it then goes on to say at the end of the paragraph that it can do

all these things in relation to encouraging people to live and work in the area and to travel to and from the area. What area? It is not defined anywhere, nothing. I suppose it is meant to be Gibraltar as a whole but what is the area? Then further down, to confuse matters even more, you have section 9 - the powers of the Corporation to acquire land and in section 9(a) it states: "land in a development area". What is a 'development area', Mr Speaker? I have never heard what a development area is and I do not see any definition in the Bill which statutorily states what a development area is. Is it a Government development area? Is it a private investors development area? This, Mr Speaker, is a major power because one has power to grab land, perhaps 'grab' is the wrong word, to acquire land in a development area. What is development area? This, Mr Speaker, is an absurd system of legislating and things are being done in a half-baked fashion, with respect to my Learned Friend, but I do not think it is his fault, it must be that he is being rushed or other people are being rushed but the Government should spot these things. The main object of the Bill, Mr Speaker, is ambiguous at the end because it actually talks of an undefined area which leaves us all wondering whether it is the whole of Gibraltar. I just do not know, Mr Speaker. It is completely badly done. There are also a number of other matters which require further explanation. For example, the members of the Board are to be appointed by the Governor by notice in the Gazette. There are then powers for the Governor to remove people in certain situations, of course,, directed by the Government. Assuming that it is Government Ministers who are to be on the Board, one assumes that if an election is lost by any particular Government that has Ministers on the Board that there would be a power envisaged in the Governor to remove them, but there is nothing here that says that, Mr Speaker. It may well be a naive point because you will tell me that we would resign the moment we lost an election but there is nothing that says this. I do not for one moment imagine, and I certainly do not accuse of any attempt to linger on and influence in this way after an election, there would be other ways by which you would try to gain influence, but my point is that the draft Bill says that the Governor can send anyone packing if he is absent from the Board, if he is bankrupt or becomes ill or is otherwise unable to discharge his functions. But what happens if he loses an election? What happens if an appointment is made for three years or two years or one year and then, God forbid, there is a bye-election after six months and there is a new Government in? Where is the power? One has to pray that you would all resign out of regard for views of the electorate and out of a sense of fairness. I do not know, you would have to be gentlemen. How can something be drafted in this manner? The employment of officers by the Corporation. One point that has been mentioned is that this will bring about finally, potentially anyway, the complete dismantling of the Civil Service. If there was constitutionally, Mr Speaker, an orthodox opinion, and I am not sure whether an orthodox opinion is respected by Members

opposite, if there was any benefit ever in the impartiality, independence of the Civil Service as a body which has an important role in the Government of the Nation, this Bill which allows people to be employed directly by the Corporation and which potentially allows the Corporation to take over wholesale huge areas of Government responsibility will mean or could mean, potentially the almost complete dismantling of the Civil Service. It would therefore mean as well that if it went that far and there is no reason why it could not, under the terms of this Ordinance, again those constitutional checks, responsibilities, conventions, that are attached to a Civil Service structure with all the difficulties and drawbacks that I know that could cause, would go completely and you will be left maybe with the Police, the Judiciary and one or two others. I do not know how far you can go in privatising, perhaps you can even pay a Judge to hear a case. Mr Speaker, if that is the case, if the intention is to move, potentially, so far as to dismantle the Civil Service that way, and whilst I am the first to accept streamlining and rationalisation of the Public Sector, are we not throwing what is also an important Constitutional element in our democracy? The independence of an administration that is not linked to commercial gain but that has an official independent role. At least that is the way I have always seen the Civil Service. However, if all the functions of Government are divested to the Corporation which will run on commercial lines then you start putting former Civil Servants under pressure and constraints which change the nature of their employment. In certain areas that may be feasible without endangering the way we run ourselves as a democracy, but beyond a certain point I think it becomes undesirable. And although I am not saying it is going to happen, it could happen because there is nothing in this Bill to stop that happening. In the event that it is not going to happen because it is not Government's intention to go that far well then they have to sit down again and start trimming this Bill.

Mr Speaker, the question of public accountability to which I have addressed has been limited to the area which I feel that Government would no longer be acting as a Government but as members of the Board of the Corporation and as far as the House of Assembly is concerned this would automatically mean that this House becomes increasingly more redundant because by not being able to seek explanations politically from the Government this House and its effective role as a check on Members opposite. I think this is what the electors expect this House to be and if they act as Board members of a Corporation the House will become ineffective. I was quite shocked to see that as far as Accounts are concerned although the Corporation is under a duty to submit a report "which takes note and includes the activities, policy and financial position of the Corporation during that year". The Government accepts that report but the House does not get the report, the House does not get any Accounts at all. So we could vote, hypothetically, £40m, it is spent by the

Corporation and no one gets to know of how it has been spent. There is no public accountability. At least with the Health Authority we have had a little controversy because the eventual tabling of the Accounts was being delayed and becoming ineffective as far as control is concerned because they are being published a year and a half after the money has been spent. By that time they may be helpful to historians but certainly not to politicians. However, in their case they are being published and tabled and even if eighteen months later we are shown how the money has been spent. But with the Corporation, Mr Speaker, potentially they will spend huge sums of money with no provision for any kind of tabling of Accounts in this House. How can the Government justify this, Mr Speaker? The money that will be spent is coming from the pockets of the people of Gibraltar. What objection can they have to Accounts being tabled here? Is it an omission? Has something that important been the subject of an omission, Mr Speaker? Was it that in the rush to put this Bill together that this factor was omitted? Things are not being done well in Gibraltar and one must stand up and say enough is enough. Mr Speaker, I am the first to admire the dynamism and enthusiasm of the Chief Minister and his team but Gibraltar cannot be run as though nobody else mattered. The views of others must also be sought and taken into account because Gibraltar cannot be run as if it were the GSIP Corporation. Mr Speaker, even if they had Gibraltar's best interests at heart things cannot be done without public accountability. The issue before us is how we run ourselves. Mr Speaker, we are voting away parts of our democracy here, this is what we are doing. We are being asked to vote our powers away without the Government even telling us, after a year and a half, how they have done things. Because you are not saying: "Here are the accounts, this is how the money has been spent and here is the Report showing what we have done". Because we do receive the GBC Report and the comparison was made with GBC but we are not going to get anything on the Corporation. Is that what we want, Mr Speaker? I wish to end, Mr Speaker, with a question. Bearing in mind that the main purpose of this Development Corporation is supposedly the creation of an autonomous body and for the reasons that I have given it is incomprehensible to me how such a thing could be argued, I would like an explanation from the Government as to why we need a Corporation in the first place if it is going to be so transparent. Mr Speaker, the economic regeneration of Gibraltar is for the Government to do because that was what they were elected for. They published a manifesto and they have the responsibility to carry out the tasks which the Corporation intends doing. What is the reason for this? Give me a better reason because the one you have given is transparent. What is the reason for this delegation of those responsibilities? Why is Gibraltar going to be better off? Why can we not be governed by an elected Government as we should, Mr Speaker? Acting as politicians in an elected capacity, full stop. That is what politics is about, Mr Speaker. We do not wish to be governed by a Corporation. Why

do we need the Corporation? How are we going to be better off? How are people's democracy going to be improved, Mr Speaker? How is Gibraltar's economic regeneration going to be facilitated by this? I expect, Mr Speaker, something more than the argument that "Ah since it is autonomous somehow we will be able to take steps in Europe, which we cannot now take as a Government". I reject that, Mr Speaker, because they are not going to kid a six year old child with that. How can you when you have Government Ministers on the Board, Government paying for it from money voted by this House? Moreso when the Corporation will act in various matters under the direction of the Government? What really are the reasons, Mr Speaker? Because unless I hear to the contrary I must assume that it is for the reasons that I have expressed and which are that it will be easier for the Government to govern without the pain which they believe opposition and consultation is and in a way which makes them less accountable, and let me add that I do not think it is for any improper purpose, let me make this quite clear. They feel that to get from here to there the quickest way is a straight line and they are determined to go in a straight line. My answer to that is that although that is the quickest route, the proper route in a democracy where you have minorities, opposition, etc is to move from one point to the other and then you get there. If as a result there is a price to pay, a price in efficiency and in speed, then it is a price which has to be paid because we are a democracy. Things are not done by decree, things are done by listening to other people, by taking other views into consideration and by those checks and balances and not through people but with them consulting them and bearing their views in mind. Government is not all powerful, it has limited functions with constitutional and political constraints. For these reasons this Corporation, as it stands at present, Sir, would detract from that system which we all enjoy. Thank you, Mr Speaker.

MR SPEAKER:

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

HON CHIEF MINISTER:

Mr Speaker, clearly nothing that I have said or nothing that I will say is going to alter the judgement that Members made before we came to the House which, I am afraid, was what I suspected was going to happen when I stood up because I said: "Fine, they had made a judgement on looking at the Bill, they had not waited till they came here for me to tell them about the Bill and what it is that we intend to do". They then say they are not happy with the explanation that they have been given and they continue saying a lot of things which, frankly, suggest that as far as they are

concerned they are on a high and they are going to stay that way irrespective of what the reality is. I do not know whether the Hon Member opposite is right and this is a Mickey Mouse Bill or a Donald Duck Bill or a Goofy Bill but we certainly have powers here to create a Disneyland in Gibraltar and that might keep him happy. But I can tell him one thing, he has been more consistent in defeating every one of the arguments that have been put against the Bill than anything that I could have said. Because if, in fact, the Bill is totally transparent then it is not anonymous and it cannot do anything that the Government can do already then not only is he right in saying: "Why do we need it?" but he should also be saying: "Why am I objecting to it?" That is the position that he has taken. He has taken us, Mr Speaker, a full circle. He started off by telling us that this Bill would not fool anybody and he asked us who were we trying to kid. Well, I ask him who is he trying to kid? The people of Gibraltar? Because he says that all the powers that exist in this Bill worry him presumably because it would enable the Gibraltar Development Corporation to do things that the Government cannot do.

HON P C MONTEGRIFFO:

No, I have not said that, Mr Speaker. If the Hon Chief Minister will give way.

HON CHIEF MINISTER:

Mr Speaker, I think I know what he said and I would like to finish what I am saying.

HON P C MONTEGRIFFO:

Well, it does not appear to from what the Hon the Chief Minister is saying.

HON CHIEF MINISTER:

Well, I suggest if the Hon Member sits down and lets me finish, like I have done with him, he might then see that I know what I am saying. He says that the Corporation can do things that the Government cannot do without having to come to the House and obtain the approval of the House. That is what he said. Because he said that the democratic controls are being taken away. He said 'a straight road might be more efficient but the roundabout way is more democratic', that is what he said. So he is saying that the Development Corporation is going to be able to do things in a straight road without having to come back here and get the permission of the House and the Government cannot do that, that is what he is saying.

HON P C MONTEGRIFFO:

Potentially.

HON CHIEF MINISTER:

So if the Hon Member had let me finish he would have found out that I was correct in my analysis because I had paid attention to what he was saying and I made notes, Mr Speaker, like I always do when somebody else is speaking. Of course, the reality of it is, as I started off by saying, that what the Government cannot do is legislate away the powers of the House or create in an Ordinance something which is superior to the House of Assembly which is the body that passes the Ordinance. The Member opposite quite rightly said that it is not a question that he suspects that if the GSLP lost an election the GSLP would wish to continue to be the directors of the Gibraltar Development Corporation notwithstanding the fact that the AACR or somebody else might be in Government. But, of course, even if the GSLP were to wish that, which is a ridiculous assumption as he himself recognises, there would be nothing to stop the new Government in the first meeting of the House of repealing the Gibraltar Development Ordinance and the GSLP would then cease to exist as directors of something that had ceased to exist because there is nothing that we can do or that anybody can do in any parliamentary system short of abolishing Parliament, to prevent any future Government undoing what a previous Government did. This is why we are being so successful in undoing all the damage of the last sixteen years of the AACR because we are able to undo all the things that they did, otherwise we would be stuck with them. We are stuck with more than we want but we are having a go at undoing things. The Government, Mr Speaker, brought the Bill to the House with the timing which was influenced by other considerations and we are prepared to leave the Committee Stage for a subsequent date to give Members opposite, as I have said, if they are really concerned about specifics in the Bill and they want to put to us proposals for improving the Bill or for introducing the safeguards that they think are needed, then we are prepared to take a look at them and see whether, in fact, they are compatible with the objectives that we want the Corporation to have. What we are not prepared to accept are amendments that negate what the Bill sets out to do. I have made that clear when I moved the Bill, Mr Speaker. That we were prepared to consider some points if they were concerned in producing a better Bill for the reasons that the Member opposite has said that it is not well done, obviously the drafting is not something that I have got as much knowledge about as the Hon Member opposite because I am an economist and he is a lawyer and lawyers draft things and economists produce the money to pay the lawyers. But if, in fact, conceptually it is totally unacceptable then we might as well pass it tomorrow and be done with it. Why bother with delaying something so that we can finish up with a better Bill if it is, in fact, in principle, conceptually unacceptable to the other side not because they feel that there are things in it that could give theoretically somebody powers that the Government does

not already have which I submit is nonsense. I submit it is not possible to extend the powers of the Government by creating a Corporation with more powers than the Government already has. It is not something that can be done, even if anybody wanted to do it and nobody is trying to do it. So we have a vehicle here which will allow us to delegate some powers if we choose to delegate them. It will also allow the vehicle to do things in addition to the Government doing them. The fact that you have got a Corporation that is charged with doing certain things does not mean that it is now prohibited that the Government should do it. There is nothing here that says: "This is in substitution of Council of Ministers". So on the one hand we are being told that if the Corporation is granted autonomy and is not, in fact, run by Council of Ministers that that is the end of democracy in Gibraltar because the Corporation will be doing things that Council of Ministers cannot control. On the other hand if the Corporation is run by Council of Ministers then it is transparent that it is Mickey Mouse. Well, I am not sure which it is that he wants us to do. Does he want it to be transparent and does he want the Government of Gibraltar to transfer its corporate entity into the Corporation or does he want the Corporation to operate at arms length from the Government? Which is it?

HON P C MONTEGRIFFO:

We do not know what the Government wants to do?

HON CHIEF MINISTER:

We know what we want to do, Mr Speaker, but if he objects he must object to one or the other. He cannot say: "I am against the Bill because it is black and I am also against the Bill because it is white". Because the Bill, in fact, is clear.

HON P C MONTEGRIFFO:

If the Hon Member will give way. Mr Speaker, the point that the Chief Minister is not addressing is that we do not know how the Corporation is going to be structured. Will he please tell us? Are there going to be Ministers who are going to be the Board members in which case that will reinforce one scenario? Is there, in fact, going to be a delegation of responsibilities which now can be identified so that he can put our minds at rest? If so, we could limit the Bill accordingly. Let us limit it to Transport or to Port matters or to whatever. What I am saying is that you cannot ask us to determine how far this is going to go if all we have is a framework which allows you to everything but you are telling us "We may not do everything". For example, will Ministers be on the Board?

HON CHIEF MINISTER:

Mr Speaker, that is not the point. The point is that the Hon Member says that if there were Ministers on the Board he would object to Ministers being on the Board because that would make it transparent and pointless and if there were not Ministers on the Board he would object for the other reason. So what is the use of him asking me which it is? He has already told me that whichever it is he is against it. What is the point?

HON P C MONTEGRIFFO:

We will know which.....

HON CHIEF MINISTER:

Mr Speaker, the Hon Member will have the right to speak as many times as he wants in the Committee Stage and he has had the right to speak for as long as he has wanted in the general principles of the Bill and I am answering the points that he has already made. And the point that I am making is that I believe that if Members opposite are genuinely worried as they say they are, and this is not just an exercise in political histrionics, then their worries can be put at rest like they have had a number of other worries before about a number of other things which have not materialised because they have read too much into things on a number of pieces of legislation that we have brought here. The number of disasters that Gibraltar should have experienced in the last eighteen years.....

HON M K FEATHERSTONE:

Eighteen months.

HON CHIEF MINISTER:

Sorry, eighteen months, yes. It seems like eighteen years.

HON M K FEATHERSTONE:

That is wishful thinking.

HON CHIEF MINISTER:

No, the wishful thinking is forty-one years because that would make me ninety-one. If one were to go back to the Hansard and look at all the predictions that have been made here every time we have brought a piece of legislation there would be nothing left for the Gibraltar Development Corporation to organise, it would have all been gone by now. I can tell the Member opposite that his predictions about what is going to happen in this year's Budget are total nonsense. And I can tell the Member opposite that, in fact, the power to give a grant to the Development Corporation is

a power that is exercised if we put money to do that in the Estimates and when the House votes the money obviously it votes the money because the Government exercises its majority like it has always done ever since the Constitution was created and the House of Assembly was created. This does not mean that if we remove from here the fact that the Gibraltar Development Corporation can be given a grant by the Government the Government can no longer give it a grant for creating a new situation where we say: "Because we have legislated we can now give money to the Development Corporation". No, the power to give grants to anybody is already in the law and if he looks at the Estimates he will find that every year the Government gives grants to different people. There is not a law in each case saying: "A grant may be given to so and so". So in each one of the supposedly wide powers that we are creating, all that we are doing is reflecting here powers that are in existence. And if we are giving the Gibraltar Development Corporation a function and role it is not because we want to create an independent Government in the Gibraltar Development Corporation in competition with the official Government or because we want to hide the minutes of Council of Ministers from His Excellency the Governor, who is no doubt very grateful for the concern of the Hon Member opposite that he should read our minutes. He can always move an amendment saying that he should also have the minutes of the Gibraltar Development Corporation if that should keep him happy. That is not the object of the exercise. The object of the exercise are the things that I have spelt out and I can assure the Hon Member that everything that I have said is documented in the study that has been carried out leading up to this and what we have got here is, in fact, a hybrid drawn primarily from two sources: the UK Development Corporations and the situation in the GBC Ordinance. It has been put together and it is possible that it can be improved upon and we would welcome attempts to improve it because we think it will be a good thing to have this vehicle that will enable certain things to be done more expeditiously than the way they are being done at the moment and it could become for us the vehicle to do certain things that we have wanted to do and have not been able to do because they have been competing with the resources in manpower and so forth that we have had to devote to the things that are not done. Since we find that we have not got certain things which we think are valuable and important particularly when we are looking into a situation over the next two years where we see the need for forward planning as being absolutely essential to economic management, we saw an opportunity in using the legislation that we are borrowing from UK. We saw an opportunity of perhaps being able to integrate that planning machinery into the system and to do it faster than if we try and do it through three separate pieces of legislation. We are trying to do it in a way which produces better value for money which is the essence of all the changes that we are bringing in and in order to bring in better value for money it is not that we are doing a disservice to the taxpayer of



Gibraltar, it is that we are protecting the taxpayers of Gibraltar. And if the Opposition is here to do anything at all, it is here not to press us because we are doing too much in getting value for money but to press us to do even more. That is what Oppositions exist for. Oppositions exist to make sure that the Government of the day is using the people's money efficiently and this does not prevent them from doing that, Mr Speaker, because this creates an institution which can have its own sources of revenue from its own activities, for its own purposes but which at the end of the day is controlled ultimately by whoever happens to be the Government of the day like anything else that is legislated and can be changed at any time. As I have said, if Members opposite feel that they can spend more time going through this and suggest things which we may find do not create any problems, then we are quite happy to change it as long as the whole idea is not to emasculate it but to either overcome worries that they may have or to clarify things that they may feel are not clear.

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 P J Brooke

The following Hon Members voted against:

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

The Bill was read a second time.

HON CHIEF MINISTER:

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

HON A J CANEPA:

Mr Speaker, from our point of view, of course, this is welcome in the sense that it will give interested parties, the representative bodies that we have referred to, an opportunity to look at the Bill and consider its implications and make any representations that they may consider fit. However, the Opposition's approach and our attitude to this Bill is not the same as what it was, say, with the Financial Services Bill where we gave up a great deal of our time and efforts in improving a measure of legislation that we were wholeheartedly behind because it was something which we had wanted to bring during the latter days when we were in Government. We have fundamental objections to this legislation. In other words, if we were in Government we would not be bringing this piece of legislation to the House and therefore whilst in Committee there are a few relatively minor points that I would want to bring to the attention of the Government where amendments may perhaps be required. Our approach is not going to be that between now and Committee Stage we will be introducing substantial amendments that will alter the shape and purpose of the Bill because obviously that would not be acceptable to the Government and it would really be a waste of time and, as I say, we are not in favour of the Bill in any case. As I say, we have a few minor points which having regard to the importance of the Bill in principle, we did not think that we should mention during the Second Reading of the Bill but when the Bill comes up in Committee we will be indicating, without necessarily moving the amendments ourselves because they are very minor, we will be indicating certain matters which, may have been lost sight of. I just want to make that clear so that the Government does not think that we are going to do what we did with the Financial Services Bill because we will not. But we do welcome the fact that it should be left for a subsequent meeting because we have had about a week's work on this Bill but other people now they may, as a result of the debate in the House, some people may now feel that they shall have a look at the Bill and if no representations are made then, well and good, it will have been a useful exercise in consulting the public nevertheless.

#### THE MERCHANT SHIPPING (AMENDMENT) ORDINANCE, 1990

HON M A FEETHAM:

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

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

## SECOND READING

HON M A FEETHAM:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, the House will recall that on the 16th day of November, 1988, various amendments were made to the Merchant Shipping Ordinance by virtue of the Merchant Shipping (Amendment) (No.2) Ordinance, 1988, which made changes to the Registry Rules under Part 1 of the 1894 Merchant Shipping Act. Further legislation is necessary to bring our legislation in line with the UK otherwise our Registry will not get all the international approval it needs and the credibility that is necessary to expand and penetrate the shipping market. The principal changes in this Bill now before the House are amendments in respect of the payments to the crew, the safe condition and operation of the ship, to create offences associated with these matters and to impose related penalties. By this legislation we are also extending the permissible nationalities of the Master, Chief Officer and Chief Engineer so that the requirements are similar to that required by UK legislation and therefore laying the groundwork for further extension of the nationality provisions once negotiations have been completed. These amendments are necessary, Mr Speaker, as ships registered at this Port are registered as British ships and are governed by the Merchant Shipping Act of 1984 and 1988. As ships can be transferred from the UK register to ours and vice versa, it is necessary that our Merchant Shipping legislation be identical to that appertaining to the UK. 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 welcome this Bill and we will be voting in favour. It seems to complete, barring any further legislation which may be enacted in the United Kingdom, the process that was initiated some years ago of bringing our legislation up to scratch and, in particular, in line with the relevant United Kingdom Merchant Shipping Act. There are a number of provisions in this Bill that I particularly welcome and which are highly desirable. I recall that there have been occasions in the past when industrial action has had to be taken in order to prevent a ship from sailing because the crewmen were owed arrears of wages and salaries. The Transport and General Workers Union sometimes at the request of the National Union of Seamen from London has had to resort to such industrial action here and therefore it is very desirable that this provision, that this protective measure should be introduced into our legislation. I also welcome, particularly having regard to the fruitless efforts that I made over a very long period of time, Mr Speaker, in

trying to liberalise the requirements for Masters, Chief Officers and Chief Engineers where the absolute strict requirement was that they had to be British Citizens. I remember, Mr Speaker, it was a very frustrating experience, I even tried to take advantage of the Falklands conflict when I remember because naturally it suited Britain's defence interest, ships were allowed to sail and one sailed from Gibraltar with a Swedish Master and this was allowed, there was no problem about that and this was precisely the sort of thing that we had been trying to do, that we should be able in registering a vessel to have a Master who was a citizen of a reputable nation in the world of shipping and Sweden, Norway and, indeed, the other EEC members were all reputable and are all reputable mercantile nations. But, nevertheless, the representations and the points that we made, perhaps they were not agreed to because the other legislation of implementing the provisions of the 1984 Merchant Shipping Act were still to come. So I am glad to see that in Clause 7 there is provision being made whereby the Governor may exempt any person from the provisions of this subsection. I wonder whether the Hon Member perhaps when he exercises his right to reply, may explain whether it is, in fact, the intention not just for the categories of nationality which are spelt out in the Bill but these other reputable mercantile nations and, indeed, EEC citizens.

HON P C MONTEGRIFFO:

Mr Speaker, in welcoming the Bill I give it a qualified welcome inasmuch as although the Bill in itself is something which I would agree with, it is presented to this House by the Government on the basis that it should be another step towards improving the performance of the Gibraltar Registry as a centre of business and as a centre of income for Gibraltar. There were attempts recently, as far as I understand it, there was something in the Gazette to this effect, to actually derive benefits from the collapse of the Panama Registry and the opportunities that might have existed for us in that respect. I do not know to what extent Gibraltar has been successful, not particularly so, I understand, but my qualification to the approval is the fact that the Port Registry and the system which is presently in operation leaves more than just a little bit to be desired, from a practical point of view and I am always loathe to pass legislation which on paper shows Gibraltar to have a very good service or potentially to offer a very good product when we cannot deliver if the customer turns up seeking to purchase. Therefore I would ask the Minister in his reply, Mr Speaker, I think it is within the context of the general merits of the Bill that what the Bill is doing, to indicate whether the Port is going to come under the Corporation which seems to be indicated in one of the subsections of the Bill or alternatively what other type of action to enable the legislation, in a practical sense, to get on with more significant business for the benefit the community. Thank you, Sir.

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 would like to thank the Members opposite for their general support to the Bill. In fact, what it does do is more or less complete an exercise of bringing us in line with the relevant UK legislation. I did say that we want to extend, in response to the Hon Leader of the Opposition, the nationality provisions to other reputable nationalities and it is still a matter of ongoing discussions with the DTI and other people. I think, in essence, in today's situation it is not a valid argument anymore where British Masters or the new nationalities that have been agreed. We should not limit the provisions, for example, so that in time of war the British Government could step in and use the vessels in their defence interest. I think that that is no longer a totally valid argument and in any case, if one thinks about it seriously, the question of being able to find those ships quickly in the time of war, wherever they may be, is indeed a difficult exercise in itself. So the strong arguments that existed some years ago are beginning now not to hold such strong basic grounds and therefore we are moving to a situation where it is more than probable that we will be giving it to other reputable nationalities.

HON A J CANEPA:

If the Hon Member will give way. This point that he has made about defence as the reason being valid to this liberalisation. That was an argument that we also deployed. But apart from that being the reason there was, I think I may have mentioned it in the House in the past when I had responsibility for the Port and perhaps I should remind the Hon Minister so that he can keep it in mind, an additional reason that was also adduced against allowing other categories of nationalities, the Masters was the question of jurisdiction. As the Hon Minister knows ships very often disappeared from the high seas and the intention was that by the Master being a British Citizen he should be subject to British jurisdiction whereas if it was a citizen of some other country that might not be the case. So I think he will also find, if he has not found it already, that the DTI will also bring that argument up, the consideration or jurisdiction.

HON M A FEETHAM:

That is the case and that is an argument that is being put. But in terms of jurisdiction if one considers the tendency now in terms of registry and in terms of European Community obligations and Directives and working towards a common European Registry, matters of jurisdiction then could turn

out to be not necessarily vested in a particular country but it could be vested in a more centralised authority in due course. There is a tendency to change and therefore we are taking every opportunity, as it is a longstanding issue, of trying to improve the capacity of our Registry. In terms of the point made by the Hon Mr Montegriffo when he talks about the organisation or the ability of the Registry in Gibraltar to respond, I would agree with him on that issue. The Government has already said and it is on public record and it has been mentioned today, that we are looking very seriously at the complete restructure of the Civil Service and there are priorities as to where one starts and one finishes. We are looking closely at the Shipping Registry because we feel that in looking at the economic activity of Gibraltar and where we are likely to be able to improve revenue, the Registry itself cannot be disassociated from other aspects which are happening, ie the revenue which is raised, for example, by solicitors in the business that they themselves are carrying, both are very inter-related in the sense that in a substantial part of the initiative in placing a ship or mortgaging a ship on our Registry is initiated by the solicitors and Chambers in a legal practice. And I think it would be very positive to look at the relativity between both so that Government's contribution to the Registry and improvement of the Registry is recognised by the people who are ultimately making a substantial revenue to themselves and at the same time promoting the efforts of Gibraltar in doing the Registry. I think there is a very good argument looking closer at the activities of the Registry and protecting the conflicting interests that could emerge by having the register obviously in the presence of the Captain of the Port or somebody appointed by the Governor with the necessary qualifications to be able to carry out the job and the activities of the solicitors and lawyers in Gibraltar. That is the thinking at the moment that the Government is doing and is in consultation with various people in the industry so that we have a proper shipping industry, as it were, in every aspect in Gibraltar.

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 BUSINESS TRADES AND PROFESSIONS (REGISTRATION)  
(AMENDMENT) ORDINANCE, 1990

HON M A FEETHAM:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Business Trades and Professions (Registration) Ordinance, 1989 be read a first time.

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

SECOND READING

HON M A FEETHAM:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill in front of us introduces amendments to minor procedural matters connected with the principal Ordinance which is still to be brought into effect. It provides for an alternative Registrar in place of the Department of Trade and Consumer Affairs. At the same time as the matters dealt with by the Ordinance falls clearly within the portfolio of the Minister for Trade and Industry, it is considered appropriate for the Minister to be the authorised officer for regulations relating to the operation of the Register in place of the Governor. 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 the reality of the situation is that the Department of Trade and Consumer Affairs is, to all intents and purposes, being wound up as rumour has it - one should not speak on rumour but on facts, Mr Speaker - and then I suppose that this Bill is a logical consequence of that. If it is the case, therefore, that the post of Director of Trade and Consumer Affairs is being abolished and that there is no intention, therefore, because if it is abolished it is not a case of a vacancy which is to be filled at a future date then, obviously, there is a requirement for someone else to perform the functions that is if there is someone else left in the Civil Service any longer. What I find somewhat puzzling, Mr Speaker, is this. When Hon Members came into office the post of what was Consumer Protection Officer, the functions of that post were widened to include trade and that was indicative of the fact that the Government attached importance to trade in Gibraltar, which I know that they do, because we all do. Therefore I find it somewhat puzzling that the functions of that post which were

widened, now all of a sudden or a short while later the post is, in fact, being abolished, the Department apparently is going to virtually be wound up and therefore the need arises to have someone else as Registrar and perhaps we might also have an indication what type of Civil Servant is it intended to be the Registrar. Is he going to be involved in any way with trade by being, say, a Treasury person or is it somebody else? Perhaps someone having some involvement with trade who is employed in the Treasury or just anybody else?

HON P C MONTEGRIFFO:

Mr Speaker, I will be voting against the Bill not because I have any desire not to have the Minister exercise powers which are, in a sense, more appropriate for him to exercise than the Governor but because the principal Bill from which it stems was something which, at the time, we did not support on the basis that it was bad legislation. It was certainly, in my view, bad legislation because we felt it was unworkable in that it would require even, for example, and I remember this clearly that if school teachers undertook private lessons they would have to register. We took the view, at that stage, and I certainly take it even today, that the legislation is not really workable and therefore although I do not object to the technical transfer of powers, maybe it is more appropriate for the Minister to exercise these powers to remain consistent I will be voting against.

MR SPEAKER:

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

HON M A FEETHAM:

Mr Speaker, the Hon Mr Montegriffo is quite correct, that is the position he took and if I recall correctly, in fact, it was the position taken by the Opposition at the time and they projected to the people of Gibraltar what my colleague, the Chief Minister had previously indicated as one of the horror stories that the Government was embarking upon. It has not happened and if the Hon Member recalls the very essence of the Bill that we brought to the House was based on representations made to us by small businesses who were being subjected to unfair competition from other people particularly from businesses penetrating Gibraltar from Spain and not meeting any obligations over here. The only way, at the time, that we considered after taking legal advice was that this was the way forward to protect these businesses and therefore we introduced this Bill on the basis of having to have a registration system. The fact that we have not put it into effect is because it has taken its course in the sense that we have, of course, acquired more experience as to the time that it is likely to take us in our efforts to restructure the Civil Service which the Hon

Member keeps on harping about and for which we have the responsibility of doing, in order to be able to make it more efficient and make it a more cost effective exercise to the taxpayer than what has been the case prior to us taking up office. In terms of this particular amendment which at the time we did, as the Hon Leader of the Opposition quite rightly said, extend the role of the Consumer Protection Officer and Chairman of the Trade Licensing Committee. It was extended to a bigger role in terms of trade because I felt that there was a need to bring someone more closely in matters that were related to trade in terms of representations that were being made to the Government and I required that somebody should be looking at that. The realities are that it has not worked out, the realities are that it involves me personally in more work than I envisaged was possible at the time of making the decision so in.....

HON P C MONTEGRIFFO:

Mr Speaker.....

HON M A FEETHAM:

I have not given way. The Hon Member has the habit of standing up without anybody giving way and he ought to learn by now that I will never give way to him. So a number of things are happening within the Ministry of Trade and Industry which will, of course, be made public once we have put them into place. A serious restructure is taking place in the Ministry of Trade and Industry which will be known in due course. And in the light of experience therefore and in the light of the open Government attitude of this Government where new ideas come onboard as we develop our policies, we have decided that in this case the position of Consumer Protection Officer by agreement should be abolished and this will take place. Therefore, until we have decided who will be responsible for what within the Ministry which will be in the course of the next few months, we have brought this amendment which will take effect the moment that the principal Ordinance itself takes effect. So there is nothing sinister other than, in fact, learning from more recent experience as to the changes that are required.

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 P J Brooke

The following Hon Member voted against:

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 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 House recessed at 1.00 pm.

The House resumed at 3.25 pm.

THE SOCIAL SECURITY (NON-CONTRIBUTORY BENEFITS AND  
UNEMPLOYMENT INSURANCE) (AMENDMENT) ORDINANCE, 1990

HON R MOR:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Social Security (Non-Contributory Benefits and Unemployment Insurance) 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, the purpose of this Bill is similar to that of a Bill which was introduced in 1983 and time expired in 1985. The reason that this Bill was introduced in 1983 was because of the then impending closure of Her Majesty's Naval Dockyard and the likely redundancies which were envisaged at the time. The idea was that persons who were not EEC nationals and who became redundant could have the option of collecting their unemployment benefit in a lump sum on application to the Director of Labour and Social Security. The intention was that these persons could find themselves with an amount of money which could enable them to have the opportunity of attempting to seek work elsewhere given that the likelihood of finding work in Gibraltar was considerably reduced. We have already had some redundancies in GSL and the Ministry of Defence has, in fact, made some people redundant already, and with the announced withdrawal of the Resident Battalion and the changes on the PSA/DOE role in Gibraltar, it is clear that the civilian labour force will be facing some redundancies in the future and the Government considers that there will be considerable difficulties for persons who require work permits to be able to continue to be in long-term employment in Gibraltar. The Government has therefore decided to introduce enabling powers to the Director of Labour and Social Security to use his discretion to pay unemployment benefit as a lump sum where the applicant has been made redundant and there is apparently no likelihood of future employment in Gibraltar. This Bill also makes provision to deal with a situation where an applicant who, after having received a lump sum payment finds employment. 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 DR R G VALARINO:

Mr Speaker, the official Opposition support the Bill. This Bill, as the Minister has stated, is akin to the steps we took when we were in office and after the closure of Her Majesty's Dockyard and we did this in consultation with the unions at the time and we agreed to do this. The Government now intend to make it law and we approve of this. Let me

also say that this measure will also help the Department in its workload because the Department does a tremendous amount of work. I note that the provisions only relate to those persons who are not Community Nationals and I wonder whether consultation has taken place between the union and the Moroccan Workers Association because they will be the mostly affected and whether they have expressed an opinion as to the measures that are going to be taken. As far as we are concerned, on this side of the House we welcome the Bill. Thank you, Mr Speaker.

HON P C MONTEGRIFFO:

This Bill, as far as I am concerned, Mr Speaker, I can support but I only have one query which I may be told can be satisfied quite easily and I speak, therefore, not entirely sure of what the position would be but I raise it because it might be important. The Bill clearly states that if an individual finds employment in Gibraltar that the benefit is returned which is simple enough. I do not know the position exactly in respect of an alien worker who may seek to set up a business of his own or becomes self-employed, from the immigration point of view, but I would think it not impossible that somebody is made redundant in, say, a butcher's shop and decides that he is going to open his own butcher's shop and does not actually become employed in that capacity but becomes self-employed. I make the point with some trepidation because from the Immigration Ordinance and Immigration Rules point of view, Mr Speaker, I do not know to what extent a person has time in Gibraltar before eventually having to leave to actually set up in self-employed occupation. But I think it might be a point worth looking at from the point of view that if, indeed, there is a possibility of people setting up business on their own even on that level. A chap might start selling flowers and the moment he becomes self employed selling flowers at the Piazza it would be quite wrong that he should not reimburse funds to the Government. That is the only point, Sir, that I would raise that could perhaps be dealt with.

HON CHIEF MINISTER:

I think the area where non-Community Nationals set themselves up as self-employed is somewhat nebulous. There is a right of establishment which Community Nationals have but that right of establishment does not apply to non-Community Nationals and, in fact, somebody that is self-employed does not have a work permit because he does not have a Contract of Employment and consequently is not



HON ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Imports and Exports Ordinance, 1986 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, I believe this House would normally expect a Bill to amend the Imports and Exports Ordinance to be presented either by the Hon Minister for Trade and Industry or the Hon Financial and Development Secretary. However, in addition to the provisions which this Bill contains affecting imports and exports per se, it contains important amendments to certain existing criminal provisions and I have therefore agreed to present it to this House. Sir, clause 2 empowers the Governor, by subsidiary legislation, to vary in any way whatsoever the rates of import duty contained in respect of those classes of dutiable goods specified in the various chapters contained in Schedule I of the Ordinance. And as the explanatory memorandum of the Bill points out his powers at present are restricted to reducing such duty or to abolishing it altogether. As Members are aware, Mr Speaker, under section 16 of the Ordinance, the Governor already has power to restrict, regulate or prohibit the importation of any goods or any class of goods. Following on from that, clause 4 of the Bill empowers the Governor to make regulations, from time to time, providing for the payment of fees paid on the export of duty free goods in the circumstances which currently are provided for by section 74 of the Ordinance. This new provision, Mr Speaker, will give Government the flexibility it wishes to have to remove, add to or otherwise vary such fees as Government sees fit, from time to time, in the same manner as with import duties. Clauses 3 and 9 effect the appropriate consequential amendments to the Ordinance arising from the repeal and replacement of the existing section 74 which, as I have just said so, is effected by clause 4. Clause 5 of the Bill amends section 85 and what is deemed to be the time of exportation. Mr Speaker, it is considered that the present provision specified respectively in the section at the beginning and in the proviso, are capable of ambiguity and uncertainty and the Collector of Customs who, of course, has many duties and responsibilities under this Ordinance, wishes there to be no doubt when the exact time of exportation is deemed

covered by Unemployment Benefits. So a self-employed person is not insured against unemployment. From my knowledge I can say that the Moroccans or other non-Community Nationals that have effectively set themselves up in business have tended to overcome it by incorporating a company here and then being employed by the company that they own and it may well be that there is really no other way in which they can do it. I think that the right of a worker to stay here in Gibraltar once he ceases to have employment under the Immigration Control Ordinance is very, very limited and it is administratively extended to allow the person to seek employment but I do not think the law was ever intended to provide for, although at one stage non-British citizens and subsequently non-EEC citizens were allowed to come to Gibraltar to seek to set themselves up in business, that was never there and I do not think the law is clear that they can do it legally. But obviously there are ways of getting round the legal impediment but if they use the machinery of setting up a business and employing themselves then they would be covered by what we have there. But I think it is certainly something that we will ask the Director to look at.

MR SPEAKER:

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

HON R MOR:

Mr Speaker, all I really would like to say is that I appreciate that both Oppositions are in support of the Bill. 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 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.

to have occurred. Mr Speaker, Members may think that clause 6 is especially important because it substantially modifies the provisions at present contained in section 112. The proposed new section has been modelled on the provisions of the United Kingdom Customs and Excise Management Act 1979 and section 89 of that Act in particular. I have not included a reference to that Statute in the heading of the proposing section because it does not follow the exact or precise wording of the corresponding UK legislation. I mention that, Mr Speaker, because I have heard the very helpful comment made in that respect by the Hon Mr Montegriffo at the last meeting of this House. Turning next to clause 7 of the Bill, this will extend the Courts' powers of mandatory forfeiture of vessels to offences of carrying dutiable goods on which duty has not been paid without the Collector's permission on ships of less than fifty net tonnes, that is section 94, Sir, and selling goods from ships while in the Port other than a ship duly licenced for such purposes, that is section 95 and the omission of the reference here to section 96, Mr Speaker, is merely to correct an error which apparently crept into section 120 when the previous Ordinance was repealed and replaced by the present Ordinance in 1986 which does not appear to have been noticed previously as section 96 actually relates to appeals by any person dissatisfied with a decision of the Collector. Finally, Mr Speaker, clause 8 amends section 124 which deals with the Port's discretionary powers to order forfeiture of certain ships, aircraft or vehicles involved in the contravention of particular provisions of the Ordinance. At the moment that section limits the Courts' powers to deciding whether or not to order forfeiture to offences of unlawful storage of dutiable goods contrary to section 31, concealment of imported goods contrary to section 103, unloading goods with intent to evade any prohibition or restriction or to defraud Her Majesty's Customs contrary to section 104, fraudulent evasion of duty contrary to section 105, and unlawful possession of dutiable goods which contravenes section 106. The amendment to section 112, Mr Speaker, extends the Courts' powers to offences, firstly of unlawful unloading from ships, aircraft or vehicles, that is section 19, and the offences specified in sections 94 and 95 which I have made reference to already. Mr Speaker, Hon Members will notice that offences committed contrary to sections 94 and 95 are to be included in respect of both the Courts' mandatory powers of forfeiture under section 120 and the discretionary powers under section 124. That, Sir, is not an anomaly as the former relates to forfeiture of goods and the latter to forfeiture of ships, aircraft and vehicles. Mr Speaker, I do hope the extension to the Courts' powers I have made detailed reference to will be seen as a furtherance of Gibraltar's commitment to get tough with persons who contravene the various provisions of this Ordinance. I can tell you, Sir, that the Police and Customs Department, our principle law enforcement agencies in Gibraltar, particularly, welcome the introduction of this Bill and I do hope that all Hon Members opposite also similarly welcome this Bill be presented to this House. Sir, my pleasure to commend the Bill to this 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, it is a pity that this Bill contains clause 2 otherwise we would be wholeheartedly welcoming the Bill and supporting it for various reasons not the least of which are the reasons which have been advanced by the Hon the Attorney-General. Therefore what we propose to do, Mr Speaker, is during the Second Reading of the Bill we are going to vote against it, unfortunately, because we have got very serious and fundamental objections to clause 2. In Committee we will be able to support all the other clauses which, indeed, I must stress that we really do welcome. Clause 2 makes provision for import duties which at the moment can either be abolished or decreased by regulation but they cannot be increased at the moment by regulation. The new clause makes provision for an increase in import duties without any further reference to the House by regulation and I remember, Mr Speaker, occasions in the past, particularly when the frontier opened that we exercised the powers already contained under the Imports and Exports Ordinance in order to lower import duties by regulation. But we think that it is a fundamental matter going to the whole root of parliamentary democracy that if import duties are going to be increased, the Government should bring the legislation here to the House, they should explain to the House why they are doing it, what the implications and the consequences of that would be by way of increased revenue and not that it should be done by regulation. It is yet another step in the pattern which has been developing for some time. The Government has taken similar powers to alter the rates of income tax and now there is this extension to do so in respect of import duties. I can see the point for the sake of flexibility that the Government should be able to abolish or to lower import duties by regulation because that can be important but increases in import duties have traditionally, and are still traditionally such as with the Chancellor's budget in the United Kingdom, they are still part and parcel of what is regarded elsewhere as the Annual Budget. That is not going to be the case here, the Government will be able to do it by regulation. No doubt we will be able to come to the House at some subsequent meeting, ask questions about it but by then we cannot influence the decision. So, unfortunately, because of that clause we are not able to support a measure of legislation that we would otherwise wholeheartedly welcome.

HON P C MONTEGRIFFO:

Mr Speaker, I have a similar view to the Leader of the Opposition in that respect and I do not really see why it should be necessary to have Government take that extra power. The flexibility implicit, in fact, in the previous provision was workable because you could make your regulation and then just table it before the House, that is the way it would work, the House would subsequently have to resolve the matter. I would certainly welcome all the other provisions of the Bill. I am surprised that the reference to section 9 has been left out completely in the explanatory memorandum and in the explanation that the Attorney-General has given. If memory serves me right, and I am just asking Mr Sanchez to have a look at this, that Schedule relates to the import and export of meat or meat products at least that is my recollection of a few days ago when I saw it and I just wonder how the repeal of that Schedule comes into the context of this Ordinance and why the explanatory memorandum has failed to refer to section 9 at all.

HON ATTORNEY-GENERAL:

If the Hon Member will give way, Mr Speaker, I can explain that. Schedule II, in fact, Mr Speaker, as it is at present contained in the Ordinance, relates to the fees which Government is entitled to collect on the licence authorised for exportation of duty free goods.

HON P C MONTEGRIFFO:

That makes sense, Sir, but I was puzzled by no explanatory note in relation to that item in the Bill. Thank you, Sir.

HON CHIEF MINISTER:

Mr Speaker, obviously the part of the Bill which the Government is most interested, on this side of the Government, is the one that the Opposition on both sides are not going to ie clause 2. We believe that there is a necessity to do this for a variety of reasons. Certainly if one is looking at a situation where Gibraltar wishes to retain its competitiveness, as has happened in the past after the frontier opened and there are representations from the trade that something should be reduced because the result is going to be an increase in the volume of goods that are sold because the price comes down, then the situation is that as it stands at the moment you reduce and if the volume does not materialise then you cannot go back to where you were before you reduced without having to come back and legislate. The fact that if you are having a system that is going to be responsive to changes in the market then the system in order to be responsive has to

be a system that can move in more than one direction. Obviously it is not the intention by this regulation to substitute for budgetary measures and this is not what it is there for. It is there to have a system that enables us to respond quickly to circumstances which in our view require a quick response and, for example, in the area in which we expect to be moving very quickly after the passing of this legislation is on the question of the wayleave and we would not want to have to come back to the House every time the wayleave has to be changed and go into a desertation of the effect of the wayleave on the turnover for exports of particular commodities. But it is an area where in monitoring the situation, as I told Members opposite in answer to a question from the Hon Mr Montegriffo some time ago, the Government was monitoring the situation as regards exports of duty free goods where there is a special rate charged. At the moment the rate can be reduced but it cannot be altered in any other way and we think it needs to be altered by increasing it and that will happen when the law comes into effect virtually immediately the regulations are published and it will be monitored and we will see what their effect will be.

MR SPEAKER:

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

HON ATTORNEY-GENERAL:

Mr Speaker, I am very grateful to all the Members opposite for their limited support to this Bill. In the short time I have been a Member of this House, Mr Speaker, I have had the privilege of presenting several Bill though this House and each and every one until today has received the total support of the Members opposite. I therefore feel rather like a certain English football team, Mr Speaker, which was on a winning streak for quite some time at the beginning of the season and then suddenly found that their luck had run out.

HON A J CANEPA:

The Newcastle United?

HON ATTORNEY-GENERAL:

Fortunately it is not the team I support I am referring to, Mr Speaker, but at least I claim a score draw for the results of this Bill on the Second Reading this afternoon. Mr Speaker, the regulations arising from this Bill have already been prepared in draft form and are being considered

at the present moment and it is intended to publish certain regulations in conjunction with the Bill in due course so that the same can come into force at the time the Bill comes into force. Subject to that, Mr Speaker, I do not think there is anything further I can usefully add.

HON P C MONTEGRIFFO:

If the Hon Member will give way.

HON ATTORNEY-GENERAL:

I have just about finished but I can say a couple of more words if the Hon Member wishes to intervene.

HON P C MONTEGRIFFO:

Mr Speaker, since the only thing that divides both sides of the House is the point as to what extent the House of Assembly has an opportunity to review rates and bearing in mind that it is a matter of principle, I am certainly not objecting to the Government wanting to have the power to increase rates quickly in order that Gibraltar can respond favourably to some particular demand. Therefore can the suggestion not be made that we go down the route that we have gone with the Financial Services Ordinance and other types of legislation, where the same flexibility is desirable for Gibraltar, whereby by reference, I believe, to section 28 of the Interpretation and General Clauses Ordinance where you have the opportunity to raise the matter formally under that section by tabling - I forget the precise term of the provisions because I am just speaking without having seen it recently - but I understand the provisions of that section state essentially, that within twenty-eight days or some limit of time, the rules are tabled here as a formality. In most cases it actually allows a framework for points to be raised but at the same time gives the Government the flexibility which they obviously feel, and which I would agree with and Members on this side might follow me in this respect, would give the Government the flexibility which is desirable. It would be a departure from the previous provision which is a little tighter, effectively the previous provision being that unless the House specifically resolves to accept the wayleave variation that it becomes inoperative and that that would be frankly unworkable perhaps given the type of situation we are now looking at, but let us have that framework which has been adopted in much similar legislations like the flexibility for the Financial Services Ordinance and we might all happily support it on that basis.

HON ATTORNEY-GENERAL:

Mr Speaker, I have heard what the Hon Member has said but it is not within my province to comment on the acceptability or otherwise of his proposals. I am sure the Hon Chief Minister has heard what the Hon Member opposite has said and it is for the Chief Minister, of course, to determine to what extent, if at all, the Hon Mr Montegriffo's proposals can be accommodated. Again, Mr Speaker, can I thank the Hon Members opposite for their limited support and I have nothing further I feel I can usefully add.

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 P J Brooke

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 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.

HON A J CANEPA:

We would agree, Mr Speaker, the only thing is if we are going to proceed immediately after the Second Reading of the Bill to go into Committee and if this Bill is going to be considered in Committee and the Chief Minister may not have time to consider the point which the Hon Mr Peter Montegriffo had made and if he were to agree that we should proceed along those lines which we have done previously

in the House, there may not be time to introduce an amendment whereas if the Imports and Exports Bill could be left to tomorrow then overnight it might be possible for the Attorney-General on instructions from the Chief Minister to bring the same sort of amendment that was brought in the Financial Services Bill. The same sort of amendment which was could wholeheartedly support and there will be no difficulty during the Third Reading of the Bill in voting in favour which we would like to do having regard to the very important points which the Attorney-General has made.

HON CHIEF MINISTER:

I am prepared to let the Committee Stage be taken tomorrow, Mr Speaker. In any case, the Members opposite can vote against it being taken today and ensure that it is taken tomorrow but I am only doing that so that we give proper consideration to the suggestion not because I am committing myself to accepting it, let us be clear.

MR SPEAKER:

The Committee Stage will not be taken today then.

#### THE BUILDING SOCIETIES (AMENDMENT) ORDINANCE, 1990

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Building Societies 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 has been primarily devised to provide a simple defensive framework in which Building Societies are authorised in EEC Member States to operate in Gibraltar. There is a current degree of interest being shown by UK Building Societies in opening branches in Gibraltar. As Hon Members are, I think, already aware, the recent Order made under Section 14 of the Building Societies Act in the UK empowers UK Building Societies with commercial assets over £100m to make advances on the security of land in Gibraltar. This Order has therefore given the green light to the larger Building Societies to establish themselves in Gibraltar. Given that Government wishes these Societies to

be in a position to carry on business here to the same extent as they are allowed to in the UK, it has been necessary to consider if anything in the Building Societies Ordinance detracts from this. So, Mr Speaker, so far good news but now we have to come to the difficulty. Building Societies in the UK in addition to providing the traditional deposit accounts and mortgage facilities, are empowered to carry on a wide range of financial services. They therefore have more extensive powers than the present provisions of our Ordinance which limit the purpose for which the Societies may be established basically to the raising of funds and making advances to members upon security by way of mortgage. A major difficulty to the UK Building Societies registering in Gibraltar is the requirement that in order to be so registered nothing in their Rules must be considered to be incompatible with any of the provisions of our Ordinance. In other words, Mr Speaker, a Society incorporated outside Gibraltar seeking to establish itself here is clearly restricted in its sphere of operation generally to the matters permitted by our existing Ordinance. To overcome this the Bill now before the House provides the means for an EEC Building Society wishing to establish a place of business in Gibraltar, to be recognised as an authorised Building Society admitted to carry on whatever business it is permitted to engage in in the Member State in which it is authorised. Perhaps at this point, Mr Speaker, I should point out that through the former such a recognition, the Bill is in a way anticipating the EEC moves towards the Single Market liberalisation in accepting as valid for Gibraltar authorisations given in EEC Member States. In addition, Mr Speaker, the Bill provides for the removal of some out-of-date maxima expressed in the Ordinance and provides for machinery that will enable them to be fixed at appropriate levels to be reviewed and revised through Regulation from time to time. 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 LT-COL E M BRITTO:

Mr Speaker, we on this side of the House generally welcome, without reservation, this Bill. We welcome it for the reasons that have already been put forward by the Hon the Financial and Development Secretary. It will provide increased competition in the field of lending and, particularly in the field of lending for mortgages for home purchasing in Gibraltar and it will bring with it the increased facilities which have been mentioned and which Building Societies already provide in UK. It will also, in a way, be an advantage in that the present situation where the majority of mortgages for home purchasing in Gibraltar seem to be centred rather than traditionally, as in UK, on

Building Societies, here it has been through the evolution of events and through the lack of Building Societies, the main lenders in this field appear to be the banks and this is not necessarily in the best interests of the home purchaser because, again, traditionally in UK the Building Societies have always offered money for this purpose at a lower rate than the banks have done. For this reason and for the fact that it will help and it will foster home ownership, we fully support the Bill. It is perhaps relevant at this stage to mention that the Government might like to consider ways and means of controlling or limiting the increases in lending rates offered by lenders in Gibraltar to avoid, for example, automatic increases or semi-automatic increases that we have had every time the UK bank rate has increased or possibly to bring the money lending rates more in line with their principal offices in UK rather than have the situation which we have tended to have where the mortgage lending rate has been slightly higher but the deposit rates have not necessarily been correspondingly higher. I would take this opportunity to suggest that the Government should look into this matter in order to find some way of controlling it. Mr Speaker, we will be supporting the Bill.

HON P C MONTEGRIFFO:

Mr Speaker, I have just one reservation on the Bill which, again, perhaps the Government can allay. I welcome fully the idea of EEC Building Societies establishing themselves here for the purposes of providing greater competition in the lending market but it seems to me, again and I stand to be corrected, that the Bill unfortunately is going to allow "outside lenders" establishing themselves here to do things that other Building Societies cannot do. I understand, the position as explained by the Financial and Development Secretary, that this Bill should be regarded as a transitional Bill which will anticipate a fuller document. But if what the Bill does, or I understood it to be, Sir, that the Financial and Development Secretary has indicated that there would be, well he would anticipate liberalisation generally which I assumed would invite changes to other Ordinances. My point is, Mr Speaker, that if as I understand the position a Gibraltar Building Society is limited to what it can do in deposit taking and lending on property and if now by this legislation it allows any EEC lender to be recognised in Gibraltar and to do whatever that Member State allows it to do then we are creating an unfair competitive environment for our own lenders. Because if, for example, a UK Building Society can do things other than take deposits, for example, issue unit trusts; go into other areas of financial services, it allows it effectively to make money and to bolster its own financial position and to diversify its own business in a way which will allow it, potentially, to bring better rates than, for arguments sake, the Gibraltar Building Society. Because the Gibraltar Building Society can only take deposits and not do anything else. As

I say, I am not sure to what extent the point can be answered satisfactorily. I raise it because if I assume by implication you have to specifically in the Bill say that whatever you are allowed to do in another Member State you will be allowed to do here because our law here would not allow you to do that, then you have really two levels of permission. One that affects Gibraltar lending societies and which strictly limits, by the terms of the existing Ordinance and one that affects firms and which are allowed potentially a wider sphere of activity. As I say, it is only a supplementary point that I am addressing because I would certainly not object to the Bill on that basis but if there is any uncertainty or ambiguity in that area then I would like perhaps to hear some explanation as to how that could be redressed. Thank you, Sir.

HON CHIEF MINISTER:

Mr Speaker, the Hon Member is right when he says that there will be different treatment of Building Societies incorporated in Gibraltar and Building Societies incorporated in other Member States. Where he is wrong is in thinking that we are doing anything now that we will not be required to do on the 1st January, 1993. Therefore all that we are doing is anticipating what is a Community requirement. Because we want to welcome Building Societies the law in the Community, the Second Banking Directive affecting Credit Institutions says we have to do something by the 31st December, 1992 and we are choosing to do it now instead of doing it then because it is in our interest to encourage the Building Societies to come here. In fact, what we could do is stop them coming in until 1993. What we cannot do either now or in 1993 is allow the Building Societies that we have in Gibraltar and who would not be allowed to register anywhere else in Europe on the capital ratios that they have, the umbrella of being able to operate on the basis that other Building Societies are going to be operating here. I would remind the Hon Member that as has been pointed out by the Financial and Development Secretary, Section 14 of the Building Societies Act which has been applied by the Building Societies Commission to Gibraltar discriminates between Societies in UK with £100m and Societies that have not got £100m who will not be allowed to lend on land in Gibraltar. Clearly, if we were to adopt the criteria that in order for a Building Society in Gibraltar to be able to do what a Building Society in UK can do, it has to have £100m. It goes without saying that the two and a half Building Societies that we have here who between them have not got more than £5m or £6m would not come anywhere near that criteria. So the reality of the matter is that if our locally registered Societies are going to survive at all they will have to survive on the basis that they have a much narrower range of things that they will be allowed to do and there is no way that we can maintain our reputation as a Financial Centre and allow a Building Society capitalised at £100,000 to provide overdrafts and banking services and all



the other things that very substantial credit institutions in UK do who, in fact, meet the minimum capital requirement of £5m ecus laid down in the Second Banking Directive.

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 would just like to thank Hon Members for their general support to this Bill. I think the Chief Minister has responded to the majority of the points made. I think one point that was not responded to was the question of the control of money lending rates. I know of no control of money lending rates that the Building Societies in the UK have but I stand to be corrected on that. Other than that I would just simply like to thank Hon Members for their support, Sir.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

THE SUPPLEMENTARY APPROPRIATION (1989/90) (NO.2) ORDINANCE, 1990

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. In accordance with what I understand is to have been the custom of my predecessor, Mr Speaker, I will not make any speech on the general principles of the Bill but merely commend it 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:

No, Mr Speaker, we will raise any points at the Committee Stage.

MR SPEAKER:

I will now call on the Mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have nothing to say, Sir.

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 Contract and Tort (Amendment) Bill, 1990; the Sale of Goods (Amendment) Bill, 1990; the Pensions (Widows and Orphans) (Amendment) Bill, 1990; the Criminal Procedure (Amendment) Bill, 1990; the Pensions (Amendment) Bill, 1989; the Bankruptcy (Amendment) Bill, 1989; the Public Health (Amendment) Bill, 1990; the Merchant Shipping (Amendment) Bill, 1990; the Business Trades and Professions (Registration) (Amendment) Bill, 1990; the Social Security (Non-Contributory Benefits and Unemployment Insurance) (Amendment) Bill, 1990; the Imports and Exports (Amendment) Bill, 1990; the Building Societies (Amendment) Bill, 1990, and the Supplementary Appropriation (1989/90) (No.2) Bill, 1990.

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

THE CONTRACT AND TORT (AMENDMENT) BILL, 1990

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

Clause 2

HON M A FEETHAM:

Mr Chairman, I need to correct a printer's error. After Part XIV the letter "o" was left out of the word "CONTRACT".

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

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

THE SALE OF GOODS (AMENDMENT) BILL, 1990

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

Clause 2

HON LT-COL E M BRITTO:

Mr Chairman, I have to declare an obvious interest in this Bill. Mr Chairman, this point would have been more relevant to have been made in the general principles of the Bill but at that time I was not in possession of information relating to the UK Toy Safety Regulations 1989 of which I have a copy here and therefore I was unable to make the point at that juncture. I think there is an ambiguity in Clause 2 as it is envisaged in that it is not clear whether the 'CE' mark referred to in subsection (2) is required or not required to be carried by toys after any given date and the UK Regulation is much clearer in that it comes into effect on the 1st January, 1990, but it establishes quite clearly that toys held in stocks by shops and manufacturers and suppliers prior to the date of the implementation of the law do not have the requirement to carry this 'CE' mark and can be sold subsequently without the 'CE' mark being on them. But on the contrary any item received by the retailer or supplied by a manufacturer subsequent to the 1st January, 1990, by statutory obligation is required to carry the 'CE' mark. I am not aware whether the Directive which it is intended to publish in the Gazette will be as specific as that but I would have thought that either by amendment or by including it with the text of the Directive it would be in the interests of consumers as well as of retailers to be safeguarded by a clarification of the position of whether a toy has to carry or has not got to carry the mark at a certain date. As I say, I am not aware of what the Directive says but certainly the legislation as we are bringing it in does not make this clear whereas the UK legislation does. And if it helps in any way, I am quite prepared to make available to the Hon the Attorney-General the copies of the UK legislation that I have in my possession.

HON M A FEETHAM:

Mr Chairman, I would like to move an amendment to Clause 2, section 16A(1), in the first line the word "the" should be inserted immediately before the words "sale of goods".

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

HON A J CANEPA:

Mr Chairman, we support the amendment. The point that the Hon Mr Britto has made, I think, still requires to be clarified before we move on.

HON CHIEF MINISTER:

Mr Chairman, what this does is it brings into effect a Directive of the European Community relating to safety standards and it gives us the power to update that Directive by publication in the Gazette. At the same time just like we are able to update there is nothing to stop us introducing in the publication an element to take into account the point that the Hon Member has made but we certainly would not want it in the law because for reasons that we have explained, our own experience is that in the time that we have been in we suddenly find that something that was intended for one thing in the law is stopping you doing something else somewhere else without knowing it. We take the point that the Hon Member has raised and we will ask the Attorney-General's Chambers to see before we publish the actual thing in the Gazette whether it covers the point that has been made.

HON M A FEETHAM:

Mr Chairman, I wanted to clarify the point further. In fact, since the Bill was presented to the House there has been consultation with the Toy Traders Association and the Attorney-General's Chambers taking into account these sort of things and at the time when we made the Regulations the points which have been made will be taken care of.

HON A J CANEPA:

We are grateful for that, Mr Chairman, we vote in favour.

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

THE PENSIONS (WIDOWS AND ORPHANS) (AMENDMENT) BILL, 1990

Clause 1

HON ATTORNEY-GENERAL:

Mr Chairman, can I in accordance with the notice I gave to you on the 13th February, amend Clause 1 of the Bill. The Government has decided since publication of the Bill, Mr Chairman, that the Bill is to be given retrospective effect to the 26th day of October, 1989 and therefore, Mr Chairman, I move that the side heading "Title" be amended to read "Title and Commencement". That the figure "1" is followed by a "(1)" be inserted before the words "This Ordinance" and that a new subsection be inserted as follows: "(2) This Ordinance shall be deemed to have come into effect on the 26th day of October, 1989".

HON P C MONTEGRIFFO:

Mr Chairman, before I comment further, could I invite the Attorney-General or any other Member of the Government to perhaps elaborate further why we are being asked to give retrospective effect to the Bill.

HON CHIEF MINISTER:

Mr Chairman, the position is that representations were made by Staff Associations that there were people who had, in fact, left the Government Service since the date that the Bill was published and the date that the Bill was passed which is why the 26th October date comes from. So, effectively, it will mean that people who retired from that day on whereas normally people who have retired would not be able to obtain a refund of contributions because, as I explained, I think, in the general principles of the Bill, the whole essence of getting a refund is that you have to put a time limit on it otherwise you have a situation where you insure yourself against something happening, if it happens you collect and if it does not happen you collect a refund and then you destroy the principle of insurance which is that effectively the survivors pay for those who do not survive. But we accepted the argument, I think there are a couple of individuals caught in that situation and therefore we have agreed to make the date effective from then.

HON P C MONTEGRIFFO:

I am grateful for that. The date the 26th of October, I believe it is, is not relevant in any other way at all, it just happens to coincide with their requirements so to speak.

HON CHIEF MINISTER:

No, I believe that it is the date that we published the Bill and there are people who left the service after we published the Bill but before we passed it which is now. So if we

introduce the Bill with effect from now it would mean that people who had left the service previously would not be able to claim the refund because they were no longer in the Government service. What we have done is effectively that the period within which people are claiming refunds is from the 26th October to the 31st March. There are people who claimed after that date and who having claimed it did not stay in the Government after they had claimed it and therefore as the law stood we were advised that they would not be able to collect the refund unless we actually specified that if their claim had come in after the 26th October, which is when it was made public, then even if they had ceased to be employed by the Government their claim for a refund should still be dealt with.

HON P C MONTEGRIFFO:

Mr Chairman, I do not want to labour the point, I am grateful for that explanation. But the Bill was published on the 11th January, 1990, and not on the 26th October. Was the 26th October a date perhaps when it was made public to the Staff Side, I am quite confused, Sir.

HON ATTORNEY-GENERAL:

Will the Hon Member give way, unless he has completely finished. What, in fact, happened, Mr Chairman, was that this Bill effects certain additions or, if you like, amendments to the Bill which went through this House at the end of last year which began the winding up of the Widows and Orphans Pension Scheme. That, I think, is what the Chief Minister was referring to.

HON P C MONTEGRIFFO:

I am obliged, Sir.

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

Clause 2

HON K B ANTHONY:

Mr Chairman, in Clause 2(a) I think it should read "except" and not "expect", is that correct?

HON ATTORNEY-GENERAL:

Yes, Mr Chairman, that is absolutely right. The Hon Mr Anthony has better eyes than I do. He is absolutely right and I am most grateful to him. It should be "except a contributor who has ceased to be a public officer" and not "expect". Perhaps that amendment could be considered, Sir.

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

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

#### THE CRIMINAL PROCEDURE (AMENDMENT) BILL, 1990

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

#### Clause 2

HON ATTORNEY-GENERAL:

Mr Chairman, in relation to Clause 2 of this Bill and in accordance with the notice I gave on the 15th January, 1990, I move the repealing and replacing of section 226 of the Ordinance. I move, firstly, the deletion of the word "arrestable" preceding the word "offence" and, secondly, the deletion of the word "before" which immediately follows the said word "offence" and the substitution of the words "triable at".

HON M K FEATHERSTONE:

Sir, does the Attorney-General think that that reads as proper English it will now read "has been charged with an offence triable at the Supreme Court".

HON ATTORNEY-GENERAL:

Yes, that is perfectly proper English, Mr Chairman, as far as I am concerned, "triable at the Supreme Court".

HON M K FEATHERSTONE:

Well, it confuses me, Sir.

HON ATTORNEY-GENERAL:

Mr Chairman, let me explain, I am sure the Hon Mr Montegriffo, as a fellow lawyer, knows exactly what I am talking about. There are three categories of criminal offences, Mr Chairman, there are summary offences which can only be tried or which are triable at only the Magistrates' Court; there are offences of a certain category which can be tried at or triable at either the Magistrates' Court or the Supreme Court depending on the wish of the parties and the election of the defendant, and thirdly there are the more serious category of offences such as rape, murder, manslaughter, blackmail and the like, which can be tried at or triable at only the Supreme Court.

HON M K FEATHERSTONE:

Is not the word "at" missing, "triable at at the Supreme Court".

HON ATTORNEY-GENERAL:

It is in, is it not? That is the amendment I am moving, Mr Chairman, the substitution of the words "triable at". That is what I have said. That is what I have in front of me and if I did not read that then it is my mistake but that is what I seek to substitute, Mr Chairman, the words "triable at". But I did say "triable at" when I moved the amendment originally, Mr Chairman.

HON M K FEATHERSTONE:

Now I have it, Mr Chairman.

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

#### Clause 3

HON ATTORNEY-GENERAL:

Mr Chairman, in Clause 3 which related to the proposed section 227(1) I move the deletion of the words "and to section 68B of the Magistrates' Court Ordinance", the Magistrates' Court (Amendment) Bill, Mr Chairman, having been withdrawn by me at the last House. Also in Clause 3, Mr Chairman, in respect of the proposed section 227(2) by firstly inserting immediately after the words "compensation under subsection (1) shall" the words "in the case of the Supreme Court" and, secondly, by inserting immediately after the words "considers appropriate" the words "but in the case of the Magistrates' Court shall not exceed £2000".

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.

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

#### Clause 6

HON ATTORNEY-GENERAL:

Mr Chairman, in Clause 6 dealing with the proposed new section 232A I move to insert immediately after the expression "section 226" a comma, and the figure "227".

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

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

THE PENSIONS (AMENDMENT) BILL, 1990

Clause 1

HON ATTORNEY-GENERAL:

Mr Chairman, I gave notice to you initially on the 9th January of certain amendments that the Government then wished to move to this Bill. That notice is now replaced, Mr Chairman, by the notice I gave dated the 12th February. That notice effects a large number of amendments to the Bill and in addition the Hon Colonel Britto has also given notice, dated today, that there are certain amendments which he intends to move to the Bill. Mr Chairman, I seek your guidance at this stage whether you wish to go clause by clause or whether you feel there is any way we can shorten the procedure by dealing with the respective amendments being moved on a collective basis.

HON A J CANEPA:

Mr Chairman, some of the amendments of which the Hon the Attorney-General gave notice on the 12th February are major amendments because they amend sections of the principal Ordinance which were not previously the subject of the previous Bill, for instance, section 7 which I think applies to officers who are retired in the public interest. It is now proposed to amend that section and I think, Mr Chairman, that the correct procedure, if I may say so with your indulgence, would be that we take each clause one by one and when we come to the amendments which the Attorney-General has given notice of on the 12th February, that we should take them individually and he should explain what the import of those amendments are so that we can understand really what is being done. I have had a look at them but we have not had due to lack of time sufficient time to be absolutely certain that an Ordinance with which I am reasonably familiar, namely the Pensions Ordinance, that I understand what is being done and how it is being amended.

MR SPEAKER:

I think that we should follow the normal practice which is to go clause by clause.

HON ATTORNEY-GENERAL:

Mr Speaker, personally I am perfectly happy to proceed as the Hon Leader of the Opposition has suggested. I do not think it falls upon me to explain matters of policy in Committee Stage, that is for the Chief Minister or anyone else whom he nominates from the elected Members on this side of the House to explain. Mr Chairman, I will be perfectly happy to accommodate the Hon Leader of the Opposition, of course; by doing my best to clarify any legal points which may arise in the Committee Stage.

MR SPEAKER:

No doubt other Members of the Government will come up and explain the clauses if the Leader of the Opposition wishes any explanation, I am sure.

HON ATTORNEY-GENERAL:

Mr Chairman, in that case, in respect of Clause 1, I move that that Clause be amended by the addition to the "Title" of the words "and Commencement"; by the insertion of the figure "(1)" immediately before the words "This Ordinance", and by the insertion of a new subclause in the terms of paragraph 1 of my memorandum to you of the 12th February reading: "(2) This Ordinance shall come into operation on such day as the Governor may by notice in the Gazette appoint and different days may be so appointed for different purposes".

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

Clause 2

HON ATTORNEY-GENERAL:

Mr Chairman, in relation to Clause 2, I move that that is renumbered as Clause 4; that the words "Pensions Ordinance (hereinafter called 'the principal Ordinance'))" are omitted from that Clause and are replaced by the words "the principal Ordinance"; that the word "the" is inserted inside the second set of quotation marks and before the word "Governor"; and that the following words are inserted after the word "Governor", namely, "and in subsection (1)(a)(iv) by omitting the words 'or the Secretary of State'". That, Mr Chairman, is in accordance with Clause 2 of my notice of the 12th February.

Mr Speaker then put the question which was resolved in the affirmative and Clause 2, as amended, (renumbered as Clause 4) was agreed to and stood part of the Bill.

Clause 3

HON ATTORNEY-GENERAL:

Mr Chairman, in respect of Clause 3, as per paragraph 3 of my notice, I move that the present Clause 3 is omitted and replaced by the following new Clauses, the first of which is headed as "Amendment to Section 2" is numbered 2 and reads as follows: "The Pensions Ordinance (hereinafter called "the principal Ordinance") is amended in section 2 by omitting in paragraph (d) of the definition "public service" the words "Secretary of State, or the Governor after consultation with the Secretary of State", and substituting therefor the word

"Governor". As a further amendment to Clause 3, Mr Chairman, I move turning to page 2 of my notice, that we have a new Clause 3 headed "Amendment to Section 3" and reading: "The principal Ordinance is further amended by omitting in subsection (2) of section 3 the first and second commas and the words "with the sanction of the Secretary of State".

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.

#### New Clauses 5 to 10

HON ATTORNEY-GENERAL:

I have already moved, Mr Chairman, that Clause 2 of the existing Bill should be numbered as Clause 4 and I therefore move that we insert a Clause 5 to the Bill with the heading "Amendment to Section 7" and reading as follows: "The principal Ordinance is further amended by omitting in section 7 the words "and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of this Ordinance".

HON A J CANEPA:

Mr Chairman, am I correct in thinking that the section 7 and can I have confirmation from the Attorney-General that the section 7 of the principal Ordinance that is being amended is that which provides for the payment of a pension, gratuity or other allowance to be payable to an officer whose employment with the Government is terminated in the public interest. If that is the case could I have, perhaps if not from the Attorney-General if he thinks that it is a matter of policy though I always understood that the Pensions Ordinance was not a defined domestic matter and that therefore if anybody had to give an explanation here in the House on behalf of Government as an employer, it was the Attorney-General who used to but I want an explanation from somebody as to why it is considered that in those circumstances a pension and gratuity should no longer be payable to an officer whose employment is terminated in the public interest.

HON ATTORNEY-GENERAL:

Mr Chairman, can I deal firstly with the last comment by the Hon Leader of the Opposition. When I agreed and became Attorney-General I stressed to everyone that I am and would remain a lawyer, not a politician, I do not and will not interfere in any way in matters of policy. I can confirm, however, as the Hon Member has said, that section 7 of the Pensions Ordinance does indeed relate to retirement on the grounds of public interest.

HON A J CANEPA:

Right, I am sure therefore, Mr Chairman, that I can now invite the Chief Minister on behalf of the Government to give us an explanation as to why. We may very well agree that this is desirable and proceed in this manner.

HON CHIEF MINISTER:

Mr Chairman, I think what this does are two things. There are a number of amendments throughout which remove the references to the Secretary of State and that, in fact, we had already decided to do in the original Ordinance, that is when we brought the Bill to the House for First and Second Readings, but in between then and now what we have done is, effectively, go through the rest of it and we have realised that there is no consistency if we keep the Secretary of State in some areas and not in others so we are removing it from all of them. The amendment that we are doing to section 7 is not to prevent us from giving a pension to somebody retired in the public interest but to broaden the category of people to whom we can. So it is not a restrictive amendment, it is an amendment that makes it easier to do so because at the moment you can only do it provided a pension or gratuity or allowance cannot otherwise be granted under another provision. We felt that there might be a situation where somebody could go under this provision and get £x or under another provision and get £y and the individual might argue: "Well, £x is more than £y, why cannot I use this provision". As the law now stands if he gets a minimal amount under another provision he loses the right to get a higher amount under section 7 and we are removing that restriction.

HON A J CANEPA:

That is perfectly understood.

HON ATTORNEY-GENERAL:

Mr Chairman, I propose that a new Clause 6 be inserted to amend section 8 and that the principal Ordinance is further amended by omitting in paragraph (b) of subsection (1) of section 8 the words "with the approval of the Secretary of State" together with the surrounding commas. May I further propose, Mr Chairman, that a new Clause 7 be inserted to amend section 9 of the Ordinance by omitting in subsection (3) of that section the words "after consultation with the Secretary of State in order that it may be determined". Mr Chairman, I further propose that a new Clause 8 be inserted to amend section 11 of the Ordinance. Firstly, that paragraph (a) of subsection (1) of section 11 be omitted and replaced by the following new paragraph: "(a) unless or until the person in receipt of the pension has attained his normal age of retirement, he may, if fit for service, be called upon by the Governor to accept, in lieu of his pension, office in public service under the Government or in



other public service;". And as a second amendment to section 11, Mr Chairman, may I propose that paragraph (b) of subsection (1) of section 11 be amended by the omission of the words "the age of fifty years" and the substitution therefor of the words "his normal age of retirement".

HON A J CANEPA:

Could the Attorney-General at this stage explain what this amendment will achieve?

HON P C MONTEGRIFFO:

Mr Chairman, could I interrupt at this stage although I do not want to confuse proceedings further. Mr Chairman, the amendment to section 8 according to the notice given by the Attorney-General is, in fact, the nub of the Ordinance and effectively replaces most of what the old section 3 was doing. It is an amendment to section 11 but it is number 8 in the principal Ordinance. The subsection that that is replacing does not contain this similar wording but has the words "not less in value at the end of office in public service" so that the position if this subsection was passed is that if a person in receipt of an early pension was fit enough to be offered employment in the public sector and if he did not take up that employment he would lose that early pension. The previous position, Mr Chairman, in the principal Ordinance said the same except that the offer of new employment had to be effectively equal in value and not less in value. That is, I suppose, a fairly nebulous term 'not less in value' but it would definitely encompass value of remuneration and, I think, value of responsibility. The original section 3 of the Ordinance that we are now considering did in fact contain words which were of a similar effect because, Mr Chairman, you will recall that that relevant part of section 3 said that if a person in these circumstances was offered employment which was similar in rank to the one he had last held before retirement that if he then refused to take up that new employment that the early pension would not be paid. So we had a situation, Mr Chairman, where the original principal Ordinance said 'if you retire early because you are ill but then you get better, we offer you a job as long as it is the same job of a similar value you have got to take it or else you lose the pension'. The first Bill, if I can talk of it that way, that came to the House said 'forget about that but you will also lose your pension if we offer you a job' - we lose the words 'of the same value' - 'but it has got to be a job that is not inferior in status and responsibility and it is obviously on a type of par with the one you originally had before leaving due to ill health'. Mr Chairman, you will recall the point I made which I think the Government took on board but I wanted to make sure that self employed people would also be subject to the possibility of being caught in the same way. We now go to what the Learned Attorney-General is proposing which appears, subject to any explanation which the Government may give, to actually take the position even

back beyond what the original principal Ordinance provided, ie it seems to be a dilution of a right which was originally in the principal Ordinance and which was also, to some extent, going to be encompassed in the philosophy in the Bill that first came to this House. What we all agreed in this House, I think, was that if a man became fit after having left his job because originally he had been ill then it was logical that the Government should say: "Right, I offer you a job back of a similar type that you had. If you do not take it up why should the taxpayer go on paying you when you have entered into other employment in the private sector or you have become self employed elsewhere". Am I correct in saying, Mr Chairman, that the amendment as it now stands really says that as long as the Government makes an offer of any job in the public sector, if that job is not accepted by the individual the individual loses that early pension? If that is correct, Mr Chairman, would that not be undesirable from the point of view that one could be, for example, a Head of Department in the Civil Service, one could suffer some illness to make the discharge of those functions impossible but one could still be able to be asked, for example, to be a Porter in the public sector. But it would be wrong, would it not, for a man who had achieved a certain position, after a career in whatever aspect, to be told that because he has recovered to the extent that it is possible to him to act as a Porter or as a Messenger and I am not decrying that post at all but that there are different levels of capability. If the effect of this amendment is to say: "We offer you the job of a Clerical Officer because you can, in fact, fill in a ledger but you cannot take decisions in the level of a Head of Department, and if you do not accept that then your pension will not be payable", if that is what, in fact, is being done that would appear to be undesirable and I cannot imagine that that would be the Government's intention. Could perhaps the Government clarify that aspect? I think it would be important and it would certainly change my attitude to the Bill. I liked the sense of it originally, I thought it was right that the people of Gibraltar should not pay somebody an early pension if he was in employment in a job of similar nature and of a similar standing but if he is offered a job which is at a lower level then that would not seem really to be the right sort of situation where an early pension should be done away with.

HON CHIEF MINISTER:

Mr Chairman, we in fact took a second and very hard look at this in the light of the arguments put by Members opposite when we brought the Bill to the House for First and Second Readings. What we are doing now reflects the validity of those arguments that were put here which were, effectively, that the way the original amendment had been prepared was a nonsense. If we have a situation where it says, as it did originally, that the person that is being retired has to be

offered employment in a pensionable office similar in rank and duties to those of the last office which he held before then, effectively, he must be fit to do what he was doing originally. If he is fit to do anything else he cannot be offered alternative employment. I know from the years that I have been dealing with industrial workers that quite often industrial workers do not want to be retired and, in fact, it was the Transport and General Workers Union who made representations to the AACR administration saying that before people are medically retired they ought to be offered alternative employment. But we were then talking about industrial workers. You might get somebody, for example, that has heart trouble and he is a driver and it is decided that he cannot drive but that does not mean that he cannot work. Since industrials tend to get relatively low pensions even if he leaves the Government he has no choice but to get another job because he cannot live on the pension that he gets from the Government. We all know that. That is one end of the scale and I can tell the House that at the other end there are a number of current cases seeking medical retirement and one happens to be a Police Constable who has gone to UK after ten years and three weeks of service and his doctor has told us, from the UK, that the man is suffering from depression because of his dislike for Gibraltar. We have been asked to please retire him on medical grounds and give him twenty years because he dislikes Gibraltar and he is depressed. If we went ahead with the original amendment we would then have to find him alternative employment in a pensionable office similar in rank and duties and which presumably must be giving him a job as a Police Constable in England where he would not be depressed since it is the place that makes him depressed and not the Police Force. In fact, what we have done is look at the principal Ordinance again and there is no doubt that the Pensions Ordinance is a very antiquated piece of legislation and that when there have been changes to it over the years we have been left with things which say one thing in one area but which is contradicted by something in another area. We however found out that we did not need to introduce new legislation in order to offer re-employment because the possibility of offering re-employment already existed in the Ordinance under section 11. So rather than go ahead with what was intended and which was probably what was being prepared under the former administration because we simply brought to the House something that had been in a very long gestation period and it is only really when we started debating it here that we recognised the inconsistency of saying 'if somebody is going to be retired from a particular office at a particular rank then he can only be offered the same office at the same rank'. The actual section 11 that we are amending provides that he should be offered employment not less in value - although that is not defined - and provided that the circumstances of the climate are ok. I do not know whether the particular Officer in question who wants to retire is not because he objects to the climate in Gibraltar. I would imagine that that is not what he dislikes

about Gibraltar. But since this was intended to provide for people who were in the Colonial Civil Service because that is where the origin of this Ordinance originates from, effectively what you are talking about is that if somebody leaves the Civil Service because he is unfit to be working in India then you can send him somewhere else to do something similar provided that the climate is compatible with the illness which lead to his retirement. So this section as it stands today is clearly designed to allow the Colonial Office to remove Colonial Civil Servants from one Colony and re-deploy them to another Colony as opposed to retiring them on medical grounds. What we have done is, since that is a dead letter anyway, is propose an amendment to that which we think is consistent with what medical retirement is all about because at the end of the day when one looks at people who are sent to a Medical Board there are, in fact, three options put down. One is, is the person fit to return to the job that they were doing; secondly, is the person unfit to do that particular job but fit to do any other job, which means that if he is he has not got a case for retirement; or thirdly, is the person unfit for the public service and you are retired from the public service and not from the particular job you are doing in the public service. So there is an inconsistency which says 'if you are retired from the public service you can only be re-employed in the public service in the particular job that you were doing before you were retired'. However, if you are not retired from the public service, which we have already got power to do, we do not need to change the law. If you had a situation where the particular case that I am bringing to the notice of the House and which happens to be the latest, and perhaps one of the worst examples that I certainly have come across, if that particular case were to be looked at by a Medical Board and the Medical Board came to the conclusion that the depression was not really Gibraltar but being in the Police Force then the Medical Board could recommend that the person should be, in fact, re-employed in another job in the public service rather than retired from the public service because he would have been unfit to do the job of a Constable but not unfit to be in the public service and that we can do already without amending the Ordinance. What we cannot do is do it to somebody that leaves and then we want to bring back and therefore the view of the Government, that is a matter of policy, is that having looked at what we were going to do and having taken on board the arguments that were put at the Second Reading of the Bill we realised that, in fact, had we gone ahead with the amendments that we brought to the House originally we would have been able to do nothing at all that we cannot do already because the qualifications put on being able to say 'no' to somebody on medical retirement or, in fact, to withdraw the medical retirement if they recovered their health miraculously, were such that it would have been easily challenged and effectively a dead letter. We then looked back at the Ordinance and we found the provisions that exist already in the Ordinance and with the amendment that we are introducing

what we are doing is giving us an opportunity to do to somebody that leaves the Service what can already be done to somebody before he leaves the Service. Whether the person agrees or does not agree or can or cannot do the job is something that will be taken up by the individual concerned. I think the most important thing, frankly, about the law that we are seeking to amend and the measures we are seeking to put out is that people who think that all they have to do is wait ten years and one week and then they can happily collect a lot of public money, in some cases higher than the minimum wage and then immediately go and get a second job and start working towards a second pension. Well, they are not going to get away with it anymore.

HON P C MONTEGRIFFO:

Mr Chairman, I am grateful for that information but I am not sure that the Chief Minister has fully addressed the point of the omission of the words 'not less in value'. I agree, in principle, with a lot of what the Chief Minister has said and the desirability of dissuading people from abusing a system in the terms in which he has described. But is it not reasonable, and maybe he does not feel it is, maybe we just take a different view on this, is it not reasonable that if in a legitimate situation you retire on medical grounds because you are not able to undertake the job of Financial and Development Secretary, for arguments sake, a demanding and stressful job for whatever reason, a medical condition, but you would be able to undertake the job of a Clerical Officer because less experience would be required and a different level of expertise would be required, would it be right - and as I understand it this law would allow the Government so to do - to offer the former Financial and Development Secretary a job in the public sector at that level and if he refused to take it, once he had been declared competent for that job, that he would then lose a pension at a level which he had worked for for X years previously whilst in that different level of responsibility. That seems to me unfair.....

HON CHIEF MINISTER:

Does he want the answer?

HON P C MONTEGRIFFO:

Yes, but could I make just one more point which perhaps the Chief Minister could also answer.

HON CHIEF MINISTER:

Before the Hon Member decides it is unfair!

HON P C MONTEGRIFFO:

That is one point and the other point which perhaps the Chief Minister could also address is this. My understanding is that the other part of the original section 3 because there were two parts really. The first one, that if you give up employment because you are ill and you just lounge around in your house and then somebody gets to know that you are fit and the Government offers you a job, if you do not come back then you stop getting your pension, fair enough. That is more or less encompassed in the new one. But the other situation was where you retire from your job, you then take up employment somewhere else, you are seen to take up employment somewhere else and even though the Government may not say 'I offer you employment', the mere fact that you have taken up employment somewhere else at a level which you could, as the Government, objectively assess is comparable in responsibility, that would be enough for the Government to say: "Fullstop, we are not paying you any more pension". It would appear to me here and I think that would be a legitimate view to take as well, it would appear to me here, Mr Chairman, that what is happening is that in the case of a person who actually goes out and does I think the bigger crime, so to speak, of retiring on medical grounds, then recovering and actually going to work in the private sector, that unless the Government actually had a job to offer him - and I assume that in most situations the Government would have a job to offer the man - in the hypothetical situation that we have a shrinking public sector after all, where the Government actually cannot offer him anything, the provision of part of the old section 3 which would allow the Government to say: "You seem to have entered employment with another person and that for me is enough for us to form the view that you should not be in receipt of your pension". I think that should be covered as well because it would be unfair to have a different situation depending on whether the man went out to work in the private sector or just stayed at home. This all now depends on the Government being able to offer alternative employment as opposed to a situation where somebody just takes up employment in the private sector and the Government cannot, in fact, make an alternative offer of employment.

HON CHIEF MINISTER:

The Hon Member is right. We are removing in the new provision the penalty which he has, in fact, mentioned that was in the original provision and we think it is fairer to do it. We do not agree we are being more unfair in the first bit and less unfair in the second and I will explain why. I stress that when people are retired now they are retired from the public service not from a particular job. That is, there is an inconsistency in the law. If the Hon Member takes the trouble to check he will find that people who are retired from the public service receive a letter that says:

"You are retired from the public service" and not "You are retired from the job of Financial and Development Secretary". If you go to a doctor and the doctor decides that working with me is so stressful that you need medical retirement then the doctor may decide that the answer is not to retire you from the public service but to distance you from me in which case his recommendation is.....

HON A J CANEPA:

Does that apply to other Members on this side?

HON CHIEF MINISTER:

I do not know, we would have to look at the provisions in the House of Assembly Pensions Scheme, Mr Chairman. As I was saying, Mr Chairman, we would be told: "We are not retiring the person from the public service but we are offering him alternative employment". The point that I am making is that we can do that already.

HON P C MONTEGRIFFO:

Yes, but on the terms clearly that it should - and I have mentioned it - that the original section 11, I think it is, says that you can offer employment but it shall be of the same value and the words "not less in value" have been excluded from the new amendment. So what you are allowing yourself to do, or at least that would appear to be the case, that you are taking out that safety net of "not less in value".

HON CHIEF MINISTER:

No, Mr Chairman, the Hon Member is wrong. Because what I am saying that we can do is not being done under section 11.

HON P C MONTEGRIFFO:

That is what you are repealing.

HON CHIEF MINISTER:

No, what we are doing is amending section 11 to bring it into line with the provisions that are elsewhere in the Ordinance and which allows us not to retire somebody. Section 11 is not about retiring somebody. Section 11 is about somebody who is already retired, that is the distinction. If a Civil Servant goes.....

HON A J CANEPA:

They are already pensioners.

HON CHIEF MINISTER:

That is right, they are already pensioners. So the one that we are amending is the one for people who have already gone and who are already pensioners. What I am saying we can already do and which is what the Hon Member thinks is unfair. We do not have to amend the law to do that, that we can do anyway.

HON A J CANEPA:

In the old days there were fears within the Civil Service in the days when it was being run along strictly Colonial lines, there were fears voiced - I am talking of decades past - that people who were already pensioners might be required to come back and work. That is what this applies.

HON CHIEF MINISTER:

So therefore we are not talking about saying "we are amending section 11 to enable us to refuse medical retirement", that we can do anyway. What we are saying is "we are amending section 11 so that instead of getting the man that may have another job in the private sector and sending him to another Colony where the climate may not be good for him, we will bring him back to the Government Secretariat where the climate is alright".

HON P C MONTEGRIFFO:

Then the policy of the Government is that as they have indicated it has changed its mind, if not its mind, then they were going to do something which you did not have to do because you could do it already.

HON CHIEF MINISTER:

Well, it is not that we changed our minds.

HON P C MONTEGRIFFO:

But you have realised that you had the power anyway.

HON CHIEF MINISTER:

We realised that we had the power anyway because, in fact, when we brought the Bill to the House the Members opposite brought up certain arguments and surely this is what they are always complaining about when they say that they want us to come to the House with things and take into account the arguments that they put. So we went back and looked at those arguments and as a result after reading a transcript of those arguments, which I have here, we went back and looked at the law, in the light of those arguments, and we found that they had made a number of very important and practical points. Some of the things that we were seeking to do were

in conflict with other bits of the Ordinance, or were superfluous, and in the light of that we have now come back and are not proceeding with the original proposals but with the new proposals. These achieve the same objective, that has not changed, in a more efficient way and in a way which does not create a greater degree of conflict between one section of the Ordinance and another. So what we are doing, effectively, is producing more intelligible legislation. But the objective has not changed and therefore the object of the Bill which we explained in the general principles, Mr Chairman, and which I have repeated today are still the same object. It is just that as a result of the contribution of Members opposite we have gone back and reconsidered the entire thing and come back, we believe, with a more efficient method and we are grateful to Members opposite for having pointed out the inconsistencies in the original Bill.

HON P C MONTEGRIFFO:

Mr Chairman, the Chief Minister has not addressed the point of whether it will still apply even for somebody who is already a pensioner. Is it the case if somebody is already a pensioner?

HON CHIEF MINISTER:

Of course it applies to somebody who is already a pensioner, that is precisely what I am telling the Hon Member.

HON P C MONTEGRIFFO:

But the amendment as it is being proposed excludes those words.

HON CHIEF MINISTER:

Mr Chairman, I will go over the argument, I think, for the last time and I think if the Hon Member does not understand it this time I will not explain it again because this is the third time round. Somebody claims to be too ill to continue working, as the law stands now without this Bill and without any amendments. He is then sent to a Medical Board and the Medical Board may retire him or may not retire him. The Medical Board has the option of saying: "This person is unfit to be a Policeman but he is not unfit for the public service". That is something that exists already.

HON A J CANEPA:

At the same salary.

HON CHIEF MINISTER:

But that is a different issue because the salary can be retained personal to holder on the basis that there are

agreements that says you cannot reduce somebody's salary. That is not the issue about whether you retire or you do not. At the moment when the person goes out.....

HON P C MONTEGRIFFO:

That is the part which is of concern and which I am addressing, Mr Chairman.

HON CHIEF MINISTER:

But the concern that the Hon Member is expressing is that on the one hand we are removing the fact that there is a reference to value for people that we are saying come back and yet he is saying that we should, in fact, proceed as originally intended and that if somebody leaves the Government service and gets a job as a Clerical Officer in the private sector we should, in fact, be able to say to him: "I will remove your pension if you carry on working as a Clerical Officer".....

HON P C MONTEGRIFFO:

No, that is what the Bill said, I am sorry, Mr Chairman. The original Bill said that equivalent employment had to be similar in status. It is your Bill and not mine, let us see where the fault lies.

HON CHIEF MINISTER:

I accept that it is our Bill and not his, Mr Chairman, I think if it was his none of us would get a chance to speak because being mine I can hardly get a word in edgeways.

HON P C MONTEGRIFFO:

I actually thought it was sponsored by the Hon Minister opposite who should defend his own Bills. Yet Mr Mor has not defended the Bill at all, Mr Chairman.

HON CHIEF MINISTER:

It has nothing to do with Mr Mor. We have just removed the powers of the Secretary of State and transferred them to me and not to Mr Mor, Mr Chairman. He ought to know that. Pensions is not, in fact, a matter for the Minister for Labour. This concerns the pensions of public servants and not pensions of the workforce generally. The Hon Member should know the distinction. The Hon Member said in his contribution that there were two things. The one about the value, which I answered, and the second part which was that we were no longer proceeding with the original provision which he considered legitimate and which we were no longer doing. I explained that we are no longer proceeding with it because by the amendment to section 11 we have got what we think is a fairer alternative to the original provision.

Because if somebody leaves the public service because he is considered unfit for work and then recovers we can offer him re-employment in the Government. But if he does not come to us for re-employment and he recovers and he is working in the private sector then under the original provision all that we could do was remove his pension whereas under the existing provision we can in fact offer him re-employment. The Hon Member seems to be saying if somebody leaves the Government then you should not be able to offer him re-employment unless you offer him his old job back. However, if you are not in a position to offer him his old job back and he may be unfit to do that particular job, if he gets a different job in the private sector then I agree that you should go ahead and do what you originally intended. Yes, the Hon Member is on record, as having said that he agreed with the original provision. The original provision was not to offer him a job but to take his pension away unless he stopped working.

HON P C MONTEGRIFFO:

He has the choice to leave and then be offered a job if the Government wants but that is his choice, Mr Chairman.

HON CHIEF MINISTER:

But this is precisely what I am trying to explain to him, Mr Chairman, that the option that we are giving now is a better option than the one that we had thought of giving him before where on the one hand either we had to give him his old job back or no job at all, either in the public or the private sector. So if the situation was that somebody was in the Government in a job of responsibility and because of the pressure of the work he could not carry it out then the situation, as the law now stands, is that we can offer him alternative employment and we can give him a preserved wage or we can let him go.

HON A J CANEPA:

Could the Hon Chief Minister elaborate that question of the preserved wage?

HON CHIEF MINISTER:

Yes, the position at the moment is that if somebody is in the public sector and goes, for example, for medical retirement, the example that I gave before of the Driver, if the Driver cannot be offered a job as a Driver then he is offered alternative industrial employment and there are agreements which protect his rate of pay and, in fact, he knows that, Mr Chairman, because we have had that problem before.

HON A J CANEPA:

Yes, Mr Chairman, I know of a Police Constable who has been retired and has been employed in an industrial capacity and has carried his salary but that can also sometimes raise problems.

HON CHIEF MINISTER:

Of course it can raise problems but it is not because the Pensions Ordinance says so. It is because there are other problems about the pay and how it affects other workers. What I am saying is suppose that officer goes and then takes a job as a clerk in a private sector firm, at the moment although he has been retired as being unfit for work we cannot bring him back even though he is manifestly fit for work. Under the provisions that we intended to include originally we could either bring him back to his old job which he might be unfit for or we could let him stay in the private firm but then we had the power to stop his pension. Under the provision we are introducing now we do not have the power to stop his pension because he is working in a private firm but we have got the power to offer him an equivalent job in the Government which is less than the one that he had in the Government before but is as good as the one he had in the private sector. Therefore we think these provisions to section 11 are more consistent and take care of both of the elements in the original Bill.

HON P C MONTEGRIFFO:

Mr Chairman, I raised the problem of what is the Chief Minister's attitude to the word "equivalent" position.

HON CHIEF MINISTER:

I am not explaining it a fourth time.

HON LT-COL E M BRITTO:

Mr Chairman, I had given notice of an amendment which followed very much the line of thinking that the Hon Mr Montegriffo has been following and that was to include the words "not inferior in status, responsibility and emoluments" in the position being offered to someone who was coming back from retirement. In view of the explanations given by the Chief Minister we are satisfied with the position and I am therefore withdrawing the amendment.

HON ATTORNEY-GENERAL:

Mr Chairman, may I propose that a new Clause 9 be inserted to amend section 12 of the Ordinance by inserting in that section after the words "If a person" the words "not being a person to whom section 22 applies". Finally, Mr Chairman, I



propose also that a new Clause 10 be inserted to repeal Section 16 of the Ordinance.

HON A J CANEPA:

Could we have some explanation of what this amendment does, Mr Chairman?

HON ATTORNEY-GENERAL:

The Government considers that provision to be obsolete and totally out-of-date, Mr Chairman, and that is, as I understand it, the reason for the repeal of this section.

HON CHIEF MINISTER:

This, in fact, refers to a situation where a former Civil Servant, irrespective of the date, may not even become a director in a company in Gibraltar without the permission in writing of the Governor. If he has not obtained the permission in writing after retiring age since then the pension may be withdrawn, obviously it has not been implemented otherwise there would be a lot of pensioners without pensions.

HON P C MONTEGRIFFO:

Mr Chairman, just one point on that section. The section said that where any person to whom a pension or other allowances be granted under this Ordinance otherwise than under section 18. Section 18 is not the one that we had been talking about principally, we have been talking about section 11 which can include the situation that we spent so much time debating. Is there still not a loophole there? -

HON CHIEF MINISTER:-

No, I will explain to the Hon Member. Section 18 deals with widows' pensions. So the widows of Civil Servants may become directors without losing their pensions but not the Civil Servants themselves as the law stands now. So we do not need to repeal section 18 because section 18 is the right of the widows' pension or the dependents' pension. Section 16 says that if you are anybody other than someone who gets a pension under section 18 then you cannot become a director after retirement without the permission of the Governor.

Mr Speaker then put the question which was resolved in the affirmative and new Clauses 5 to 10 were agreed to and stood part of the Bill.

## The Long Title

HON ATTORNEY-GENERAL:

Mr Chairman, I think perhaps we should amend the Long Title to read "The Pensions (Amendment) Ordinance, 1990" rather than "1989".

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

The House recessed at 5.15 pm.

The House resumed at 5.45 pm.

## THE BANKRUPTCY (AMENDMENT) BILL, 1990

### Clause 1

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I rise with some trepidation after the last Bill, firstly, to apologise to Hon Members that the amendments that I intend to move I was not able to circulate until this morning. Secondly, to note with some dismay that the volume of these amendments is even more voluminous than the previous Bill. I take it, Mr Chairman, that the Committee would like to proceed as they did with the previous Bill and I will take each amendment in turn and pause for any comments or explanations that Members might want. In terms of Clause 1, Mr Chairman, I move that the side heading "Title" be amended by the addition of the words "and Commencement". Also that the figure "(1)" be inserted after the figure "1" and a new subclause be inserted as follows: "(2) This Ordinance shall come into effect on such day as the Governor by notice in the Gazette shall appoint and different days be so appointed for different purposes". I think the purpose of that amendment, Sir, is self explanatory.

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

### Clause 2

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I have twelve amendments to make to this Clause. As I say, I will go through them one by one and pause at the end of each one.

HON A J CANEPA:

Mr Chairman, these amendments are of a very technical nature. We in the official Opposition are laymen on these matters and therefore I do not think that it is necessary that they should be taken individually, not for us anyhow. As far as we are concerned, they have been circulated and they could be taken as read and I would leave it for those with a more circumspect legal turn of mind to really identify anything which gives cause for concern and which might be wrong in the proposed legislation. But we, as laymen, are not in a position to do that, Mr Chairman.

MR SPEAKER:

Will the Hon Mr Montegriffo explain his position, please.

HON P C MONTEGRIFFO:

Mr Speaker, from my point of view I am familiar with a lot of what has been going on with this Bill although I am not sure that the final reference in subclause (1) is something I understand completely. Could perhaps the Hon Financial and Development Secretary just deal with that part because it makes provision for a Register. Is that Register in respect of such trusts to which this Ordinance would apply? That is something which I have not seen before in the amendments that have been suggested. It is an entirely new addition to the Ordinance and if perhaps the Hon Financial and Development Secretary could deal with that I would be grateful. The rest of it I am happy to accept.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

If I could clarify that, Sir. It is simply felt that to avoid the opportunities of abuse that might possibly be open to the use of this Ordinance, it was felt that a registration process would be necessary to weed out any inappropriate use of the provision.

HON P C MONTEGRIFFO:

Mr Chairman, this I think is serious. One of the virtues that Gibraltar affords at present to Trusts that can be set up here, Mr Chairman, is the fact that there is no type of register or filing requirement or any other type of public record of Trusts set up here. Indeed, there is the case in most Financial Centres of the type with which we are in competition. I believe it would be a serious mistake to include that clause at the end. I very much want to see this legislation in place. Professionally I am aware of many people who want this legislation to go through but I am sure that there cannot have been consultation with other professional parties interested in this matter with that clause because that, I really think, would destroy one of the huge benefits that we have. That you can set up such an

arrangement in Gibraltar within the confines of the law but there is no place where anybody can go to search anything or register that. That is the way a Trust should be and to establish a register I think is wrong. I really do think it is wrong. I would prefer truly, Mr Chairman, to ask the Government not to proceed with this Third Reading rather than see the reference to the register included.

HON CHIEF MINISTER:

Mr Chairman, the new subsection creates enabling powers, it does not create a register. It says: "The Financial and Development Secretary may by regulation make provision for the establishment of a register" and therefore this does not create the register itself. It gives us the power at a later stage should we choose to do it, by regulation to create the register. We are not prepared to stop the Bill because of this because, in fact, as the Member opposite well knows the Bill had been initiated by representations from professionals within the sector who seem to be incapable of reaching agreement amongst themselves. And at the end of the day what we have got here is what we thought finally had everybody happy. As far as we are concerned, if the Hon Member is correct in saying that making the regulations and creating the register would effectively negate what we are trying to do with the amendment which is, in fact, to create an environment within which trusts will be attracted to Gibraltar, that is the purpose of doing it, it would be complete nonsense to amend the law to make it more attractive for people to come here and then to amend it another way that makes it unattractive for them to stay here once they come.

HON P C MONTEGRIFFO:

Mr Chairman, I am grateful for that and I understand what the Chief Minister is saying. The only thing that I would ask him to consider is that when this law is published, and I know as well from personal experience let me say, that a good degree of international attention, in the world of trusts, looking at this Bill and when they see the simple reference to the ability to create a register even though it is only an enabling power and not a power which may necessarily be exercised, I think it will have a deterring effect. As I say, I have been quite intimately involved with some of the things that have been going on, Mr Chairman, and I can tell you that I am the last one to want to stop it. But I really think that this is a mistake. I can do no more than to express that view. Remember that we are looking towards, and why not elaborate, we are looking towards people who want to establish arrangements in Gibraltar but the whole basis of a trust is often confidentiality where they can set up arrangements in the knowledge that it is not open to somebody who may be a tax inspector from another jurisdiction to search a public registry, get details of the trust and continue investigations as a result of that. I

think the provision for a register, even if it does not take place in practice, but there is provision for it, is going to send alarm bells ringing in the heads of some people who would otherwise, I know, be extremely keen to use Gibraltar as a base. Can I make one suggestion only? Would the Government be amenable to give this an overnight stay? I invite the Government to liaise with those who have lobbied for it or to do whatever is necessary with a view to deciding on the matter. That is all I am saying, Sir.

HON CHIEF MINISTER:

Mr Chairman, we have got a couple of Bills that we are taking the Committee Stage tomorrow, so I am prepared to leave this Bill for tomorrow so that we can check out with other interested parties whether they coincide with the views put forward by the Hon Member. We will then take a second look at it. But I am certainly not prepared to leave it for another meeting of the House because I think it has been around for too long.

HON P C MONTEGRIFFO:

Sir, I agree with that.

MR SPEAKER:

So the House then agrees to defer consideration of this Bill until tomorrow.

#### THE PUBLIC HEALTH (AMENDMENT) BILL, 1990

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

#### Clause 2

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I have two amendments to move in respect of Clause 2. Firstly, omitting the words "in his discretion" in subsection (3) of section 271 and substituting therefor the words "in accordance with the criteria laid down for that purpose from time to time by the Government of Gibraltar". Secondly, omitting the words "as the Financial and Development Secretary in the exercise of such discretion may decide" in subsection (3) of section 271 and substituting therefor the words "as shall be provided for in such criteria".

HON A J CANEPA:

Can we have, Mr Chairman, from the political side of the Government, the reasons behind this amendment?

HON CHIEF MINISTER:

Actually on this occasion, I think, the Financial and Development Secretary could have given a very good explanation because he felt that he would be happier in having the criteria laid down for him by the political side of the Government rather than having it in his discretion. We were quite happy to do it one way or the other but his feeling was that at the end of the day the judgement should be the judgement of the elected representatives and we are happy to go along that road. It suits the thinking of the Government but we had put it initially, as is perhaps more normal in our laws, at the discretion of the officials. This has tended to be the paramount factor rather than the discretion of the elected representatives. I am glad to say that the Financial and Development Secretary preferred the latter option.

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

#### Clause 3

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have a number of amendments to move here, Mr Chairman. Firstly, that Clause 3 is omitted and replaced by a new Clause. This is rather lengthy and I wonder whether Hon Members wish me to read it all out.

HON A J CANEPA:

I think we can take it as read, Mr Chairman, and perhaps some explanation could be given.

MR SPEAKER:

Does the Hon Mr Montegriffo with that?

HON P C MONTEGRIFFO:

Yes, Mr Chairman.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

The principle implications of what is here, Sir, is to extend the Bill effectively to take out of operation certain exemptions of rates that were in the Ordinance previously. In particular in relation to the exemption for a building yet to be built; a building that is dilapidated, and a building that is empty.

HON A J CANEPA:

What is it, that rates will not be levied in these circumstances?

HON CHIEF MINISTER:

Rates at the moment are not levied, Mr Chairman, and what we are doing is we are removing the exemption from rates on the grounds that the building is unoccupied or dilapidated because in looking at the situation we have come to the conclusion that, in fact, it can be an incentive to keep the building dilapidated rather than an incentive to keep it repaired if you do not pay rates.

HON A J CANEPA:

What about the provision that there is at the moment, Mr Chairman, whereby somebody purchases a flat or rents a flat and they are refurbishing it, like a couple wanting to get married, and during the period of refurbishment or repairs I think up to about six months are allowed, it is effectively a rebate on rates. What will happen in those instances? Is building different to dwelling?

HON CHIEF MINISTER:

That provision, in fact, remains in the Ordinance and it is at the discretion of the Financial and Development Secretary whether it is a reasonable period given the complexity of the work involved.

HON P C MONTEGRIFFO:

Mr Chairman, I am trying to recall the debate that we had at the Second Reading of this Bill. But what is new, is it not, and perhaps Members opposite can confirm this, is the much wider powers which the Financial and Development Secretary now, taking into account the criteria which the Government will have set down, will have to exempt payment of rates where in the view of the Government there is a view that to do so is in the interest of development in Gibraltar. That, as I understand it, is the principle thrust of the Ordinance in that respect. Am I correct in that assumption, Sir?

HON CHIEF MINISTER:

I think that the Hon Member opposite, Mr Chairman, is going back to Clause 2 again.

HON P C MONTEGRIFFO:

Yes, Sir.

HON CHIEF MINISTER:

No, the position is that the exercise of the judgement as to whether an incentive was desirable or required in order to promote a particular development would previously have been done by the Financial and Development Secretary on the basis of what he considered was necessary. Under the amendment that we have moved now and which we have just voted, in fact, in exercising that judgement he will be working to guidelines laid down by the Government and we are doing that, as I have already explained in answer to the Leader of the Opposition a minute ago, it is because the Financial and Development Secretary suggested that himself.

HON P C MONTEGRIFFO:

But is it not the case, I am just seeking clarification, that the previous exemption provisions were linked to Development Aid?

HON CHIEF MINISTER:

Those remain, Mr Chairman. Those have not been changed.

HON P C MONTEGRIFFO:

So it is just in addition to a Development Aid certificate.

HON CHIEF MINISTER:

Yes.

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.

#### Clause 4

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I would like to move, Mr Chairman, that Clause 4 be amended by omitting everything after the word "by" in line 1 up to and including "(b)" in line 6. It removes the whole of that subsection in 4(a) which relates to electricity and water supply. The purpose behind this amendment is it is felt, on reflection, Sir, that given powers that are intended in section 2 that that Clause is not necessary.

HON K B ANTHONY:

Mr Chairman, I have not understood what the Hon Financial and Development Secretary has said but although accepting part 2, as he says, it does not mean that it is necessarily going to be a rate free situation in the future for water and electricity in generating areas.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Not necessarily, Sir, it will be subject to the criteria as set out under section 2.

HON K B ANTHONY:

I find it a bit confusing, Mr Chairman, that this was put in, first of all, an additional paragraph and I was wondering what the thinking was behind this and now it has been deleted before it has even been put in the law.

HON J C PEREZ:

Mr Chairman, it was put in as a result of the contract signed with Omrod because whatever you charge the company at the end of the day you are going to be charged back in the rate that you have to pay per unit of electricity. So it was put in specifically for this.

HON K B ANTHONY:

I understand that, Mr Chairman, but it is not laid down anywhere that it will be done, it can be done but it does not say that it will be done.

HON J C PEREZ:

Obviously if we are voting ourselves power to do it and the aim of the other one was to be able to do it, the Hon Member can take it that it will be done.

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

HON P C MONTEGRIFFO:-

Mr Chairman, could we please go back to Clause 2. Could the Attorney-General confirm what present power there is now in the Public Health Ordinance that allows the Financial and Development Secretary to waive payment of rates, if he is of the view in his own criteria as explained by the Chief Minister, that a development would benefit from that waiver?

HON ATTORNEY-GENERAL:

I am not quite clear what the Hon Member is asking, Mr Chairman. I have not got the Ordinance in front of me but if I remember the relevant provisions correctly, as the law stands at present it is only on account of poverty that there can be exemption from rates. The Government is, of course, seeking to be able to remit rates in very much wider circumstances and those limited circumstances which exist at present.

HON P C MONTEGRIFFO:

Mr Chairman, I thought the position as explained by the Chief Minister a moment ago was that the law already was that the Financial Secretary could waive rates but that instead of using his own criteria he would now use the criteria of the Government. What is then happening is, indeed, that there is no power at present for the Financial and Development Secretary other than on grounds of poverty, to exempt payment of rates.

HON ATTORNEY-GENERAL:

That is what I have just said, Mr Chairman.

HON P C MONTEGRIFFO:

Exactly. So therefore this is a new power which the Government is seeking to obtain.

HON CHIEF MINISTER:

Mr Chairman, I think the Hon Member opposite is particularly obtuse today, I do not know whether it is the levanter or what it is. We are now on the third round again.

MR SPEAKER:

I must warn the Hon Chief Minister that I will have to stop him for repetition if he is not careful.

HON CHIEF MINISTER:

I accept, Mr Chairman, that I am transgressing the rules of the House in repeating myself but I do not want the Hon Member to think that we do not want to give him the explanation. We had already in the original Bill created powers to enable the Financial and Development Secretary to do something. We are now amending that and we have already voted that amendment. The amendment that we have voted which the Leader of the Opposition asked for an explanation about and which I already gave now twenty minutes ago, and not ten, were the result of the new Financial and Development Secretary's own view that as far as he was concerned he would prefer that if he was going to use his judgement in deciding whether a particular type of development or a particular industry was going to be treated differently, then the guidelines should be laid down by the elected Government of Gibraltar and therefore the amendment that we are bringing today, which is what we have debated and voted, is to allow that to happen. What the Hon Member opposite asked was what happens then to places that have got development aid and did not pay rates, as we understood the question. The answer is what happens there is not changed and continues as it was.

HON P C MONTEGRIFFO:

I am grateful for that but the point I am seeking to make is, and it is only to clarify my own position on this Bill and which I now give notice that I will not support even if, for the record, it is too late formally to do so. But certainly for the public consumption I will not support the view, Mr Chairman, that there is an additional power to be given to the Financial and Development Secretary without any form of published criteria, we assume, for him on any criteria which the Government may determine to waive rates. It should be a matter which is done either under Development Aid or under a specific criteria which is published but not simply with a man sitting at his desk saying "I decide to do it that way". I mention it only because I thought I had asked what, in fact, this Bill was doing, the Bill in its entirety not just the amendment to the Bill. In fact it gives the Financial and Development Secretary and the Government therefore, a wholly new power to waive rates which did not exist before. I think the matter has been clarified and in the light of what I have said, therefore, I would not vote in favour of that Clause, Sir.

HON J C PEREZ;

He would not have voted if he had known at the time, Mr Chairman.

HON P C MONTEGRIFFO:

If I had been given a full explanation at the time, that is correct.

HON J C PEREZ:

If he had asked for a full explanation he would have had it.

HON P C MONTEGRIFFO:

The record will show exactly what the explanation was and I think it may make interesting reading.

HON ATTORNEY-GENERAL:

Mr Chairman, can I just add, for the Hon Member's enlightenment, that if a law purports to give a discretionary power to take away something which somebody has already then, of course, there has to be a basis for doing that and it would be an appropriate circumstance to specify criteria in the legislation justifying the deprivation of something which somebody has. But what the Government is doing in this case, Mr Chairman, of course, is to confer a benefit upon someone to give him the benefit of not having to pay rates. That is not a deprivation of anything, Mr Chairman, that of course is a benefit.

HON P C MONTEGRIFFO:

Mr Chairman, if the Hon Attorney-General thinks that that does not cost somebody something else then I think he is wrong because surely if someone does not pay something then it is costing others, that are paying, more because eventually at the end of the day the Government is getting less revenue and we are all worse off.

MR SPEAKER:

So the Hon Mr Montegriffo will be voting against that Clause.

HON P C MONTEGRIFFO:

If it is possible to correct the record I would be grateful, Mr Chairman.

MR SPEAKER:

We will do that. So we are going back now to Clause 2 of the Bill and we will take a vote.

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 P J Brooke

The following Hon Member voted against:

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

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

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



#### New Clause 6

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I would like to move the introduction of a new Clause 6, Mr Chairman, to read as follows: "Amendment to Section 294 - 6. The principal Ordinance is further amended by omitting in subsection (4) of section 294 of the word "Governor" and substituting therefor the words "Financial and Development Secretary".

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

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

#### THE MERCHANT SHIPPING (AMENDMENT) BILL, 1990

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

#### Clause 4

HON M A FEETHAM:

Mr Chairman, just a slight amendment. There is a printing error in Clause 4, page 48, paragraph 4, line 8. We need to insert a bracket in front of the word "be".

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

#### Clause 5

HON M A FEETHAM:

Mr Chairman, again another printing error. In page 54, paragraph 10, line 2, the insertion of the word "any" immediately before the word "person".

Mr Speaker then put the question which was resolved in the affirmative and Clause 5, as amended, was agreed to and stood part of the Bill.

Clauses 6 to 8 were agreed to and stood part of the Bill.

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

#### THE BUSINESS TRADES AND PROFESSIONS (REGISTRATION) (AMENDMENT) BILL, 1990

HON P C MONTEGRIFFO:

Mr Chairman, I will be voting against the Bill:

#### Clauses 1 to 4

On a vote being taken 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 P J Brooke

The following Hon Member voted against:

The Hon P C Montegriffo

Clauses 1 to 4 stood part of the Bill.

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

#### THE SOCIAL SECURITY (NON-CONTRIBUTORY BENEFITS AND UNEMPLOYMENT INSURANCE) (AMENDMENT) BILL, 1990

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

#### Clause 2

HON R MOR:

Mr Chairman, just a slight amendment. On page 34, the third bottom line where it says "remained" it should read "remainder".

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

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

THE BUILDING SOCIETIES (AMENDMENT) BILL, 1990

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

Clause 11

HON FINANCIAL AND DEVELOPMENT SECRETARY:

May I move a small amendment to Clause 11, Sir. It is purely a typing error. At the bottom of the page delete the word "Register" and insert the word "Registrar".

Mr Speaker then put the question which was resolved in the affirmative and Clause 11, as amended, was agreed to and stood part of the Bill.

Clause 12 was agreed to and 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, 1990

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

Schedule

Part I - Consolidated Fund

HON G MASCARENHAS:

Mr Chairman, Head 3, subhead 8, there is an extra provision now required of £18,200, it is for the provision of extra courses. Would the Minister please enlighten us?

HON J L MOSS:

Certainly. That was due to extra courses that were put on the Business Studies side and which had not been provided for in the Estimates. We run those courses really in conjunction with the DLSS, as part of the Training Scheme, for people who were leaving school.

HON G MASCARENHAS:

Purely extra courses for Business Studies?

HON J L MOSS:

That is correct.

HON K B ANTHONY:

Mr Chairman, under Head 17, subhead 11 - Investigation Expenses. This represents an increase of 45%. In view of the increases as a result of the number of cases requiring forensic examination, is Government satisfied with this state of affairs or should we perhaps set up our own forensic laboratory?

HON ATTORNEY-GENERAL:

Mr Chairman, we have facilities only in Gibraltar in connection, for example, in drugs cases for testing cannabis or cannabis resin. There has been a great increase in the number of drugs cases and prosecutions particularly for drugs related offences and the consequence of that is that exhibits have to be sent to England for forensic testing so that the necessary essential evidence can be obtained. It is not only in drugs cases, of course, Mr Chairman, there are many other types of criminal cases where it is necessary for exhibits which are taken by the Police to be sent to UK and examined such as burglary cases, for example, paint scrapings, fibres on clothing in sexual assault cases since it is absolutely essential to have appropriate forensic evidence in that type of case. I could go on and on, Mr Chairman, the list could not possibly be exhausted but there is a necessity for that. It is not for me, at this stage, I suppose, to comment when or if we will have a suitable forensic science laboratory in Gibraltar. Personally I would love to see one but that is for the Chief Minister and the Government to determine when or if economic considerations make that possible. At the moment though we are confined to going elsewhere to obtain the necessary forensic evidence in appropriate criminal cases.

HON K B ANTHONY:

I thank the Hon Attorney-General for that answer. Can I perhaps now call upon the political side of the Government whether they have considered seriously setting up their own forensic laboratory sometime in the future?

HON CHIEF MINISTER:

I can tell the Hon Member that with the amount of money we are voting here we would be hard pushed to employ an extra sergeant never mind a forensic laboratory.

HON A J CANEPA:

Mr Chairman, Head 11 - Income Tax Office for which we are appropriating £3,300. Has the lease run out? Does the Government require to renew the lease? What is the future of the Income Tax Office as regards that building?

HON CHIEF MINISTER:

The Income Tax Office will be moving to St Jago's hopefully at the beginning of the next financial year and we hope that, in fact, the premises that we are renting we will be able to terminate in March. The work is fairly advanced of the internal refurbishment to suit their own particular requirements.

HON A J CANEPA:

Is that the reason why originally the Government were going to come to the House for £27,000 for the Income Tax Office?

HON CHIEF MINISTER:

That is correct, yes. We found that, in fact, there were savings in other areas which we could use to pay for that rent without having to bring a supplementary vote.

Part II - Improvement and Development Fund

HON K B ANTHONY:

Mr Chairman, under Head 104, subhead 25(N) - Improvements to Beaches and Rockface Protection. Presumably it is the Rockface protection outside the Camp Bay area which has got a special grant from ODA.

HON J C PEREZ:

Mr Chairman, there is a small allocation made there for Rockfall protection in the preliminary studies that are taking place. The case for the ODA has not yet been prepared although agreed, in principle, with the ODA. They said it might be that there is a possibility that the Government of Gibraltar might have to pay for the preliminary studies and then they would pay for the whole of the works. But that might not be the case and therefore, basically, this is for the improvement to beaches although there is a small amount of money there for the Rockfall situation as well. There is some money there, of course, for clearing up the rocks of Camp Bay when the situation is made safe.

HON K B ANTHONY:

Does that also include, Mr Chairman, Rockfaces other than Camp Bay?

HON J C PEREZ:

Yes.

HON A J CANEPA:

Mr Chairman, the public lighting at Alameda Grand Parade. I understand that there has been considerable tampering with vehicles in Alameda Grand Parade, is that the reason?

HON J C PEREZ:

That is right. It goes back a very long time. There have been petitions, I think to the previous Government, and then to us and we were not very keen in extending the public lighting pending decisions that might be taken if there is development in the area but since we received a report from the Police that the tampering of vehicles continued at a very high rate we have gone ahead because the cost of providing public lighting there is minimal compared to the damage that is being created.

HON K B ANTHONY:

Mr Chairman, Head 109, - Electricity Service. This presumably is phase one of the Omrod interconnector for GibElec.

HON J C PEREZ:

That is right. This is, in fact, the connection with Omrod directly but will be able to be used by Omrod or by the MOD Generating Station, they will both be connected to the same cable. We are expanding the present one and they will both be able to supply the Government of Gibraltar and vice versa as regards the MOD.

HON K B ANTHONY:

Does the Hon Member have any idea of how many phases there will be in this operation?

HON J C PEREZ:

I cannot answer that question specifically at the moment because the programme might be brought forward and therefore it might be that there will only be one more phase because it is possible that the installation of engines will be quicker than anticipated. Therefore we would have to have the cables there to be able to utilise the capacity to the full. But if I recall rightly, at the time of the signing of the contract that was scheduled to be in three phases but it might be that we will be able to cut that to two phases.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, since we have not proceeded with the Bill's predecessor we need to delete the term "(No.2)" from The Long Title.

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

MR SPEAKER:

We will now recess until tomorrow morning at 10.30.

The House recessed at 6.45 pm.

FRIDAY THE 16TH FEBRUARY, 1990

The House resumed at 10.45 am.

THE BANKRUPTCY (AMENDMENT) BILL, 1989 (Continued)

MR SPEAKER:

We are now at the Committee Stage of the Bankruptcy Ordinance and we will carry on from there.

## Clause 2

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I would like to give notice, Mr Chairman, that it has not been possible to resolve, in such a short time, all the fears that were being expressed yesterday concerning the provisions of Regulations and I would like formally to give notice that it is the Government's intention to withdraw from Clause 2 the provision in respect of 42A(1)(e) that deals with the Register and also the new proposed Clause 4 that deals with the Regulations. The intention being, Sir, and I would like to give notice now, to discuss further the implications of the Register with a view to bringing further amending legislation at the next House.

HON P C MONTEGRIFFO:

I welcome that, Mr Chairman, and I think it gives the Government and us time to consider the implications.

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

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

THE IMPORTS AND EXPORTS (AMENDMENT) BILL, 1990

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

## Clause 2

HON A J CANEPA:

Mr Chairman, in Committee we were hoping that there was going to be an amendment made to Clause 2.

HON CHIEF MINISTER:

Yes that is right Mr Chairman and before we leave the Committee can we go back. Having considered the point made yesterday, the Government is prepared, in fact, to meet the request of the Opposition to the extent of laying the Regulations at the next meeting of the House after they have been enacted and therefore what I would propose to do is to amend Clause 2 by adding the words "and any such regulations shall be laid at the table of the House at a subsequent meeting" after the words "thereunder" in the final line of the new section 49 which is the section that creates the power for the Governor to make Regulations.

MR SPEAKER:

Are you happy with that or would you like the amendment to be written down?

HON A J CANEPA:

No, I am entirely happy with that Mr Chairman, it meets the point. We are glad to see the Government has been able to take the matter on board and we shall be supporting the amendment. That leaves the way for us at the Third Reading of the Bill to vote in favour.

HON P C MONTEGRIFFO:

One small point, Sir, is the amendment as proposed by the Chief Minister in fact in accordance fully with Section 24-28 of the Interpretation Clauses Ordinance? I think it is Section 28, which goes further than just allow the details to be tabled and which in fact in a sense is superfluous because it is going to appear in the Gazette, I imagine.

HON CHIEF MINISTER:

Mr Chairman, I am not saying it does or it does not. All I am saying is that last night we were asked to do at least that and we said we would consider it and we left the Committee Stage for this morning and that is as far as we are prepared to go. So if that is not enough for the member

opposite then he can either vote against or abstain. Independent of anything else, I may say anywhere else, what we are prepared to do is because we thought frankly it was a reasonable request to lay them on the table at the House.

HON A J CANEPA:

Mr Chairman, there is a very serious practical difficulty for the Government. If the Government wishes to raise Import Duties and if it is going to do so by Regulation then it has to come into effect immediately otherwise traders knowing that Import Duties are going to be increased after the next meeting of the House would be stocking up. I see the practical difficulty and the impossibility, in real terms, of equating this to what has been done previously and which is the point that is being made by the Honourable Mr Montegriffo. There is this practical reality which has to be recognised and therefore the Government, in my view, can only meet us part of the way. I think if I were on that side of the House and was minded to do what the Chief Minister is doing I could only go that far.

HON P C MONTEGRIFFO:

Mr Chairman, I disagree with that but if I am given a chance just to look at the section but I disagree because if that logic were to hold any water, then the same would be the case in respect of the Financial Services Ordinance. The House passes Regulations which are published to any particular area of business.....

HON CHIEF MINISTER:

Mr Chairman, let us be clear we are not prepared to go to the extent that the Honourable Member said about the Financial Services Regulations that he mentioned yesterday because in the Financial Services Regulations there was a provision that it had to be done in twenty eight days, that is what he said yesterday.

HON P C MONTEGRIFFO:

Well I was not sure.

HON CHIEF MINISTER:

Independent of what it says in any other Regulation, in this Ordinance this is as far as we are prepared to go, therefore I am moving this amendment, the Member opposite can either vote against or in favour or abstain, but it is not going to make us move any further than this, that is what I am saying.

MR SPEAKER:

I think the Chief Minister has made himself clear. He is not going to be persuaded otherwise.

HON P C MONTEGRIFFO:

I understand that Mr Chairman. I would just like it to be recorded that what I was seeking to ask the Chief Minister to do, and I respect his view that he disagrees, was that it should be an equivalent provision to that introduced in the Financial Services Ordinance, whereby the House would not have the rules tabled as a matter of good information, but that there would be power to actually raise an issue and disagree or agree or ask that it should be changed. The simple tabling of the Rules would not allow any debate or discussion on the matter, and for that reason I will be voting against that particular section.

On a vote being taken on Clause 2, as amended, 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 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 P J Brooke

The following Hon Members voted against:

The Hon P C Montegriffo

Clause 2 as amended stood part of the Bill.

Clauses 3 to 9 were agreed to and stood part of the Bill.

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

### THIRD READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to report that the Contract and Tort

(Amendment) Bill, 1990, with amendments; the Sale of Goods (Amendment) Bill, 1990, with amendments; the Pensions (Widows and Orphans) (Amendment) Bill, 1990, with amendments; the Criminal Procedure (Amendment) Bill, 1990, with amendments; the Pensions (Amendment) Bill, 1990, with amendments; the Bankruptcy (Amendment) Bill, 1990, with amendments; the Public Health (Amendment) Bill, 1990, with amendments; the Merchant Shipping (Amendment) Bill, 1990, with amendments; the Business Trades and Professions (Registration) (Amendment) Bill, 1990; the Social Security (Non-Contributory Benefits and Unemployment Insurance) (Amendment) Bill, 1990, with amendments; the Imports and Exports (Amendment) Bill, 1990, with amendments; the Building Societies (Amendment) Bill, 1990, with amendments; and the Supplementary Appropriation (1989/90) Bill, 1990, with amendments, have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Mr Speaker then put the question and on a vote being taken on the Contract and Tort (Amendment) Bill, 1990; the Sale of Goods (Amendment) Bill, 1990; the Pensions (Widows and Orphans) (Amendment) Bill, 1990; the Criminal Procedure (Amendment) Bill, 1990; the Pensions (Amendment) Bill, 1990; the Bankruptcy (Amendment) Bill, 1990; the Merchant Shipping (Amendment) Bill, 1990; the Social Security (Non-Contributory Benefits and Unemployment Insurance) (Amendment) Bill, 1990; the Building Societies (Amendment) Bill, 1990; and the Supplementary Appropriation (1989/90) Bill, 1990, the question was resolved in the affirmative.

On a vote being taken on the Public Health (Amendment) Bill, 1990; the Business Trades and Professions (Registration) (Amendment) Bill, 1990; and the Imports and Exports (Amendment) Bill, 1990, 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 P J Brooke

The following Hon Member voted against:

The Hon P C Montegriffo

The Bills were read a third time and passed.

#### PRIVATE MEMBERS' MOTION

HON A J CANEPA:

Mr Speaker, I have the honour to move that: "This House considers that the proceedings of the House should be televised and all aspects of the matter should be considered by the appropriate Select Committee".

Mr Speaker, I hope very much that this motion will prove to be uncontroversial. It is a very simple matter really, the motion is a very simple matter, in that all that I am asking the House is to indicate that it approves, in principle, the idea that it would be desirable to televise the proceedings of the House, but conscious of the fact that there could be numerous implications, not the least considerable being the financial implications, and that the practical consequences should be gone into and should be examined, perhaps by the appropriate Select Committee. I shall have something more to say about that aspect of the motion and the question of the Select Committee in due course. It is now, Mr Speaker, three years since the proceedings of the House have been broadcast over GBC radio and I think that the experience has been very positive. It has been worthwhile and conducive to arousing greater interest in the proceedings of the House. Honourable members who have been members of previous Houses of Assembly will recall, will know, that the introduction of broadcasting of the proceedings of the House over the radio was considerably delayed. There were numerous members of the House, in the past, who felt that that should have happened much earlier on and possibly the delay of a number of years occurred because there were fears as to how the experiment would work and what the experience would be. There were fears, I think, that Honourable Members would play up to the gallery, that longer speeches would be made and that there would be a great deal of acrimony. I think that those fears have been proved to have been unfounded. I do not think that in the last three years there has been any more acrimony than was previously the case, certainly not going back to 1972, when I first became a member of the House, and I think that both the previous House, in other words that the House of Assembly between 1984 and 1988 and the present House of Assembly, are as well behaved as any other House has been, notwithstanding occasional eruptions. I think that we are very brisk and businesslike in our approach and speeches are very much to the point and we get through our business perhaps quicker, certainly than I would say most previous Houses between 1972 and 1984. I have no doubt that we get through our business much quicker, much more



to the point. So I think the experiment, if I may call it that, of broadcasting the proceedings of the House on the radio has been a great success and the time has come to consider whether we ought to be more ambitious. I say that because the experience of those rare occasions, of a ceremonial nature, when the proceedings of this House or at least part of the proceedings of this House have been televised, has also been very positive. The Ceremonial Opening of the House in April 1988 and more recently the swearing in of his Excellency the Governor on the 1st December, both occasions were televised, and were very well received by the public. We are all aware, Mr Speaker, of the fact because we can see that from our television screens, now that the proceedings of the House of Commons are now being televised under certain conditions, an experiment that commenced in February 1988 for an eighteen month period during which on the basis of that experiment a framework will be established for the future. There has been a great deal less misbehaviour in the House of Commons than was anticipated in spite of occasional problems and in spite of members being seen on television shouting across the floor to others that they should "shut up you fools". That in Gibraltar is very unlikely to happen, I think, because of the nature of our community, that would be very badly received, that sort of behaviour would be very badly received in Gibraltar and Honourable Members who lost their cool and their temper and reacted in that manner in the House and were to be seen on television to do that, I think, that they would get a lot of stick from members of the public, they would come up to them and tell them and therefore, I think, that we are not likely to see a repetition of that. I would not advocate, based on our experience here from broadcasting over radio and based on the experience of the United Kingdom, I would not advocate that all the proceedings of the House should be televised live. Yesterday, Mr Speaker, we saw that we had in Committee very intricate toing and froing with Bills for about a period of half an hour, particularly during the Pensions Bill, and whilst some of the points that are sometimes made have a clear interest to the public very many people listening on radio or watching on television would be completely lost, so I would not advocate that Committee Stage should be televised, but certainly if there is going to be live coverage and our hours by and large, the hours during which we sit, are by and large convenient or very likely to be convenient for television, I would advocate that Questions and Answers, Government Bills and Motions from both Government and Opposition and I say Government because no doubt a motion discussing the future of Gibrepar or the Accounts of Gibrepar is a matter of great public interest and then of course invariably most Private Members motions are also matters of public interest. As I say, Mr Speaker, I advocate the televising of the procedures of the House because it is important to always try to improve the awareness and

the understanding that the electorate should have of the democratic process. It is important that they should be able to see the people that they elect performing and, I think, if anything the incentive for the members of the House would be to try to perform better. By better I mean in a more professional sense if I may use that word. I think it would enhance the standing of the House of Assembly, and I think that we would bring home to people, to the general public, the importance of the House in the affairs in the life of Gibraltar. The crucial importance that it has as to what it represents which is the focal point of democracy. Democracy is something which is priceless Mr Speaker. To have said in the past during an election campaign when we were encouraging people to go to the polls to vote, to have said, to have used as an argument, that people have died, have been prepared to die for the vote, for democracy perhaps sounded like a historical cliché, but we have seen that on our television screens in recent months. People today are prepared to die for democracy and those of us who have that priceless asset should value it and we should do everything in our power to bring home to the people who put us where we are, to the electorate, that it is something that they must cherish, value and uphold. And what better way that the standing of this House, the dignity of this House should be enhanced by the public understanding, in a far more profound manner, what we are on about. We had yesterday an exercise in which we members of the Opposition were criticising the Government for a piece of legislation that was brought here and we said that it was a step in dismantling democracy, but at the end of the day, I have no doubt regardless of what we say, that the debate in itself was an important exercise in democracy and the manner in which it has been reported in the media shows that that is the case, that we should differ in part and parcel of the business of democracy, but that we should have the opportunity in this House and outside the House to express our views passionately and that we should be seen to be doing that is absolutely crucial and we must do everything in our power to ensure that the public understands that. Of course we quarrell, of course we disagree and of course we get het up about things, but we are here for a very serious business, for a very serious matter, and that is the way in which this community is governed and the principles on which that Government, the principle of parliamentary democracy, the western style type of democracy, constitutional government, that those are matters that we value and we want to be seen publicly playing the role which is crucial in all that. Mr Speaker, in the United Kingdom, as I said earlier, there is an experiment which is going on for eighteen months as from February 1988. I think that it is continuing until the summer recess of this year and then there is going to be a process of stock taking. I have got here an extract from a newsletter which the Clerk of the House of Commons sends twice a year to members of the Society of Clerks-at-the-Table and it is an interesting report as to what is

happening in the United Kingdom and I would like to read from the last paragraph of it which really sums up the position. "The conclusion is that there have been no signs, there have been no immediate signs, of the House becoming either more or less disorderly than it was before, although there is an increased demand to speak and some anxiety about the number of bogus points of order at prime time, but it is still too soon to say whether television is going to lead to any other significant changes in patterns of behaviour of or use of procedures". So the initial reactions, as seen by the Clerk of the House of Commons and that is a valuable judgement, a valuable assessment because the Clerk of the House of Commons is a figure of great respect in the House, invariably a person of long experience about the proceedings of the House. I think I should also mention that the funding, the financial arrangements in the United Kingdom are rather peculiar and they are worth going into. The House does not pay, the House of Commons or the Government does not pay for the televising of the proceedings of the House. A rather ingenious way has been found of making provision for that and I think it is a matter that we would want to study here. It may not be of practical application here but the manner in which it is being financed in the United Kingdom could give rise to, it could elicit further thought and we might be able to adapt with some ingenuity the arrangements that are being made there. I am advocating in the second part of my motion Mr Speaker that the Select Committee of this House which at the moment has not actually been appointed should look into the matter. There is a Select Committee which went into the question of the broadcasting of the proceedings of the House on radio and which was the forum of consultation for what has happened in the intervening period, including meetings with the Chairman and the General Manager of GBC and in the present House of Assembly, in the last couple of years or so what has happened, Mr Speaker, as you well know is that the Chief Minister and I, who would both in the normal course of events be members of that Select Committee, which would be chaired by you Mr Speaker, we have an informal arrangement which we channel through your office, through yourself, through the Clerk, and it has worked perfectly well. If the Chief Minister does not feel that it is necessary to constitute formally the Select Committee and that it should formally be looked at in this manner then I would be happy to agree with the Chief Minister that perhaps we should ask you, Mr Speaker and the Clerk to go into the matter and to prepare a report initially for the Chief Minister and myself and then for the House to consider and discuss. There are administrative arrangements that have to be made, practical arrangements, financial implications to be gone into, they require considerable study. I think if the House is agreed, in principle, about the desirability of proceeding in this manner, it is obviously necessary for the House to consider the financial implications in particular. If it were to be felt by the Government that because of financial stringency

the experiment is not one that can be afforded, if the Government is going to be expected to foot the bill, if there are no other more ingenious roundabout means of financing the experiment then it would be regrettable, but at least because I imagine that the principle is one which is likely to be of general acceptance, at least if we are not able to go as far as we would like to, Mr Speaker, let it be because we know that the practical implications, that the actual implications are such that we would preclude that. Mr Speaker, I commend the motion to the House.

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

HON CHIEF MINISTER:

Mr Speaker, I propose to move an amendment to the motion, but it is an amendment that I think has already been covered by what the Leader of the Opposition has said. The amendment is to insert the words "in principle" after the word "considers" which he in fact has already said is what he is looking for an agreement, in principle, because I think if we leave it out, then effectively we have already decided in the motion that we should be televising even before we have established whether it is feasible to do it for a variety of different reasons including the economics of the operation. The other thing is that rather than the appropriate Select Committee, which is a Select Committee that we had previously on broadcasting, I would rather have a more informal arrangement and therefore what I propose is that we substitute for the words "the appropriate Select Committee", the words "a sub-Committee set up for the purpose" so that independent of the normal arrangements we can get together and decide who we want to nominate to take a look at all the factors involved in this. Needless to say we share entirely the sentiments of the Leader of the Opposition in his introduction to his original motion and as I say my amendments are not intended to alter one iota anything that he has said, but I think it reflects more the extent to which we can commit ourselves. If it is possible to do it, we want to do it, independent of the mechanics of it, we have to look at the economics of it in the context of the funds that we have available and the competing demands on those funds. I think the member opposite has made a very well argued case about the importance of democratic institutions and of letting the people see in fact how they work although I am not sure that the people in the United Kingdom are particularly impressed by what they see of the performance of the House of Commons, but I agree that it does not necessarily follow that we have to go down that route and I am glad that we are still in agreement that democracy continues alive after the First and Second Readings of the Gibraltar Development Corporation and that there has not been an attempt to include television and also televising the proceedings of the Board of the Gibraltar Development Corporation which is supposedly substituting the House of Assembly.

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

HON P C MONTEGRIFFO:

I do not mind speaking on both the amendment and on the original motion if I can do so, so that I do not have to get up on my feet again because the amendment does not fundamentally change the original motion. In welcoming both the comments made by the Leader of the Opposition and the Chief Minister, I think that one aspect that has not been actually addressed by either speaker which adds to the desirability of the proceedings being televised is that the complexities of issues which are sometimes involved, in fact more often than not usually involved in any matter of public interest results in the public not really being fully appraised of matters and the degree to which there is substance to various arguments only through reports that are made to the media. The media does the best job it can but when you have only ten minutes of news on GBC and two or three pages of report in our daily newspaper, what tends to happen is that there is an artificial summary of what has occurred and the real complexity of argument which is what brings matters to life are lost. Radio has gone some way towards ameliorating the position but the televising of the proceedings would bring that more to light and would actually serve to highlight much more accurately the different positions taken by the politicians in the House and the respective views that each are expressing. So I welcome the amendment to the original motion and obviously I will be voting in favour.

HON LT-COL E M BRITTO:

Mr Speaker, I will also be speaking both on the amendment and on the main motion, and I will start off by confirming that we have no difficulty with the amendment as proposed by the Chief Minister and therefore we will be supporting it from this side of the House. I would like to add one or two points to what has already been said and that is that I think one has to look also at the aspect of whether television or televising of the proceedings of this House is necessary as seen through the eyes of the man in the street. Do people outside want it? Does it warrant the cost? Is there enough interest for it to go ahead? I think it is relevant to look at what has happened with radio, where interest is much more difficult to sustain, in the absence of moving images and pictures and yet it is obvious from peoples comments that quite a number listen to these transmissions and follow them much more closely than one would have thought and there is no doubt that with a change to television that interest would increase with the obvious

advantages that have already been expounded by my colleague the Leader of the Opposition and the value of educating members of the public in the democratic process. The other thing that one has to lay stress on, I think, in the sub-committee would be the question of costs. To my mind this is one of the crucial factors. Obviously it would be up to the sub-committee to make whatever recommendations they think necessary, based on the study that they make, but I think that one important principle that obviously may have to be followed is that the cost of transmitting these proceedings does not in itself become detrimental to the normal transmissions of GBC in the day to day viewing of the people of Gibraltar. I think it would not be a good thing if that were to happen. Thirdly the technical aspects have not been covered and obviously it is only GBC who will be able to advise the Committee on what these are, but one would have thought that the difficulties, once the costs are covered, on the technical side would not be unsurmountable. I would like to reiterate what the Leader of the Opposition has said on coverage that not everything obviously should be covered only selective bits of the proceedings but I think this raises the important question "what will be selected"? This is something that has already caused controversy on at least one occasion in the broadcasting over radio. What should be selected and obviously some editing of material will be required. Obviously agreement on the editing procedures would be of much more importance and have to be discussed in detail. I would just like to support, in principle, to avoid any doubt that I think the televising of proceedings would be a good idea Mr Speaker.

HON K B ANTHONY:

Mr Speaker, I feel I am almost preaching to the converted when for once we have a consensus of opinion and agreement on both sides of the House. A couple of points that I would like to raise that have not been mentioned by any Honourable Member so far. As most of you know I have many years experience in radio and television and therefore I am going to refer to this. There are three aspects of television that are always in the mind of broadcasters. "Entertainment, Education and Information. Now entertainment is out, but information and education are two vital aspects that, I think, televising of this House should stress. When sound broadcasting began we did make a major step forward in bringing the proceedings of this House to the eyes of the public, to the ears of the public and prior to that I suppose members will recall, you either had to sit in the public gallery to find out what was happening or tune in that night on television and sometimes sit through what the Honourable Mr Montegriffo has said a ten minute report and sometimes a thirty or even a forty minute report read out by a rather

irate newsreader, as I know from bitter experience. Alternatively you could buy the next days newspaper and read a summary of what has happened, sometimes in the newspaper of the day after next, so there was never the full topicality that radio brought to this House, but with sound broadcasting of course we made a major step forward. You could listen in your home, in your car or in the office and it was a big step forward but there was still problems, Mr Speaker, because we all like to think that everybody can identify us by our voices instantly, that is not the case because even if we have downstairs in the little cubicle under the stairs a broadcaster who identifies each speaker when he stands up because we are not as well known as that. But at least with sound radio we could hear how our representatives when legislating on their behalf. Mr Speaker, you may remember a few years ago that GBC commissioned a survey on listening and viewing habits in our community. But I have no intention of going into details on this because most members have seen and analysed it. But there is one important aspect that did come out in that poll and that was that when television transmissions began radio listening dropped way down and this meant, as far as we could see, that the moving picture wins everytime over a voice out of a little tin box. It is as simple as that and I am convinced that viewing would take precedence over listening if this House ever does televise the proceedings. I am not suggesting that we should drop sound broadcasting because we cannot have television in cars and people in cars may want to listen to their radio. It should be supplementary to sound broadcasting, not a substitute. The Honourable Leader of the Opposition, my colleague Mr Canepa, has mentioned the House of Commons and I fully agree with what he has said. Every elected member of this House has been on television at one time, most of us have been on more than once and I see no risk of any member of this House playing to the gallery by leaping to the middle of the floor and brandishing the mace or any of those silly behaviours happening on occasions in the House of Commons. The rules in the present experiment in the House of Commons they have very clever safeguards. Basically there are only four shots they can take, closeups of individual speakers, a general shot of the gallery of the House and if all else fails a picture of the Speaker. The public gallery is never in view and I would not envisage that and, I think if we keep in mind that these basic rules are working with great success in Westminster perhaps the Select Committee may be able to come round to agreeing on a similar pattern for our House of Assembly. Of course we have to go into details and I am delighted that the setting up of the sub-committee because that means that it will not be rushed into or defeated by any individual in this House. It is too important, I believe, and you need a sub-committee to go into all aspects. We

need to get the views of the professional broadcasters, we need to go into the finances and doubts have been expressed about the finances, Mr Speaker, but I think this is a possibly and the biggest problem that we will face when we get down to the nuts and bolts of televising the proceedings of this House. Although I am one of those people who believe that television is a vital step forward in bringing the proceedings of this House, not only to the public but also in the other field of education. We have all seen in this House classes of school children coming into the public gallery to see democracy in action and I am convinced also that if it were to be televised, many more school children could watch our proceedings in their classrooms and see what democracy is all about. So in all aspects Mr Speaker I am delighted that this motion is going to get accepted by both sides of the House and I fully support the motion in every way. Thank you.

HON J C PEREZ:

Mr Speaker, I think I am not going to pre-empt what the sub-committee might decide in looking at all the details, just to say that I hope that this is not a roundabout way of getting our resident president back on the screens because that would mean that it would not only be education and information, as the Honourable member has said, but also entertainment.

MR SPEAKER:

If there are no other contributors to the amendment I will ask on the proposer of the amendment to reply.

HON CHIEF MINISTER:

I do not think I need to say anything else on the amendment, Mr Speaker.

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

MR SPEAKER:

The motion now reads as follows:

"This House considers, in principle, that the proceedings of the House should be televised and that all aspects of the matter should be considered by a sub-committee set up for the purpose". If there are no other contributors I will ask on the proposer to reply.

HON A J CANEPA:

Thank you Mr Speaker. Obviously, Mr Speaker, I am very pleased and delighted at the positive response that there has been to this motion from both sides of the House. We are delighted to have the opportunity to participate in a sub-committee to consider the practicalities of the matter. I think that this augurs well for the future, Mr Speaker, provided the financial considerations are reasonable. Perhaps we might be able to levy a tax on beauticians who I think would make a roaring trade if the proceedings were to be televised.

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

The House recessed at 11.40 am.

The House resumed at 2.30 pm.

HON P C MONTEGRIFFO:

Mr Speaker, I have the honour to move a motion in the following terms

"This House considers that present employment legislation regulating employees' rights and including provisions in respect of pensions and redundancies, is antiquated and inadequate and requires reform as a matter of urgency".

Mr Speaker, in presenting this motion I do so with the conviction that the House as a whole would be able to accept it almost axiomatically that there is a need to review the basis of employment law in Gibraltar bearing in mind, simply that the last time any comprehensive review was done, certainly not within my recollection and that, by a simple perusal of the present framework of the law would show that there is in fact a lot of scope for updating the basis in which people take employment. Aspects of employment in areas like pensions in the public sector, for example and which we were discussing in this House yesterday, also derive from an antiquated Ordinance. In fact there was talk about antiquated provisions in that specific area of what is in broad terms the employment policy and there is a need, I hope, to closely look at Employment Legislation. Not in my view because of any special privileges which employees should now enjoy which they did not enjoy ten years ago, but because of the particular circumstances which we are now going to face in Gibraltar and which are different to those that applied before. It is clear from the way that we are moving, Mr Speaker, that the trend is towards a reduced public sector and towards a greater private sector economy and that move implies, in a sense unfortunately, loss of protection of the very enhanced benefits of the public sector employment. A lot of protection and which obviously people

do not like to lose something that they already have but which is unfortunately unavoidable because in a modern world you have to earn every benefit that you receive and therefore in Gibraltar's case as a result of our artificial economy during the siege years we were able to sustain or tolerate a level of benefits in the public sector which helped almost to keep the social fabric of Gibraltar together in very difficult times. Now bearing in mind that we are all now resolved to make sure that we all pay our way, not just as a community but as individuals, I think we must be resolved to ensure that whilst lamenting, in a historic sense, the loss of the protection of the public sector we should try to replace in the private sector that protection which people would be able to earn and defend for themselves in a much more modern context. The previous position was based very much, I think, and other members of this House who have much more direct knowledge than me in this respect, largely through dealing with the bargaining positions of the workers who obtained many of these advantages which were possibly the appropriate method of resolving matters at the time but which, I think, bearing in mind that the private sector would be extremely diversified would be the wrong method now. Because huge blocks of workers that could collectively exercise sufficient bargaining power to have a big impact on specific areas would be a thing of the past and therefore thought should be given to actually enhancing, in a legislative framework through legislation, the rights which employees could look to as minimum guarantees rather than having to rely simply on negotiations. The negotiations could improve on a position as a basic floor protection but it would not be almost exclusively the sole avenue that they would have in order to progress matters. I think also, Mr Speaker, in moving towards a more private sector orientated economy we have also to consider the wage structure which we have inherited from years past and which is basically a North European wage structure and which we must match in competitiveness and in productivity. This is the minimum we must aspire because of the standards set by the Japanese and the Americans. In seeking to make demands from our employees, in that respect, and I am the first to seek to make that demand and more because I am a strong believer in people standing on their own two feet and earning their way and not having a single passenger in an organisation but in making that demand, I think, we have to stop and say that although we are possibly in that transition period we must make sure that the same level of benefits and protection is potentially in our Gibraltar legislation to equate to that North European standard. We must, Mr Speaker ensure that we are not making an unfair demand on people and have the same standards in our laws to what there is in the North of Europe. Let us make those demands but let us at the same time provide a modern framework which allows us to say "as long as you live up to those demands, these are the sort of benefits and this is the sort of structure of employment legislation which we feel you should be involved



in". There has been some progress in this respect, Mr Speaker, through the activities of the Conditions of Employment Board and the liaison that takes place within that body between representatives of Trade and the Trade Unions. But I would suggest that the Conditions of Employment Board whilst being a useful forum to build on, it by necessity has a piecemeal approach to things. It will deal with one particular aspect, like for example, it dealt with the question of redundancy for workers in the Retail Trade and for shop assistants in the Retail Trade whereby they came to an arrangement on redundancy with the Chamber of Commerce. Whilst it has a useful role to play, I think, of necessity because of its composition and because it can only meet every now and then it means that things are advanced, as I say, piecemeal without stopping and taking stock of the whole situation and start on a clean slate. That our present legislation is "OK", as I say, I hope will be taken very much as read and certainly the sources of our Employment Ordinances specifically related to in the Ordinance itself. Reference is made to the original sources, they were talking about the Truck Act of 1881, the Employment of Women's Persons Act of 1920 and we have an Equal Pay Act of 1970 and admittedly there has been updating of some elements of the Employment Legislation as a result of a European Community Directive and as a result of some law passed in this session of the House of Assembly over the last two years on Sex Discrimination and such like. But basically our essential framework is an archaic framework which is quite out of step with most of the provisions that you would find in North European countries. Certainly the United Kingdom position, which members may be more acquainted with, is that under the legislation in place, before Mrs Thatcher's ascendancy to power in 1979, was considerably more advanced, in certain areas of employment protection, than in Gibraltar and despite a decade of Thatcherism certain elements of the employment legislation in the United Kingdom still remain favourable over and above the position which technically in law we have here. The reason why Gibraltar has not suffered from this archaic system is that as a result of the negotiating power of the unions there have been improved conditions on a bilateral basis between employee and employer. But not because the law has actually demanded a certain type of treatment and what I am saying is that I think in a modern community things should be done as a result of proper legislation and the bargaining side of things should be an addition of basic floor protection but not something that is required because the law is so completely archaic and out of step. So, for example, in the context of redundancy which I will deal with first. We have in Gibraltar as it is well known no legal right to any redundancy payment. So whereas workers have, in certain sectors, protection because there are agreements with employers whereby redundancy payments will be made, basically in the Public Sector, increasingly as we move towards a more Private Sector orientated economy that area of protection is not there in the Private Sector and we have had many cases, as my Honourable the Minister opposite will know of, for example, in the Construction Sector where until recently there was

no protection. The Trade Union Movement had to actually establish a redundancy fund. There is nothing there if a firm goes bankrupt. There is no fund for redundancy and there is no protection for them at all. The Construction Sector perhaps has been the one that has hit the news more often because of the nature of construction which means that if there is a lot of construction a lot of people are employed. Then you enter a decline in construction and everybody have to be dismissed for say three years and then development increases and work starts again. However, it is not an isolated industry at all, it is just the one that happens to have more impact because of numbers. There are other situations in the Private Sector that I certainly have come across where people can only argue compensation in terms of what they are entitled to by way of notice. You are given notice that your job is terminating, you have a maximum, I believe, of thirteen weeks which in fact the Ordinance allows you payment in lieu of notice but there is not a right statutorily to redundancy. If you are lucky enough to be with an employer with whom there has been an agreement that there should be redundancy payments you are fine, but that is not the case as protected by law. In the UK as far back as 1965, there was in fact a Redundancy Fund established which meant that employers had to pay into the Redundancy Fund which reimbursed payments made by employers when people were made redundant. It was not a Fund actually which automatically made payments to people when they became redundant, but it served as a reimbursement mechanism to employers who had an obligation to pay people when redundancies occurred. Mrs Thatcher has done away with large elements of that, I should point out to the House, but I am sure that we would want to go down that same route. She has still retained a Redundancy Fund which will cover problems in bankruptcy and I am especially concerned with that area. Because firms just go bust and there is not enough even to pay Government in PAYE or Social Security or even rent to the landlord. In these cases workers tend to have a very serious problem. One thing we could perhaps look at here, as a specific suggestion, is some form of Redundancy Fund to cater for bankruptcy or insolvency situations where there is simply nothing left in the kitty for people to get an element of compensation to give them a breathing space before they can find somewhere else to earn their living. The second area which is also one of concern is the area of pensions. There are not an insignificant number of people in the Private Sector, Mr Speaker, who in fact are working without any pension provisions at all. Again through efforts made in bilateral negotiations between employers and unions, many employers have pension schemes in place and the bigger the employer the greater the demand from the employees and the more likely that a pension scheme is introduced. But there are still quite a number of people in employment in the Private Sector



that do not have that element of protection which we should in fact be looking towards encouraging further and to encouraging the provision of pensions further. True at this stage we have an element of incentive anyway so that people in the Private Sector do take up pensions privately. Basically contributions made by both employers and employees to a Pension Scheme are tax deductible and that provides an incentive but just as in the case of Home-ownership where we have recognised peculiar and significant special situations in Gibraltar over and above what benefits the UK have considered for Home-ownership, Midas in the UK, which is interest relief on mortgages, Gibraltar must the same as in Home-ownership because of the peculiar position we also need a special set of incentives to bring us up to full European standards in the area of Pension Schemes. I think thought ought to be given to making a real effort to say what can we do to really booster incentives so that every person working for a specific period of time within the Private Sector could be induced to enter Pension Schemes which would protect their position at a later stage. I do not know to what extent, Mr Speaker, but it may be a convenient time and we do not know to what extent this is relevant bearing in mind that the Government itself is involved in a fairly major operation on the restructuring of State Pension Benefits, whether it would not be useful at this stage to try and marry both the concept of Private Pensions provisions and State Pension provision because at the end of the day what we are all concerned about is that people should get to the age of sixty or sixty five or whatever, adequate financial protection for themselves and for their dependents. In the UK again as the Government would know, the State Earnings Pension Scheme allows for contracting out whereby employees can actually say "Well I will contract out of the State Scheme and simply make private pension arrangements". That might have implications for us in Gibraltar for we may need a funding for that and that might be the wrong route for us to go down. What I am trying to say is that that is an example of the ability to be able to link the two systems, not marry them, that is the wrong word, but to link them, so that there is an element of complimentary provision. Also bearing in mind that we are involved, as a community, and the Government is specifically looking at the whole question of State Pensions it might not be a bad idea specifically to say "What can we do to improve Pension Schemes in the Private Sector to give an element of greater incentive". I am convinced that there are some things that could be done eg further tax rebates in an attempt to try and induce people to go down this route. It would also do something else, Sir, not tax cuts but rather tax rationalisation and that if Homeownership is one area in which the Government is prepared to reduce the tax burden perhaps pensions could be the subject of special equivalent treatment without needing to touch anything else. It would be another example of

a specific area of social policy where there could be tax incentives. The Ordinance itself being archaic also does not address the whole series of points which I am not going to elaborate on because they would be very much too extensive but which by way of example I will cite a few. The provisions, for example, at present for compensation as a result of complaints taken to the Industrial Tribunal are very low. If you are unfairly dismissed and you go to the Industrial Tribunal, the maximum, I understand, that the Tribunal can actually give you in compensation is £3,125 at least that is my understanding. You can go to court and get more money but that involves the employee in expense, time and effort of going through that process. Also in certain areas like, for example, offences that are committed under the Ordinance, the penalties which an employer suffers for committing certain offences are very very low. To give you an example there is a section in the Ordinance dealing with a particular responsibility that employers have to give information to employees about their terms of employment etc and the offence, if committed, is subject simply to a fine of £10. I mean it is a very very archaic form of enforcement provision. Is £10 supposed to be a deterrent? Well, Mr Speaker, it is not going to deter very many people although technically an offence has been committed. There is a need to bring these penalties into line and say "right we are going to have an offence and let us back it up with a penalty which is equivalent". For example, the Government now intends to introduce, or so we were told, a written contract provision for every single person in employment, I think, that is the intention. We would end up with Control of Employment through that type of route which would be built on the legislation that there was. Now I do not know yet what the provisions would be in respect of lack of enforcement or lack of compliance because those details have not been yet made available, but clearly to say that if you do not have a written Contract of Employment the penalty is going to be £10 then it would be a farce. I am sure that the Government will say "well it is going to be a more serious penalty which will demonstrate the seriousness of the penalty which has been committed". There are also possibilities in many areas which at present, again, are outside our law but which we should be seeking to encourage. The idea of encouraging women to take a greater role in our workforce which has been something which again the Government has talked of on various occasions, as something which they support as a matter of policy. This also requires, I think, special incentives in terms of child care provision to make the employment of women more feasible. In Gibraltar we have been lucky because since we have a very good family network people have been able to leave young children either with parents or family and there is also a number of nurseries that recourse can be had to. But it is very much of a topic now in the UK itself that there should be a move towards the provision of much more what they call "Creches" in the UK, Creche facilities for

women working and in fact many of the large employers in the UK do provide creches so that women can actually leave children in care whilst they go to work. Now whilst not necessarily saying that we should move towards that, there was an interesting article, Mr Speaker, in the Sunday Times only last Sunday the 11th February, which was quite relevant to what I am going to say now entitled "Child Care is still the barrier for women", and it cites a report that has just been published in the United Kingdom. It has been headed by Sir Geoffrey Howe's wife and the conclusion, in the article itself, is that the report outlines the difficulty of actually providing care for the children and at the same time seeking employment but what the article at the end concludes is that if one person has the power to do something it is the Chancellor of the Exchequer himself, in that by actually again providing an element even of tax rebate or relief for payments made to child care for child care provision that that would really help to mitigate the cost involved in having people take care of children whilst they go out to work. The conclusion really is if you get people to take care of children that if such payments in respect of child care provision could be the subject for the tax benefit or the tax deduction which would encourage women to enter into such arrangements and the costs would be mitigated. It will be for a good social and economic purpose, it would not directly involve the Government in any outlay, not directly, only lack of some income coming in and certainly it would not involve the Government in setting up creches or nurseries or such type of institutions. Mr Speaker, the point that I wanted to specifically refer to I have covered already and I have not suggested in the motion how I propose, or how I would suggest that a review of such policy be effected, I think that it is a matter of priority but I do not actually say the machinery which should be used. We have had Landlord and Tenant reviews which were the subject of Select Committees in the past and the Government sometimes, I know, is not so keen on Select Committees because it may be a cumbersome procedure but clearly there is a necessity of an employment review and I think you should have a situation whereby you should try to involve as many people as possible in giving opinions and in formulating a policy which will be acceptable to all. For those reasons, Mr Speaker, I commend the motion to the House, thank you.

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

HON M A FEETHAM:

Mr Speaker, I intend to reply on behalf of the Government to whatever remarks the Opposition has to say.

MR SPEAKER:

It is very much in the hands of the other Members of the House.

HON A J CANEPA:

I would like to hear what the Government has to say, Mr Speaker.

HON M A FEETHAM:

Fine, I have no qualms about it. If any Member opposite were going to ask for any information or make any enquiries perhaps they could give way. I intend, Mr Speaker, to straight away introduce an amendment to the Honourable Member's motion and then just speak on the amendment itself. This will ensure that business of the House is got on a little bit quicker if anything. So what I am proposing is that immediately after the words "This House" remove the rest of the motion and substitute it with the words:- "considers that there is a need to review the law regulating employees rights in the private sector, particularly with reference to occupational pensions and redundancy terms and that this review should be undertaken in consultation with representatives on both sides of industry".

MR SPEAKER:

It would I think help things if it were possible for Members to agree to talk at the same time to the original motion and the amendment, with of course the proposer of the amendment having the last say on the amendment. The proposer of the original motion, even if the amendment is carried, having the last word on his motion. We shall then take a vote.

HON M A FEETHAM:

Mr Speaker, I awaited with great interest to listen to the Honourable Member defending his motion and he started off by talking about conviction, something which I entirely agree with him, I doubt whether there is anybody in this Chamber today that does not believe in the conviction that people ought to enjoy a reasonable standard of living in Gibraltar because nobody would think otherwise. But then he went on to a philosophical approach to the way he sees events developing in Gibraltar and I have to take issue with that because we either have one policy or indeed we have another. We cannot have everything in a generalised term without actually pointing out what the real issues are about. We are living in a free market situation and in a free market situation, I put it to the member opposite, that there is not a better system of achieving good conditions of work and consequently of employment than by a non-interventionist policy and allowing the Unions and the Employers to get on with the job that they are best equipped at doing and the employers and the unions without Government intervention are the best at reaching collective agreements. The moment you start with undue interference by the law, then you start coming across problems that do not assist industrial relations. When we talk about Margaret Thatcher in the UK, Mr Speaker, what has been happening in recent years are perfect examples of legal intervention. So I am not going into great details about the philosophy certainly not to the extent that the Member opposite has done. I want to do is simply to explain in a proper perspective the issue of the situation existing in Gibraltar for the benefit of the Member opposite. The realities are that

the motion as originally worded by the member opposite is in fact inaccurate because it would have been more accurate to say that there was no legislation in respect of pensions and redundancies and that there are no provisions in law requiring employers to provide occupational pensions or redundancies. And in fact if we look at the scenario over the years and certainly in the more recent years, since the early and the middle seventies, the argument that has been put both to Government and to the Unions by employers has been that to impose across the board such pieces of legislation would do undue harm to small businesses. However in order to be able to analyse even further to what extent and to what businesses we are actually relating this problem to then we have to analyse the complete picture as the situation stands in Gibraltar today. So what is the picture that we have in Gibraltar today, for the benefit of the member opposite. There are important collective agreements already in existence and have been in existence in the Private Sector for many years between all the main employers and the Transport and General Workers Union and such matters as outlined by the member opposite are catered for in these agreements. Insofar as the Public Sector is concerned, the legislation that the member or the type of legal instrument that the member has referred to in terms of collective agreements exist in the major sectors at the moment. So when we bring the situation to the nitty gritty and not to the generalising situation that require to be looked at, we see that we are primarily looking at areas in the Private Sector which are nonunionised. Where employees in the majority of cases are employed in small family type businesses that need certain levels of activity to keep them going. Anyone that can find an absolute concrete solution to this type of problem has to face the harsh realities of the economic circumstances that that particular business is faced with in many respects and one of the issues that the member opposite took umbrage with the Government was when I brought a Bill to the House as a result of small businesses making representations to the Government that they needed protection from unfair competition from across the way and we wanted to set up a Register to ensure that that came about and the members said that that was one of the situations where the Government were out to control businesses and were out to do undue harm to commerce. Yet today the Hon. Member stands there and talks in general terms without knowing what he is talking about and is precisely arguing a case which could do undue harm to small businesses. As a Government we have a social obligation in looking at these things and in providing the instrument to ensure, as far as it is possible, in an imperfect world of protecting people and what we must aim for is in fact a situation where things like the introduction of perhaps a Wages Board which

benefits, as I think he was trying to say, he has to remember that at the end of the day the money would have to come from the small businesses. At the end of the day what I am trying to say is certainly far more fundamental and what I have done is in fact, to show the people that what we are talking about in Gibraltar in the true sense of the word are indeed not covered anywhere else in the sort of situation and conditions that the Hon Member is arguing about although of course there is an obligation to look and improve the situation and that is what Government and that is what negotiations are all about. Therefore the amended motion that I have proposed takes that into account and what we are saying is that in fact the best way forward to proceed in bringing about something which is fair and obtainable and to do it in consultation, as it always should be, with employers and the unions. I therefore, Mr Speaker, propose that my amended motion should be discussed.

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

HON DR R G VALARINO:

Mr Speaker, the official Opposition will vote in favour of the amendment. I think that the Hon Mr Feetham has clearly outlined the need for such an amendment and reduced the previous original motion to its proper perspective and I agree with 90% of what he has said. As far as the original motion moved by the Honourable Mr Peter Monegriffo is concerned, this deals specifically with present employment legislation in respect of pensions and gratuities. With the emphasis that it is outdated and requires reform as a matter of urgency. Now Mr Speaker, there is no doubt in my mind that it is desirable that any area of present employment legislation should be brought up to date. There is also several specific EEC Directives on this matter and these Directives will have to be adhered to in due course. This however is a highly complex issue and great care must be given to any new regulations in order to ensure that both the interests of businesses and individuals are safeguarded. The Unions must be consulted and their views sought as well as that of the Chamber of Commerce. An important part in any such future legislation is to ensure that the effect on small traders is minimised to a degree that the trader does not find himself in dire straits in order to comply with a new Directive. Because this together with the many Municipal and other bills that he has to pay could affect his business. One must also remember that increases of this kind for whatever reason finish up as an increase in the price of the commodity. There are two points here that I agree with the Hon Member sitting on the left. One is that proposals could be introduced so

may be something that in the UK became out of touch and maybe we can look at something like this. But certainly not in the tone of the motion that the member has brought to the House. The Hon Member's motion was instigated because the Transport and Workers Union were requesting a move to the Government on the lines of the amended motion that I put to the House. The Hon Member has decided that it is a good thing now to move a motion and give us an exposition of his labour policies and what they are if he were to take Government next time. But, Mr Speaker, it is not a priority issue, it is not a high priority issue and it is not correct to say that existing legislation needs urgent action and so the motion is inaccurate and it is in effect something which at present should not be hurried, particularly at this critical time in the history of Gibraltar when we need to encourage development in the Private Sector. Why do we need to do that, Mr Speaker? Because as the member opposite is fully aware we need to replace jobs which are going to be lost in the MOD. Some of the jobs that we are going to lose in the MOD will fill a vacuum in the new economy of Gibraltar in the form of small business being set up as we envisage and as we will be encouraging the economy to proceed and to build upon. What we cannot do is in fact not to proceed with caution and put undue burden on people at the time when they start businesses. And then of course in that sort of situation, as I said at the beginning, we have to look and compare with what is happening elsewhere. The Honourable Member opposite talked about the Northern European countries and I would say let us look and equate our standards to what is happening inside the European Community of which we are a Member and it is the obligation of the Government and of this House to achieve the standards of living of other European nationals in every respect, including in labour laws, and which is very much something that we in the Government take to heart. Let me tell the Honourable member opposite that in many cases in the European Community today there exist Regulations which stipulate minimum conditions attached to minimum sizes of businesses and in fact if we look at the redundancy terms which exists in the community, we see that the agreements that exist in Gibraltar are far superior to what the EEC labour laws requires us to adhere to in terms of numbers and in terms of the notice that has to be given and the size of the number of people that have to be notified when the redundancy position is declared. So on the redundancy situation we have better conditions than what the EEC law imposes on Gibraltar. It is also a fact indeed that in many European Member States small newly set up businesses, or small business, are exempted from complying even with these minimum conditions where these would create an unfair burden or a dissensive to the business or to the formation of the business. So therefore, Mr Speaker, if what the Honourable Member opposite is suggesting is that we improve employees

that specifically small traders will be able to provide pensions for their employees and as far as Child Care provisions are concerned in order that the mother is able to go to work, this is also an area which could be looked at. I must say now that we have been talking about small traders, but large companies are in a much happier position. These firms are able to charge for their services without much quibble from the clients and ought to be in the privileged position of providing and paying for certain matters such as the large part of a pension for an employee. Redundancies obviously fall under another category. There is, as I have said before, an EEC Directive in this matter and in my time as Minister for Labour and Social Security, I remember that steps had already been taken and a paper had been prepared for discussion and implementation on this Directive. If I remember rightly, the paper when we left office was already with the Legislation Committee and maybe it could well be that Government are now dealing with this matter in that Committee. Another point which the original motion mentions is the matter of priority. I fail to understand why this sentence should have been included in this motion when there are many more aspects of Gibraltar life dealing with a large number of issues that must take priority over the updating of the present Employment Legislation in respect of redundancies and pensions. I do not want to say a great deal more, Mr Speaker but there is obviously an obligation to improve the law in this respect and I must say that although, in principle, the updating of any law is welcomed I however honestly feel that the mover of the motion appears not to have given sufficient thought to the full implications of such legislation. But Mr Feetham has explained this clearly and requires consultation with representatives of both sides of industry. Thank you, Sir.

MR SPEAKER:

If there is no other contributor I will ask on the mover of the amendment to reply.

HON M A FEETHAM:

Mr Speaker, I do not think I have anything else to add.

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

HON P C MONTEGRIFFO:

Mr Speaker, it is not that I am going to find myself in a fourteen to one position because half a step is better than no step. Although I am a little puzzled because all

the anger that Mr Feetham came up with, the anger of implying that I do not know what I am talking about and then he comes up with an amendment Mr Speaker. And frankly when I look at it as I have said it is half a step towards a step, but it is more than half a step and the Honourable Mr Valarino has talked about the fact that I want to mandatorily have pensions for the people in the Private Sector. I wonder whether the motion has been properly read. The motion states "This House considers present legislation regulating employers rights including provisions for pensions and redundancies is antiquated and inadequate". And that "it requires reform". I have not said how it requires reform or how it does not require reform or anything. I have indicated very clearly the line which I want to take but in fact I have not mentioned even once the fact that I am talking about mandatory provisions for pensions. I have in fact made it very clear throughout and I gave various examples of methods through tax incentives of encouraging employers in the various areas about redundancies and pensions to actually provide those rights. It is completely absurd what both sides have said about this. It is complete and utter distortion and, I think, that maybe the members opposite are embarrassed that a motion of this type should have been brought and they have to come up with an amendment because they are supposedly the sole defenders of employees and employees rights. But Mr Feetham's amendment is, and I ask the man listening to us, the people listening to us whether there is a completely different perspective to this motion. His amendment said "That this House considers there is a need to review the law relating to employees rights" which implicitly involves the fact that it is outdated otherwise there would be no need to review. You do not review when it is alright. In the "Private Sector" is the only new element particularly with reference to Occupational Pensions and Redundancy Terms and that this review should be done and taken in consultation with representatives from both sides of the industry. I, in fact, was the first to say that the review should encompass everybody including obviously those that represent both sides of industry. So what is this so called more extreme motion that has to be watered down. I am perfectly happy to accept this but the only thing this amendment does is two things. One it takes out the reference to "as a matter of urgency". I actually do think that it is a matter of urgency but that is a matter of judgement and the other thing it does is that it introduces the words "in the Private Sector", and I am happy with that because the malady is not the Public Sector. Because people employed in the public sector are alright. The people who might have a problem are the people in the Private Sector. So I am happy with that. Now I agree with Mr Feetham in one respect and that is that I do fundamentally oppose a view that he has expressed that we should let them get on with it ie Employers and Trade Unions and we should not

interfere. Well I do believe in that. I know Mrs Thatcher would, I know that most of those on the right wing would but that is a nineteenth century concept that went out a long time ago. I do not believe that the best thing is in fact that Employers and Trade Unions should get on with it and that is it. No I do not believe that. Like I do not believe that when you go to a shop that it should just be the purchaser and seller that just get on with it. I believe that you should have laws that says what the obligations of the seller are and we have laws that say what the rights of the purchaser are because that is what civilised western democracies of the twentieth century actually do. They equate bargaining powers and not just to leave it to the market place. I do not believe in the market place to that extent, and that should be on the record, but if the Minister does then the only thing that happens is that they change completely from presumably their trade union days when we had a history of him, yesterday evening on television talking about a completely different Mr Feetham. I would have thought Mr Feetham who would have gone to interfere to the very hilt to protect workers and he did not say "workers you are on your own" then, I do not believe that. I actually believe that rather than employer and worker sort it out that there should be a law which provides, and there are lawyers of course. And thank God that there are and judges. Yes Mr Speaker, there are lawyers in their Party as well and Mr Feetham's two sons are studying to be lawyers. They are not studying to be anything else but I suppose they are also going to be comedians as well. Mr Speaker, I do not want to bring his children in but when there are cries of parasites then I have to answer. Mr Speaker the fact remains that I do fundamentally object to Mr Feetham on that point. I do not believe that in a modern society you just let people do what they want. I do believe in intervention and I do believe that there is room for setting a framework of protection in certain areas because if that was not the case there would be complete anarchy. In any case in theory, in conceptual terms, there is no difference between an employer and an employee coming to a deal as to a seller and a purchaser coming to an arrangement and that therefore just as we have said, there is a law that says you cannot sell toys to children unless it has certain stamps on them and we in the wisdom of this Chamber say that there is a law that applies to everybody. You do not leave it up to the parent to negotiate with the seller. This Chamber has a responsibility also to say whatever the terms of employment there are, certain things that every employee should have and I actually believe that as a matter of priority every employee, subject only to the problem we had in Gibraltar with immigrant workers, which is something that we have to be conscious of, every employee in the private sector should look forward to an Occupational Pension Scheme. I know people who are forty or forty-five years old who

are working in the Private Sector and who do not have a Pension Scheme. Now that might not be a priority for the Government but for these people who are getting older for them it is a priority. I am not going to quibble about whether there are ten things you have to do before you do the eleventh and that is why the motion recognises the need for a review this is the important aspect. I do not just say "let us wait till the Unions get round to thinking about people that do not want to get Unionised and then we will sort things out". I am sorry, I actually believe that even if there were no Trade Unions we as a legislature have the right and the duty to establish certain criteria for employment. Mr Feetham talked about the fact that the agreement in Gibraltar that we have with regard to redundancies are much better than even the minimum EEC standards. I am the first to accept that where there is an agreement it is a good agreement and that is why it is the Public Sector that I am not concerned about. There is no law on redundancies in Gibraltar and what I am saying is that the man who is protected is protected. Let us be happy for him, but for the man who is not protected that is of little consolation to be told that "do not worry boys, ninety percent of you are protected". "But what about the other ten percent that are not?". I am sorry but I do not think that is an argument. The fact remains that we have a need to look at it. As a matter of urgency, priority or whatever and I think it is something that we should look at especially as I am the first to say and also for the record.....

HON CHIEF MINISTER:

Mr Speaker, as far as Community Law is concerned, Gibraltar will comply with Community Law. We do not need a motion from the Hon Member to do that. So anything that we are doing here or anything that we do as a result of a review will be to set standards which are Gibraltarian standards and which are above the minimum required by Community Law. There are a number of areas where we are already above Community Law. We are already above Community Law in the National Minimum Wage, we are already above Community Law in requiring Redundancy Collective Agreement to apply with five employees whereas in the rest of the Community it is much higher and I can tell the member that this was done, in fact, when the previous Government was in office and when I suggested that because Gibraltar had so many small enterprises that if we use the minimum size in the community half the Private Sector would not be affected, so he is wrong in thinking we are below Community Law, we are not.

HON P C MONTEGRIFFO:

Mr Speaker, I am not saying that we are below Community Law, I am saying that notwithstanding that we are not to the point on redundancy, what we are below Community Law because is in that issue because we have nothing of Redundancy

and I do not know what the EEC says on Redundancy? I have not made the point. It has been the Honourable Mr Feetham who has said that there is EEC provision for Redundancies. That we are not above it, because the law is not above it. But certain agreements are above it. That I am prepared to accept and I welcome that. That is all I am saying.....

HON CHIEF MINISTER:

On a point of order, Mr Speaker.....

HON P C MONTEGRIFFO:

I have not given way.....

MR SPEAKER:

Order, order, order, a point of order, I must listen to the point of order.

HON P C MONTEGRIFFO:

I hope it is a point of order, Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, the Honourable Member is saying that there is not a law in Gibraltar which is a Community Law on Collective Redundancy. If he looks in the Employment Protection Ordinance then he will find that there is such a law and that that law was introduced by the previous administration as a result of a Community Directive on Collective Redundancy provisions and that the law that was introduced in Gibraltar by the previous administration which was what the Community required us to do was changed in this Chamber because when I was sitting on the extreme left, where he now is, I suggested that in the case of Gibraltar if we simply apply the criteria of the Community of Collective Redundancies it would not apply to a very large percentage of Private Sector employment because the units of employment in Gibraltar were in fact smaller than the units of employment in Europe and the Government accepted that.....

HON P C MONTEGRIFFO:

Is the point of order over, Sir?

MR SPEAKER:

Order, order.

HON CHIEF MINISTER:

...and we legislated by introducing the triggering of redundancy provisions in Gibraltar and that Gibraltar's



law when they would not be triggered under Community Law anywhere else in the European Community. So, in fact, the Hon Member is incorrect.

MR SPEAKER:

What is the point of order that you want me to clear?

HON CHIEF MINISTER:

That the Hon Member is responsible for the accuracy of the statements that he is making in this House and he is making a statement in this House which happens to be incorrect and under the Standing Orders of this House I am bringing to his notice that he is incorrect because there is legislation which the House has passed which proves him to be wrong, Mr Speaker.

HON P C MONTEGRIFFO:

Mr Speaker, he has not heard what I have said. Because there is no law which provides for payment in terms of redundancies. There is a law that says that there is a procedure where notification is given to the Director of Labour and Social Security when there is a certain type of redundancy situation which is a Collective Redundancy, but will the Chief Minister confirm that there is any law in Gibraltar which allows payments to be made and what the figures are because that is not the legal position at present. There is no redundancy payments guaranteed by law.

MR SPEAKER:

Do you want him to answer that?

HON P C MONTEGRIFFO:

Certainly, Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, if he gives way I will inform him, since clearly he has not done his homework before bringing this motion to the House. In fact there is a situation where under the provisions for Collective Redundancies which in the case of Gibraltar applies where there are more than five employees affected, and this does not apply anywhere else in the world.....

HON A J CANEPA:

Thanks to an amendment moved by the present Speaker.

HON CHIEF MINISTER:

An amendment moved by me and graciously accepted by the last Speaker and where the situation is that employers in fact can be required under the law to pay....Yes they can and are paying constantly which the Hon Member would know if he had been a Branch Officer of the Union, and which he was not. Because whilst he was registering companies I was looking after the workers, Mr Speaker.

HON P C MONTEGRIFFO:

I look after individuals as well Mr Speaker.

HON CHIEF MINISTER:

Constantly Mr Speaker. I mean the Honourable member can of course introduce a Private Pension Scheme and a Redundancy Compensation Scheme in his own practice to set a good example instead of lecturing to the rest of us.....

MR SPEAKER:

Minister, order, order, when the Speaker stands up everybody shuts up. Order, I have not finished. I think the Chief has now finished his explanation and we must leave it and we we will carry on.

HON CHIEF MINISTER:

Mr Speaker, with respect I have not finished. The position is therefore Mr Speaker, that at the moment under Community Law people are required to give a situation of Collective Redundancy Advance Notice and in the event that there is a dismissal of an employee within the consultation period stipulated in the law, then in fact there is compensation paid and the legislation in Gibraltar treats that as a Redundancy Payment under the Income Tax Ordinance. That is to say, where in fact the compensation paid to an individual during the period of redundancy notice is paid in cash instead of in notice under Gibraltar's laws, again uniquely and nowhere else, the situation is that people get paid that amount of money free of tax. So in fact the Honourable member is wrong in saying, and I hope that he has accepted, what I have now told him where he can find it in our laws and put him right in that there is no reference in our law to compensating people for redundancies. Because there is and it is constantly being used, Mr Speaker.

HON P C MONTEGRIFFO:

Mr Speaker, it is clear that the reference that there might be rather than in that there is clearly stated instead of

payment in lieu of notice or when there is a breach effectively by giving an employee dismissal notice then that redundancy under the Income Tax Law allows a payment to be deemed to be a Redundancy Payment for the treatment of tax. That is one thing. But one would then assume that if no dismissal takes place within the period of notification that the only thing that the employee has in that situation is a right to dismissal payment so to speak or payment in lieu of dismissal as opposed to any right per se to redundancy. That I am prepared to accept. But only within that situation and no other. Certainly not for example like in the United Kingdom where there is a specific right as a separate item to Redundancy Pay over and above any other benefit, simply as a result of one having lost one's job, that is a separate provision, a separate benefit that does exist in the UK. That would exist, as Mr Feetham has said, in many of the Collective Agreements that are negotiated in Gibraltar between employers and employees, at arms length, but just so that we get back to the main thrust of this Mr Speaker, it is clear that we are talking about different situations, because the Government feels I believe that we should have a closer look at what exactly should be the framework which regulates such employment. The amendment as it stands, Mr Speaker, only changes the original one to the extent that I have indicated and which I am going to accept with only one reservation which is not going to mean that I am going to object to it. The amendment actually calls for the review to take place in consultation with the representatives on both sides of industry. I agree with that but I hope it does not mean to the exclusion of others that have an interest and in particular to the exclusion of Members of this House whom I believe have a duty to express the view and also have a duty to pass the law if it were to come to giving effect to a more modern framework for the provision of such benefits. I am prepared to give way to the Minister if he can confirm that his reference to consultation to both sides of industry is not a reference excluding the role that Members on this side of the House could play. That it is only a reference which happens to be helpful by making clear that they would also be consulted. We would like certainly on this side of the House, I think and I speak for myself, to be consulted on the review because if we are talking about a framework which is a modern one for employment which this House should approve, then if we can come up with a consensus approach on this that surely would be desirable. I assume that the Minister would not object to that reasonable approach.

HON M A FEETHAM:

The answer, Mr Speaker, is no.

HON P C MONTEGRIFFO:

Mr Speaker, this is again an example of Government's attitude. I cannot understand why Government if it believes that there should be a review, to look at Pensions Schemes and at Redundancy situations and they know that it is a legitimate concern of myself and one assumes of other members of the House and they are willing to take advice from other people who have no elected representative voice in the community but only representative of this specific interest, it seems odd that they should not want to have members on this side involved. Now frankly I have the choice, Mr Speaker, I know the Government's arrogance goes to the extent where it no longer thinks it actually is useful to speak to Montegriffo and hear what he has to say. They cannot give me half an hour for my views on pensions. There is nothing that they can learn from me, it is true, Mr Perez, Mr Baldachino, Mr Mor and Mr Bossano know it all so all that you have to do is consult who they think they have to consult because the likes of myself are very limited in our abilities and in fact have nothing to contribute. I am in a dilemma as to whether I simply say no to the motion which would be a sad thing because it would defeat the purpose of the debate or of saying yes despite the fact that it is self defeating. Mr Speaker, my view is that at the end of the day whatever is done to improve the situation is for the good of those people who need it and if the Government in its infinite arrogance is prepared only to talk to people that it chooses without actually being prepared to listen to others when they have something to say then that is the price we pay for a Government that seems to have lost track of the need to consult the minority opinion. An opinion that is different in coming up with legislation which is going to have a social impact on the whole of Gibraltar. From the point of view of time, Mr Speaker, I do not think Mr Perez is busier than me.

Mr Speaker put the question which was resolved in the affirmative and the motion, as amended, was passed.

HON A J CANEPA:

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

"This House:

- (1) Regrets that the Attorney-General has refused to make public his reasons for his decision to drop charges against the Spanish Customs Officers;
- (2) Considers that his remarks about sovereignty were in appropriate;
- (3) and believes that the announcement of this decision

only a few days after the disclosure of his initiative about cooperation on law and order, appears to be connected with this decision".

Mr Speaker, when I gave notice of this motion over a month ago it was described in certain sections of the media as a motion of censure. Without trying to do your job, Mr Speaker, which is to rule when necessary whether a motion is one of censure or not I can say for my part that it is not a motion of censure, it is not intended to be a motion of censure, nor is it a motion of no confidence in the Attorney General. And I say that because, in my view, it would be improper for me as a Member of the House, as an Elected Member of the House, to try to do that. If I were to do that I think that would be rightly interpreted as an attempt at interference on the part of Legislature with the Judiciary and with the procedures which are adopted in the Administration of Justice. As we said in the Press Release that we issued at the time, the first week in January, we do not question the Constitutional right which the Attorney General has to make decisions of this sort and indeed to take this specific decision. The matter of course in itself has got far wider political implications and that it has got these wider political implications became abundantly clear, if it was not clear right from the beginning because of the events of last summer. Events with which we are all familiar but I think it is important that I should make specific reference to the intervention of what the Chief Minister would call the Government of the Kingdom of Spain in instructing the men not to appear in Court after they had been granted bail because Madrid did not recognise the jurisdiction of the Gibraltar Courts. This of course is the matter that most immediately linked the whole issue to that to the Sovereignty question, because the Government in Madrid took this attitude because of their attitude to the question of British Sovereignty over Gibraltar. The jurisdiction of the Gibraltar Courts is an attribute of British Sovereignty over Gibraltar. Any country when it exercises sovereign rights, one of the attributes emanating from Sovereignty is the jurisdiction of its Courts. And then of course in the aftermath of these events we saw over a long period of time delays at the frontier, a very heightened level of activity on the part of the Spanish Customs helicopter all leading and contributing to the public in Gibraltar becoming incensed at the time, feeling very strongly about the matter last month and I would say that this feeling is still very sensitive even to this day about the whole issue, but in particular last month there was a public outcry when the decision to drop charges was announced and that is why we felt that questions that we had initially intended to ask here in the House should be followed up with a motion. The strength of feeling became

evident in a phone-in on GBC Radio on Friday 5 January and in the many letters that were written to and published in the Gibraltar Chronicle and what is perhaps rather more unusual, an unusually large number of letters in the Panorama. The Panorama does not tend to receive the amount of correspondence from the general public which the Chronicle does but on this occasion Panorama did apparently receive a very considerable number of letters and five or six of them were published and which showed varying degrees of annoyance on the part of the public. I think it was particularly unfortunate Mr Speaker that the timing of the decision to drop the charges came shortly after the Diario 16, published statements made by the Spanish diplomatic sources close to the - I forget whether on that occasion it was the Spanish Foreign Minister himself or diplomatic sources close to the Spanish Foreign Ministry, to the MFA in which threats were made against Gibraltar, and of course we have seen a continuation of these threats during the pursuing six weeks of so and only last week indications from Señor Ordoñez that Spain would be adopting a tough line against Gibraltar and introducing a much more stringent regime at the frontier. So this continues to incense people. Without trying to judge whether the Attorney General was right or wrong, I think the motion deals with three aspects of the matter. I will make my own view about the decision of the Attorney General clear in a moment. In the first place the Attorney General refused to make public his reasons for the decision that he took. I think that thereby he weakened his credibility in asserting that the decision was his and entirely his, and that he had not been influenced by anyone. I would find it very difficult to believe, Mr Speaker, that before taking that decision he did not clear it through the Foreign and Commonwealth Office, through the usual channels, ie the Deputy Governor or the Governor that I find very very difficult to believe. He made it clear that he did not tell the Chief Minister about his decision. Apparently the Chief Minister was indisposed and was not informed. I wonder whether his predecessor informed the Chief Minister when he took the decision to level charges in the first place or not, I just wonder. I think that in any case the second decision that of dropping charges which I have no doubt, as I say, unless the present Attorney General is departing from what I have known over many many years to be the established practise, I think at the very least that what he must have done was to inform the Deputy Governor, and quite honestly that he did not inform the Chief Minister, because the Chief Minister was indisposed, in my view is a poor excuse and I would have thought that the matter is so sensitive, was sensitive, that anyone could tell that it would become a sensitive public issue and remains a sensitive matter. It is so sensitive generally, regardless of the passage of time,

that if only as a matter of courtesy, I think, that the Chief Minister should have been informed. If I had been Chief Minister at the time I would certainly have expected to be told, even though the decision was for the Attorney General to make and if I had not been informed I would have been very annoyed about it. I would not have interfered in any way but I would have told him what my view was, as indeed I am going to do now, and that is that I do not think the decision is so much wrong in itself, but that because of the wider political implications which the matter acquired because of the strength in feeling in Gibraltar over the issue, because of the conclusion that people arrived at and at once saw this in the tone of the correspondence to the press, in the comments that were made in the phone-in that I have referred to, people rightly or wrongly, and unfortunately in my view, come to the conclusion that Britain and British ex-pats working in Gibraltar, do not care about Gibraltarians and their feelings and I think it is important that that should not be the case and that it should not even give the impression that it is the case. I think that the way that the public has read everything is, and seen from my point of view as well, this is a measure which smacks of appeasement when Spain is trying to bully us again. There are threats, longer delays at the frontier still, why? Because of their annoyance at the non-implementation of the Airport Agreement and notwithstanding the fact that the charges have been dropped, notwithstanding the fact that the Attorney General and I would not criticise him for his initiative on law and order not for one moment, notwithstanding that desire to cooperate in this sphere of law and order, nevertheless in spite of that the blandishments against Gibraltar continue to be an ever present feature of Spanish policy on the part of the Foreign Office towards Gibraltar. What does the Attorney General do against the background of all that? He ignores the political Government with whom he has to sit in the House, with whom he meets in Gibraltar Council. I am using rather strong language if I say that it appears that by not informing the Chief Minister he makes the Chief Minister look a fool in the process and that should not happen. It should not happen and it should not appear that there should be any possibility of that being the case because the office of Chief Minister is a very important one and whoever holds it has a dignity and that that dignity should be upheld at every stage. On Saturday 30 December, the Attorney General announced in the Gibraltar Chronicle, that he was taking an initiative on law and order. On Thursday 4 January, the Gibraltar Chronicle published the news that charges were being dropped against the Spanish Customs men. In between we had the New Year Public Holidays. The Chronicle in order to publish the story on the 4 January must have been informed by the Attorney General on Wednesday 3 January, so you have the initiative of law and order on Saturday

30 December. The 31 December is a Sunday, the 1st Monday is a Public Holiday, so in my view it could not have done during the working day in between.

MR SPEAKER:

Could I just stop the Leader of the Opposition just to clarify the dates. Is he saying that that is so or that he is assuming it to be so?

HON A J CANEPA:

I am assuming that in order for the Chronicle to carry the story on Thursday 4 January, they would need to have been appraised of this at least the day before ie before the Chronicle was put to bed as it were, and that must have been Wednesday 3 January. So on that time-scale there was only one working day in between, Tuesday 2, so a great deal of thinking must have gone on in between, before reaching the decision. I honestly, Mr Speaker, find it difficult to believe him when he says that the two matters are not linked and I think it is a pity in a way, from his own point of view, that he did not link the two matters because I think his case would be much stronger. If it is the interest of law and order, in the interest of crime prevention, in dealing with this horrendous problem of drug trafficking, with the problem of terrorism and so on, that there should be close cooperation between the authorities involved with the administration of justice and public order, law and order, both in Gibraltar and in Spain, and I for one would say that it is in the interests of all of us that that should be the case, then I think that building on that initiative the Attorney General could have presented the decision to drop charges in a far more positive manner because in logical pursuance of the first initiative, of that initiative, then he could have said, as a gesture of goodwill, it is logical that we should not continue to sour relations between Gibraltar and Spain on this issue and that we should wipe the slate clean and drop the charges and make a fresh start because there is going to be cooperation on this vital area. Not everyone might have agreed with him, but at least the point behind the decision, I think, would have been understood. So in trying to be economical with the truth, I think, the Attorney General perhaps initially inadvertently weakened his case. However he had an opportunity to have clarified matters later on, but all that he succeeded in doing was in weakening his case on the actual issue itself of the dropping of the charges and in weakening his case for the initiative that he had decided to take on law and order. Now the events of last summer and their aftermath particularly the Spanish Government itself bringing in the question of sovereignty, as I said have given the whole matter a political direction. It was no longer purely within

the domain of the Judiciary, whatever the Attorney-General is quoted as saying about sovereignty in the Chronicle and where he did say that he wanted it to show a willingness by Gibraltar to put to one side the question of sovereignty which is a political matter. As I said the Spanish Government by the instructions which they issued to the Spanish Customs men gave the whole thing a political slant and by the subsequent action taken and the whole aftermath of it all and the continuing aftermath of it all, it cannot be kept within the domain of the Judiciary, it is in the political arena and that is inevitable with virtually everything that concerns every facet of life in Gibraltar vis-a-vis our neighbours. The Attorney General stated in the Chronicle and we have heard since, quite recently, that he wrote letters to various newspapers in the United Kingdom, 'The Times' and 'The Independent' and that these letters were not published. Perhaps if they had been published, later comments that he makes about cooperation were perhaps when he talks again, quoting from the Gibraltar Chronicle, he was anxious to show that there was not a complete breakdown in cooperation with Spain, but when I read the Chronicle I was in doubt whether the degree of cooperation that he was referring to was limited totally to the question of law and order and/or whether it did not touch on other aspects political, economical what have you. Perhaps if the letters had been published by these newspapers that matter could have been clarified, but it was not clear to me then and it is not entirely clear to this day. Now why were not the letters published in The Times and in The Independent? I would say that if letters are received by editors of these newspapers, I know that the Area, I think in this morning's Chronicle there is a story about the Area publishing a letter, but the Area is a different kettle of fish altogether to The Times and to The Independent. I think the editor of these newspapers receiving a letter from the Chambers of the Attorney General would not touch it with a barge pole because they would be suspicious that there could be a legal wrangle involved and that they could get somehow involved in that wrangle. If those letters or similar letters had come from the Office of the Chief Minister, they would more likely have been published. I think that the mistake of the Attorney General in announcing his initiative and then also in announcing his decision to drop charges was that he was too forthcoming with the press and I would advise him not to be. I think as Attorney General he should not get himself involved in areas such as dealing with the press which can be a pitfall for anybody even for the most experienced politician, it can be a pitfall, and decisions of that nature I would suggest and I am not being patronising but talking from the experience of many many years should be the subject of a very carefully worded terse statement issued from the Office of the Attorney General and that is the end of the matter. No more statements, nothing further

said, because the more that you tell a newspaper, the more that the Attorney General would be opening himself up to misinterpretation, to other comments being made, to all sorts of things being said and the degree of misinterpretation increases directly with the length of the columns that are published in newspapers and that is something that I learned from observing over a number of years his predecessors in action. They had very very little to do with the media, they did not want to get involved and if they did, I imagine that it would be by way perhaps of an of the record briefing perhaps so that anything that was happening could be better understood by the media and any story coming out would be thereby more accurate. I would advise him for the future that he should be trite, terse and the statement should suffice. So, I think, that part of the problem was and has been that the Attorney General has mishandled the presentation of the matter and that is why I advise him to be more circumspect in future. There is always the danger of officials or official members of this House being misinterpreted in what they say. Moreso perhaps because they are not elected members and they are not directly answerable or accountable to the electorate and therefore there is a greater danger of misinterpretation and when you are dealing with matters about which the public in Gibraltar is very very sensitive, and has been for very long, then you have to be even more careful. To make statements of the nature that were made without clearance and support from the elected Government is to enter, to walk into a dangerous minefield, and the mines are going to explode and they have exploded. In a final analysis if the matters that you deal with you can also carry the members of the Opposition then it is always useful because they are not likely to do what is happening this afternoon. That is unlikely to happen. I think that in a way, Mr Speaker, it is unfortunate that matters developed the way that they did. I tried to be fair bearing in mind that there has been intense feelings on the matter in Gibraltar. I hope the Attorney General understands that and I hope he realises that we, as elected members of the House, particularly when you are in Opposition have more time to do that and part of the job of the Opposition is to talk to people. We have more time than Government ministers whose work involves a lot of time spent within four walls at meetings, etc. We have more time to walk around and to talk to people and I hope he believes me when I say that we have a duty to reflect the views of the people that we represent and in Gibraltar, matters that touch Spain we are very very sensitive and we are sensitive not because we do anything wrong but because all we want is to be allowed to lead our lives in peace. We are sensitive about the matter because they will not leave us alone and hence that is why I feel bound to bring this motion to the House. Mr Speaker, I commend the motion to the House.

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

HON ATTORNEY-GENERAL:

Mr Speaker, I have listened very carefully as I am sure all of us have to what the Honourable the Leader of the Opposition has said. I have also read and I am sure we all have seen the various letters which have been written in the press about the subject matter to which this motion relates. The various editorial comments which have appeared in certain newspapers and the amount and degree of assumptions. To a certain extent the Honourable Mover of this motion concedes that he has made assumptions and I have read also that there are opinions which have been expressed and the conjecture which has crept into the subject matter contained in the motion proposed by the Honourable Leader of the Opposition. But Mr Speaker, what I ask this House to do is to just pause for a second or two and step back and consider objectively what the reality of the situation is. Now Mr Speaker, the Honourable Mr Canepa has suggested that I am departing from established practice and he has compared the decisions or the manner in which I have carried out certain duties in the office of the Attorney General since I took it, firstly on a temporary basis in September last year and then substantively when I was appointed formerly to the post by His Excellency the former Governor in early November of last year and, Mr Speaker, it must not be overlooked that I did not arrive in Gibraltar yesterday. I have been here for some five and a half years now and in those five and a half years privileged to have seen a tremendous growth and a fundamental change in Gibraltar, in the structure of it and I hope I have in some way played a part in the future of Gibraltar. I have never regretted for a moment coming to Gibraltar. Not for a single solitary second. The only thing I do regret, Mr Speaker, is that firstly I did not have the opportunity to come here earlier and secondly, the fact that I did not perhaps seek to create the opportunity of coming here earlier. But not for a moment have I regretted coming here. It is well known that when Mr Thistlethwaite, the prior Attorney-General, left I was rather reluctant to take on the post of Attorney-General, having been his No.2 as Senior Crown Counsel for some five years and having been called upon to substitute in that post for different periods of time on quite a considerable number of occasions, but Mr Speaker, I was encouraged to change my mind by a very large number of people, both inside and outside Government and my own profession, the legal profession, and I am deeply grateful to them for persuading me to change my mind. I am proud, Mr Speaker, to be Gibraltar's Attorney-General and I do not intend going home yet despite the number of people who have offered to buy me a one way ticket.

Laughter.

HON A J CANEPA:

Mr Speaker, we do not have the funds on this side.

HON ATTORNEY GENERAL:

I accept that wholeheartedly Mr Speaker.

Now Mr Speaker, I am well aware how my predecessor did his job as Attorney General and I am well aware of the reasons he expressed for leaving the post when he did and not staying on any longer. I liked him very much and as I said in the Supreme Court in October of last year it was a most beneficial and rewarding experience for me to have worked with him for the five years that I did and when I took on this job, Mr Speaker, I had no elusions whatsoever but that it is the most difficult and demanding job to have to carry out and I knew that I would have to make decisions, from time to time, which would not always be received with complete popularity and accord. I knew that there would be a certain amount of dissent and some people perhaps would be irritated and extremely annoyed even, if I may go to that extent, with decisions which I had to make. Mr Speaker, I did not promise to do the job anything other than in my own way, to the best of my ability with complete loyalty and complete dedication to those whose interests I am here to serve. I have done that, so far, and I will continue to do it for the rest of the time I hold the office. And when I am called upon to exercise my constitutional powers, Mr Speaker, when I am called upon to exercise such discretions and to make decisions, I do not unfortunately have time to hold a referendum, to see if those decisions will be popular with all those people who consider they are concerned by the decisions and who are interested and feel they are affected by the decisions which I make. If I can make a decision which has a 100% accord, well that is absolutely marvellous, but if I cannot do that, Mr Speaker, and I can make a decision only, which is popular with some people and most unpopular with other people, well that is unfortunate, but as far as I am concerned it has to be acceptable because the decision is mine and I am the person who is paid to make it. Now, Mr Speaker, there are four ways in which a criminal prosecution can be terminated. Firstly the Crown can seek leave to withdraw and in that case the Courts indulgence is required. Secondly, Mr Speaker, the Crown can ask the Court to allow to lie on the file a particular charge or charges which the Crown do not propose to proceed with and that is done frequently, Mr Speaker at the Supreme Court, for example, if a person is charged with possession of a controlled drug, a simple possession and in the alternate with possession with intent to supply and obviously what the Crown is really alleging is that the accused was in possession of that controlled drug and at the time of being in possession his intention was subsequently to pass it, or a part of it, to another person and that is a far more serious charge of course than simply being in possession



of it with intent to use it purely himself. If in that event, Mr Speaker, for example, the defendant, as often happens in cases in Gibraltar, pleads guilty to the more serious charge of being in possession with intent to supply, then it is quite appropriate and completely usual and common for the Crown to ask leave of the Supreme Court for that count or charge of simple possession to lie on the file and not to be proceeded with without the leave of the Supreme Court or a Court of Appeal. Now, Mr Speaker, in both the examples that I have given so far, are two methods for terminating the prosecution, you will appreciate that the Crown is adopting either of those methods is seeking the Courts indulgence and the Court is perfectly entitled to say "give me reasons why you consider I should grant the indulgence you are seeking", and if the Court does that, well of course Mr Speaker, the Crown has an obligation to give reasons. But there are two other ways, Mr Speaker, in which a criminal prosecution can be terminated and that is when the Crown does not have to give reasons. The Crown can offer no evidence and themselves invite the Court to dismiss the charge. That serves as an acquittal, Mr Speaker, to the defendant of the offence with which he is charged and the Crown does not have to give any reasons for dealing with the case, for terminating the prosecution in that manner. Fourthly, and finally, Mr Speaker, we come to what this motion is really all about and that is the privilege, the constitutional privilege, which is vested in the Attorney General and only in the Attorney General to terminate a prosecution by the entry of a nolle prosequi. Now, Mr Speaker, that is a constitutional power which is enshrined in our Constitution. Mr Speaker, and as far as I am aware it is a power vested in the Attorney General of all countries who either have a written Constitution or who have a system of justice based on the British system of Justice, Criminal Justice, I am talking about of course, which we practise in Gibraltar. In my public capacity, Mr Speaker, as the Attorney General, that power is now vested in me. The Honourable Leader of the Opposition has been kind enough and quite properly conceded that he recognises my constitutional right to terminate a prosecution when I consider it appropriate to do so, and with respect, it is right and appropriate for him to recognise that that power is indeed vested in me, but what he does not appear to recognise, with respect Mr Speaker, is that not only do I have the right to terminate a prosecution but I also have the right, and I certainly have no obligation, to give reasons. And if I do not have an obligation, and I certainly do not have such an obligation to give reasons Mr Speaker, then it follows that I have the right to decline to give reasons, either publicly or privately or both, for any such decision I take. Because Section 77 of the Constitution reads this way, Mr Speaker, "The Attorney General shall have power in any case in which he considers it desirable so to do -

- (a) to institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary law);
- (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and, most importantly perhaps, Mr Speaker, in the context of this motion:-
- (c) to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority".

And sub-section 2, Mr Speaker, states:-

"The powers of the Attorney General under the preceding sub-section may be exercised by him in person or through any persons acting in accordance with his general or special instructions".

Now just let me pause if I may for a moment there, Mr Speaker. When the Attorney General enters a nolle prosequi that can be done in two ways. He can either go to Court personally, he cannot send a representative of his Chambers for this purpose, he must either go to Court personally and tell the Judge or the Magistrates, personally, that he has decided in exercise of his constitutional powers to discontinue the prosecution in that method. Or, Mr Speaker, what he can do is to sign a written document and this is always how the entry of a nolle prosequi has been effected in the five and a half years of service I have been in Gibraltar. It is effected by the signing by the Attorney General of a written document and that document begins, Mr Speaker, by saying that the Attorney General considers it desirable and that is the phraseology which always has been used in each and every nolle prosequi that I have seen entered in Gibraltar during my time as Attorney General and during the five years or so I served as Senior Crown Counsel to the former Attorney General. Mr Speaker, he considers it desirable. Then the document goes on to recite the name of the defendant and the charges which the Attorney General is discontinuing, which might of course, Mr Speaker, be all of the charges with which that defendant is at present faced, or it might not, it might be only one or more of several charges with which the defendant is faced. That again is something for the Attorney General to determine when he decides to exercise his constitutional powers under section 77. The name of the defendant and the charges discontinued are set out and the nolle prosequi continues by confirming that the Attorney General hereby discontinues all criminal proceedings in respect of the aforementioned charges and the document is dated and signed by the Attorney General and it is then filed in the appropriate court, the



Magistrates Court, the Supreme Court or the Court of Appeal because the Attorney General's powers extend to any Appellate proceedings still being continued at the time he decides to exercise his powers. And under Section 58 of the Criminal Procedure Ordinance, Mr Speaker, the court then has a duty on receipt of such a nolle prosequi to discontinue proceedings, to note in their records that the proceedings are being discontinued in that fashion, to notify the defendant, if he is not present in court when this happens, and thereupon to discharge him from all further involvement in those proceedings. Now Mr Speaker, the entry of a nolle prosequi is not an acquittal it is not the same as a verdict of finding someone not guilty and it is always open to the Attorney-General, present or any future Attorney-General, at any time to resurrect that prosecution, if circumstances arise which again, in his opinion, render that course of action a justifiable course of action to take. Now, Mr Speaker, most importantly sub-section (3) of section 77 says this

"The powers conferred upon the Attorney General by paragraphs (b) and (c) of subsection (1), those to which I have just referred to, Mr Speaker shall be vested in him to the exclusion of any other person or authority: and, Mr Speaker, I lay, if I may, emphasis on those words because they are of paramount importance in the context of this motion. "To the exclusion of any other person or authority". Mr Speaker there is a proviso which says "where any other person or authority has instituted criminal proceedings, nothing in this sub-section shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court".

Let me explain, Mr Speaker, where and in what circumstances that proviso could arise, or apply.

For example, if the Commissioner of Income Tax had issued a summons, or criminal summons, in the Magistrates' Court alleging that an employer had deducted tax from an employee under the PAYE system and had failed to account to Government for that tax and that, as the House is well aware, amounts to a criminal offence and such a prosecution would normally be instigated by the issue of a summons against the employer alleged to have been guilty of such an offence by the Commissioner of Income Tax in the Magistrates' Court. Now if between the issue of the summons, Mr Speaker, and the hearing date of the summons when one would expect the person against whom the summons has been issued to appear before the Court, the tax alleged not to have been paid is paid and the Commissioner of Income Tax, in his discretion, wishes

to terminate the prosecution, then that proviso would apply. And he would not have to come to me, in those circumstances and say "Can I have your permission to do it". Because he could do it of his own volition as a result of the contents of that proviso. So the fact that that constitutional is vested in the Attorney General, to the exclusion of any other person or authority, is as I have felt it appropriate to illustrate to this House, subject to the proviso I have just mentioned. Now, Mr Speaker (4) is without doubt the most crucial sub-section of section 77 for the purposes of that which we are considering now. Because sub-section (4) states:

"In the exercise of the powers conferred upon him by this section the Attorney-General shall not be subject to the direction or control of any other person or authority".

Now, Mr Speaker, it is one thing for the Hon the Leader of the Opposition to say that he recognises my constitutional right to terminate a prosecution in the manner I did this one against the four Spanish Customs Officers who were accused of landing on Gibraltar soil on the 30th June of last year and committing offences contrary to the Firearms Ordinance and the Immigration Control Ordinance. It is one thing to very properly, if I may say so, recognise my authority to do that but it is another thing to suggest, as he has done, that I am in any way obliged to give reasons publicly for my decision. Because to ask this House to express a regret that I have declined to make publicly known my reasons for the decision I reached, Mr Speaker, must necessarily imply that I have some sort of obligation to give reasons for the decision. I say Mr Speaker, that I do not, constitutionally or otherwise have any obligation to give any reasons whatsoever for that decision. Now, Mr Speaker, it is my experience, and I say my experience, it is my belief, from such research as I have been able to carry out that by convention the Attorney-General never gives reasons, publicly for the decision which he reaches. He may consult and seek the views of other persons prior to reaching such a decision and prior to terminating the criminal prosecution. He may decide as a matter of courtesy, not obligation, Mr Speaker, but courtesy to inform others of the decision he is taking after making the decision, as I did in this case, I felt as a matter of courtesy, because of the defendants being who they are, that I should inform his Excellency the Governor and I did and if the Hon the Chief Minister had been readily available to contact at the time, I would, as a matter of courtesy, but most certainly not as a matter of obligation, have informed the Chief Minister also. Mr Speaker, I never have, and I do not ever envisage, any circumstances arising where I would find it necessary or appropriate to go to the Governor or the Hon the Chief Minister and say I am thinking of terminating a prosecution

by this manner, do I have your permission to do it. I do not need the Hon the Chief Minister's permission to do it and if I know him just half as well as I feel I do, Mr Speaker, he would not want me to do it. He works 25 hours a day, 8 days a week to cope with all the problems he has to cope with now and he does not want, and I say this with the utmost confidence and conviction, Mr Speaker, he does not want me going to him and burdening him with problems I am paid to cope with and seeking his views on decisions I am paid to make. Decisions my office require me to make, whether or not they are popular or unpopular, with all or with some, they are my decisions and I will not shirk from making them unpopular or popular I think they may subsequently prove to be. Now, why, Mr Speaker, is the Leader of the Opposition asking this House to regret that I have declined to make public my reasons for the decision I took in this case. Is it because the Spanish Customs Officers are alleged to have fired shots on Gibraltar soil? Is it because they landed in Gibraltar soil? Is it because they are Customs Officers? Or is it because they are Spaniards? Not Gibraltarians, not English, not any other nationality, but Spaniards? Is it? Well only he knows that, Mr Speaker. However, Mr Speaker, as far as I am concerned I am paid to uphold the rule of law. I am paid to represent the interests of the Gibraltar Government and the office of His Excellency the Governor and I will do that to the utmost and the very best of my ability. But, Mr Speaker, in upholding the rule of law, which has been spoken about in this House on a number of occasions, as far as I am concerned all men are equal in the eyes of the law whether they be Chinese, Japanese, Lebanese, Spaniards, English, Gibraltarians or whatever, they are all entitled to equal treatment and to equal consideration so far as the law is concerned. And when I am called upon to make a decision they will be considered and they will receive equal treatment in that fashion. Now, Mr Speaker, when a nolle prosequi is entered, a prosecution is terminated in this fashion, it is because the Attorney-General holding the office at the time, on the circumstances, or based on the circumstances of that offence and all other consideration affecting those particular charges and those particular defendants, he deems it desirable that the prosecution should not be continued with. Now, Mr Speaker, let me tell this House and let me make it as clear as I possibly can to this House that this was my decision and I stand by it and I take responsibility for it. I was not, as has been suggested perhaps, pressurised by the Foreign and Commonwealth Office, the Chief Minister, anybody in Government, His Excellency the Governor or anybody else to make this decision. I took it, Mr Speaker, I took it on my own volition under no pressure, under no compulsion, under no persuasion whatsoever. If it turns out to be the wrong decision, and for those in Gibraltar who now, and since it was taken, may think

it is the wrong decision, well fine. But it was my decision, I took it on my own volition not as a result of any pressure or persuasion brought to bear on me. There was no such pressure or persuasion let me tell this House from any quarter whatsoever. Now, Mr Speaker, when the prosecution was brought following the incident which occurred at Eastern Beach on 30th June of this year that was the decision of the then Attorney General, his decision, a decision which he was entitled to make, and whether I agree with that decision is totally irrelevant. I was not Attorney-General at the time, he was. And what I will do, Mr Speaker, as strongly as I can, is defend his right to have made that decision, to have made the decision he thought, at the time, was the appropriate decision to make. Mr Speaker, I will defend, with equal vigour, my decision, my right to make that decision which I made some five or six months later. As I have said, I decided to terminate the prosecution because I decided and felt it was the appropriate decision to take. Mr Speaker, I am not prepared, still to make known publicly my reasons, to this House, or make known my reasons publicly anywhere else for the decision which I took at that time. I have stood by that constantly and I will continue to stand by that. No matter what motions are brought and no matter what criticisms are made of me for having made the decision which I made. Now, Mr Speaker, why is the Attorney-General, you may think, you may wonder not obliged to give reasons for his decision? Why by convention does he not publicly give reasons for his decision. Suppose, Mr Speaker, I was faced with a situation where a defendant had been prosecuted for a criminal offence and he was waiting trial say at the Magistrates' Court or the Supreme Court, where trials do not always take place as quickly as one would like and then I was suddenly presented with medical evidence to satisfy me he was suffering from a terminal disease and he only had a very short time to live and if in the exercise of my compassionate discretion I decided to terminate that prosecution am I expected to discuss with the press what terminal disease he was suffering from. What about if it was Aids, was I expected to tell the press that, Mr Speaker. Am I supposed to make known my reasons? Am I expected to give reasons in circumstances like that? Do I give reasons for having exercised a compassionate view and brought to an end the prosecution against him? One other example, Mr Speaker, suppose a girl with an illegitimate child alleged that some man had raped her and suppose it became apparent during the preparation for the trial that the defendant who is charged with that serious offence intended to raise a defensive consent and applied to the judge for leave to seek to produce evidence of her connection with other men, of her sexual connection with other men, and this girl as a result of the complainant in the hyperthetical rape case was terrified about coming to court and knowing that probably her character would be smudged. What do I do in a situation

like that? I have two choices, I can either force her to come to court by the issue of witness summons followed by her physical arrest if need be or I can take again the compassionate view to be sympathetic of her position and I can terminate the prosecution in this fashion. But again Mr Speaker, would the Honourable Leader of the Opposition or anybody else in this House expect me to talk to the press and to talk to the public about my reasons in those circumstances, for having brought that prosecution to an end. In all the cases, in the time I have been in Gibraltar, where a nolle prosequi has been entered, the Attorney-General, to my knowledge, has never been criticised and he has never been asked to make public the reasons for the decision he took. This is the first time this has happened, certainly since I have been here, and this House may wonder why. Now, Mr Speaker, the House I suggest should consider whether in moving the motion in the manner in which the Honourable Leader of the Opposition has done, what he is really trying to do is to question my constitutional position. This House I respectfully suggest, Mr Speaker, should accept my entitlement to decline to make known my reasons publicly, rather than express regret, as the Honourable Member has suggested is appropriate. Mr Speaker, the motion is in three parts and the second part of the motion asks the House to consider that my remarks about sovereignty were inappropriate. Let me say this that when I told the press in response to questions, and let us bear in mind, I do not ring up the press and tell them what is happening rather they ring me up because they have heard something which they might think is an item of news worthy of inclusion in their respective newspapers or worthy of reporting on radio or television. Now if I refuse to talk to them well I get criticised for that and if I do talk to them, sometimes I am not quoted with absolute accuracy, and I thank the Honourable Leader of the Opposition for the advise he has given as to the care I should exercise when speaking to the press. He is absolutely right about that and it is not the first time I have been given such advise. Also, Mr Speaker, it is not the first time I have given such advise to those who are junior to me. I have got something like thirty years experience, Mr Speaker, in the legal profession and I do know that even the slightest misquoting of something I say in the press can put a different context, a fundamentally different context, on the report which they make. What happened in this case, Mr Speaker, is as most members of the House, I believe, know already is that the press rang me up and they asked me firstly about what has been termed "the initiative I am taking in continuing to pursue and hopefully improving the degree of cooperation which exists at present between the law enforcement agencies of Gibraltar and Spain so far as criminal justice and the enforcement of it is concerned" and I was asked why I was taking this initiative and what I pointed out is that this

was a furtherance of the degree of cooperation which the Commissioner of Police, both present and past, had pursued for quite some time and I felt that the time had come for certain initiatives to be taken at a legal level, at my level, in my public capacity and I was asked Mr Speaker, if I felt that that could possibly be interpreted by Spain as a weakening of Gibraltar's resolve to resist Spain's claim to sovereignty. That is what I was asked and the reply I gave was that that had nothing whatsoever to do with me. I have said in this House that I am not a politician and I do not want to be. I have no wish to interfere or participate in policy making decisions. Mr Speaker, it must be right, does any Honourable member of this House suggest that the dispute between Gibraltar, Spain and the United Kingdom concerning Spain's claim to sovereignty of Gibraltar does have anything to do with me. It does not, Mr Speaker. That is the answer and that is what I said in response to a question put to me and I did indeed say that in the context of sovereignty having nothing to do with me "look put that to one side, it has nothing to do with me, let the politicians continue to argue about that and leave law and order, which are my responsibilities, for me to endeavour to further to the advantage of Gibraltar". I was also asked virtually the same question again, Mr Speaker, a few days later when it came to the notice of the press that I had entered, not that I was about to enter, but that I had already entered several days earlier a nolle prosequi terminating the prosecution against the Spanish officers. I was asked again exactly the same question and I gave the same answer. Mr Speaker, sovereignty and politics do not have anything to do with me because I am not an elected member but an ex-officio member of this House. I have made it crystal clear, I hope, that I do not participate in policy making decisions which in any way shape Gibraltar's future and its growth or affect Gibraltar in any other fashion. I see it clearly, Mr Speaker, as my duty to see that the law is capable of implementing the policies which the elected Government wish to pursue. That is my job, as I see it, and if the law is not so capable to advise on how, if at all, it can be amended to enable Government to pursue the policies it wishes to pursue and whether, I personally, like those policies or not is utterly and totally irrelevant in the context of my public office. When it comes, however Mr Speaker, to the administration of criminal justice in Gibraltar, that is something in respect of which I have a number of important responsibilities, that is what I told the press, not once but twice. Mr Speaker, I will give precisely the same answer if I am asked again and if this House wishes to condemn such answers as inappropriate remarks, well Mr Speaker, so be it. I can deal with the third part of the motion much more quickly Mr Speaker. The House of course is entitled to believe whatever it wants to believe

but I have told the Gibraltar Chronicle more than once and I have told this House and anyone else who is interested that the two decisions which form the subject matter of this motion, the entry of a nolle prosequi and my initiative, as it has been termed on law and order, have absolutely no connection whatsoever with the charges. Mr Speaker, when I first came to Gibraltar in late 1984, the gates were locked at the land frontier between Gibraltar and Spain and it was only possible then to get across on foot and members of this House will recall much better than I do, I am sure, that when you went across on foot to Spain in those days you were restricted as to what you would carry.

HON A J CANEPA:

No we do not recall, Mr Speaker, because we did not go across.

HON ATTORNEY-GENERAL:

Well I did Mr Speaker, for the first few weeks I was here, first few months, prior to the gates being opened and the frontier being opened fully and it was not easy in those days. It was almost impossible from what I saw the searches of handbags and so forth which were carried out to smuggle anything across the frontier, but when in February 1985 the gates swung open and to vehicular traffic and all and sundry were allowed to come and go as they pleased, despite the delays from time to time, substantial delays from time to time, to which the Honourable Leader of the Opposition has made reference and which we are all aware of, then the level of crime, serious crime, started to substantially increase. Now even as Senior Crown Counsel and the then Attorney General's deputy, Mr Speaker, that worried me. It worries me that crime is continuing to increase and it is very helpful for the learned Chief Justice as he always does in his speech on the occasion of the opening of the Legal Year to give statistics about how many criminal prosecutions there have been. How many persons have been convicted and how many persons have been acquitted, but what the courts do not get to know about, Mr Speaker, is the number of dockets which come to my Chambers for advice on whether there is sufficient evidence to bring a prosecution and we have to send them back and say "in our view, there is not". And what the courts of Gibraltar do not get to know about, Mr Speaker, either than in the context of the Annual Report by the Commissioner of Police, is the number of undetected crimes, the number of crimes, committed in Gibraltar where nobody is apprehended because it is so easy now, Mr Speaker, to steal something, for example, in Gibraltar and then to take it to Spain where it disappears and it is never seen again. It seems to be so easy in particular to smuggle cannabis and other controlled drugs over the border and to bring stolen property from Spain into Gibraltar.

Now of course that worries me, Mr Speaker, it is my job to be worried about that. Now, if by approaching the Spanish law enforcement agencies and their legal advisers, there is anything I can do to assist in stamping that out, or at the very least contain it, then I will do it and I am doing it and I will continue to make every possible effort I can. Mr Speaker, I would love to be able to say to this House that I can guarantee my efforts in that respect would be successful but I cannot say that. I can only promise to try and if my effort should produce no fruit whatsoever then if the people of Gibraltar for whom I do care deeply about, despite what the Honourable Leader of the Opposition has suggested to the contrary, if they want to say "well he was a fool for even bothering to try", well fine, they are entitled to say that. But at least let them say, Mr Speaker, I have tried, let them at least say that. Mr Speaker, the question of cooperation at this level, and at all levels, was something which was being discussed in 1984 when I first arrived. It was something which the former Attorney General and myself frequently discussed with the Collector of Customs, with the former Commissioner of Police and with the present Commissioner of Police. All I have done, which I did very quickly after taking up the office of Attorney General, is to take that one stage further, that is all, and only a few days ago, Mr Speaker, the Commissioner of Police and I believe the Collector of Customs travelled to Sevilla and they had discussions there with certain law enforcement agencies on the question of cooperation in the Criminal Justice field between Gibraltar and Spain following on with the meeting which I had last month and which had been well reported in the news media. Other meetings I hope will be arranged, Mr Speaker. The Commissioner of Police is making efforts in that respect, but I tell this House that there is no connection whatsoever between the dropping of charges against the Spanish Customs Officers and the so-called initiative which I have taken, as one stage further, of the efforts which had been proceeded with for some very considerable time before my initiative first arose. Mr Speaker, it will come as no surprise I am sure to this House to hear that I will be most definitely voting against this motion.

MR SPEAKER:

If there are no other contributors I will call on the mover to reply. But if there are going to be contributions that is going to be long, I think probably the time is now to recess and come back in twenty minutes time.

HON CHIEF MINISTER:

Mr Speaker, I am grateful to the Leader of the Opposition for the way in which he has defended the motion on two counts really. One that he has recognised that it is not really the role of the House to question the function of the Attorney-General, which are in fact laid out in the Constitution, otherwise we would be questioning whether the Constitution should give the Attorney-General the degree of independence that he has and also because he has made clear that he accepts that this is not a matter in which the elected Government of Gibraltar has been involved in taking a policy decision. He may feel that I ought to be upset for the fact that I was not consulted, but I do not feel like that myself about it and it is a matter of judgement. I also find in fact that when he explains the kind of reactions that Gibraltarians have had as reflected in the letters to the press and in the phone-ins and so forth which as he himself put it rightly or wrongly is a way that Gibraltarians react because of the harassment that Gibraltar has been, and continues to be subjected by Spain, then as a Gibraltarian I feel the same way myself. However I think even if the Attorney-General were a Gibraltarian he should not allow his nationalistic feelings to colour his professional judgement, and therefore, I think, it is important that people should understand that it has to be like that and that it cannot be any other way. And that the explanations given by the Attorney-General in, if you like not simply, defending himself against the implicit accusations in the motion but indeed, if you like, making no apologies for the stand that he has taken is one which the rest of us are entitled to disagree with or agree with but what we cannot do is seek to deprive him of his right to take the position that he considers to be his duty to take and to defend it. And I do not think the House can pass a motion regretting that the Attorney-General has refused to make public his reasons for that decision that he took without asking the Attorney-General to go. Whatever the Leader of the Opposition believes, he may think, that it is not a motion of censure, but I think it is incompatible for the House to regret a decision of the Attorney-General and say to the Attorney-General he should continue to be the Attorney-General, and I do not think that frankly.....

HON A J CANEPA:

I do not regret the decision. It is his failure to give reasons, Mr Speaker.

HON CHIEF MINISTER:

Right, Mr Speaker, the decision not to make his reasons public. That is still his decision and he has just said

that he will not make his decision public. He is doing it in the exercise of his powers, I mean not only is he entitled, under the Constitution to decide whether to institute proceedings or whether to continue them or whether to discontinue them but the Constitution also says that he shall not be subject in exercising his powers to the direction or control of any person or authority, including the House of Assembly, which is set up by the same Constitution. So we cannot in fact try to direct the Attorney-General or control him in exercising his powers without being in breach of the Constitution. It seems to me that if we regret the way he has conducted himself on this occasion we must be given a directive on how he conducts himself on the next occasion that he has to take a decision, or are we saying that we are not seeking to control him, so he can keep on doing it and we keep on regretting it. Coming to the second point of the motion Mr Speaker, I am not sure that the remarks over sovereignty were appropriate or inappropriate, I think the spirit in which the Attorney-General said it was done and that he

is not doing that in the context of the bilateral Agreement between Britain and Spain under Brussels which is the Agreement where the issue of Sovereignty is included and the issue of cooperation is included and where the Attorney-General certainly is required by the GSLP Government to accept the policy on which the GSLP Government was elected which is one where we reject the Brussels Agreement. The Government rejects the Brussels Agreement, it fought the election on that issue, was elected on that issue and therefore if it was any question of saying we are going to have cooperation with Spain as part of the Brussels process then I would say to the Attorney-General you cannot have cooperation with Spain under the Brussels process. You can have cooperation with Spain, if that is going to enable you to be more efficient in catching criminals because that is what we are paying you for, but not to negotiate the Brussels process, so whether the report on what he said on sovereignty reflected that or not I do not know and I have looked at the report to see whether there was something in it that I could find inconsistent with our own position as a Government on sovereignty and what the Chronicle of the day reported was that the Attorney-General insisted "that matters related to sovereignty were for politicians". I am responsible for the administration of justice and sovereignty is one thing and international crime is another". I think if you just take sovereignty as one thing and international crime is another in isolation, then you might say "well what is he up to, what is he trying to say?", but I think if you read it in the context where he is saying that the question of the Spanish claim on sovereignty is

one which has nothing to do with his initiative on law and order, then we would expect him to say that, because we would not want it to be taken that the initiative that he took on talking to the other side about law and order is part of the Brussels process. The Honourable Member had in fact a question earlier on in this House about whether the Attorney-General in fact had asked me or consulted me about the proposed initiative with Spain on law and order and he also asked me what my views are on this initiative. Well first of all the answer is he did not consult me and the second thing is that as far as his initiative is concerned, if the initiative is intended, as I would expect it to be intended to hopefully, produce better control of drugs smuggling into Gibraltar, which is what we want to prevent, because we do not produce drugs here, if they are consumed here they are imported from outside. And they are certainly much more easily available in Spain than they are in Gibraltar. So if the initiative helps to bring greater apprehension of people intending to bring drugs into Gibraltar, then I think it is a very good idea. Certainly if the initiative is expected to produce a more friendly Spain, then the answer is I do not expect that it will produce a more friendly Spain and it is none of the Attorney-General's business to go about the business of producing a more friendly Spain. So certainly I would not expect the Attorney-General to have taken an initiative on law and order with our neighbours in order to create a more friendly political atmosphere because that is not what he is there for. I would expect him to have done it simply because it is better to try and get the cooperation on the other side which unfortunately we have not had and which in fact I have on more than one occasion told the international press when they have said "what you are doing is not cooperating with the other side". This is a result of accusation in the Spanish press. We have had situations, according to the information that I have from the Commissioner of Police, where we have not been able to prosecute people apprehended because the evidence has been held in Spain and the Magistrate, the Judge or whatever in Algeciras has refused to release even a sample of the drugs to our police forces and therefore our police forces because they have not been able to produce material evidence of possession have not been able to put forward a watertight case. Now, Mr Speaker, this is something we want to change, not as part of any process or political understanding with Spain, but simply because we are committed as a Government to stamping out drug trafficking and not only are we committed as a Government, in fact the law enforcement agencies in Gibraltar and any self respecting Attorney-General would not work for a Government that was not and frankly if the Government of Gibraltar wanted to turn Gibraltar into a drug pedalling paradise I would not imagine that the Attorney-General would

be as admiring in his remarks about the Gibraltarian people as he has been today. The answer to that question is that my views on the initiative is that I see the initiative purely as an initiative between one professional on one side and another professional on the other, and I do not expect it to produce more than professional cooperation and I think anybody that expects that it should produce more does not know our neighbours as well as we do. And it may not even produce that. But at least it is better to try even if it does not produce it. Like it is better, for example, if you have got a situation where we are trying to put a ferry and they are trying to stop it. It is better for us to say, "well look, as far as we are concerned, we are working within international law and we are showing ourselves wanting to implement international law and the people on the other side are not, well fine". It will not stop of course the Spanish media from putting the converse story out, of that I have no doubt. I think the third paragraph of the motion I would say to the Leader of the Opposition that he is probably right in the sense that any person reading or listening to the two things, within a matter of days, would come to the conclusion that the two were connected. But I think if the House says that it believes that they appear to be connected after the Attorney-General says they are not connected, then the House must be saying to the Attorney-General "I do not believe you, you are lying". I do not see how we can vote here that they appear to be connected if the Attorney-General says "I said in the press they were not connected and I am repeating here today that they are not connected, and we say yes but we still believe they are connected". In that event we must be saying "we still believe you are lying to us". But I would agree with the member opposite that unless we believe the Attorney-General is lying in the absence of any confirmation or denial from the Attorney-General, the man in the street or anybody reading the Chronicle and a report one day saying one thing and another day saying that there was going to be an initiative on law and order could come to the conclusion that it was not just a coincidence that the two things happened so close to each other, so really what I am saying is that if one looks at the wording of the motion per se, Mr Speaker, the sentiments that each of those clauses contain are perfectly reasonable sentiments for individual citizens to have because it is not that the Attorney-General is above criticism or it is not that we all have to agree with his judgement, we do not, but what I think the Leader of the Opposition must recognise is that we are bound in this House to behave in a certain way and we all know that if I make a statement and the Leader of the Opposition believes that I am lying he can believe it but he cannot say so because you, Mr Speaker, will not let him. Those are the rules. He can believe the Attorney-General is lying if he wants to believe



that but what he cannot do is say it and that is essentially the essence of the analysis that I put on the motion. Therefore as a matter of logic, if the House were to go ahead with the motion as it is drafted, then the House would be saying that first the explanation that the Attorney-General has given, for example, saying the two things are not connected we would not be accepting. The argument of the Attorney-General that he has a right to exercise his judgement whether he makes public his reasons for proceeding with the case or not proceeding with the case, we would be saying he has not got that right. Now I do not think we can say that without, and certainly we cannot say it over an issue like this, but I certainly do not think we can say that and stay with the constitutional arrangement that we have at present. It may be that we should feel that there should be a politician as an Attorney-General and in that case then the decisions would be politicised. I am not sure that that is an improvement. I do not know how that works and it might work easier in a very big country, but in a small place, I think it is more of a delicate issue. Certainly I can tell the House that I was not consulted by the former Attorney-General when the decision was taken to press charges. I was in London when that happened, but before the decision was taken I was approached by the Foreign Office in London and I made that public at the time and it was suggested to me that this was something that could damage our relations with Spain and it was suggested to me that Spain might be willing to apologise for the incursion that had taken place and argue that it was that they had lost their way and landed on our beaches thinking that they had landed on their beaches. I would have thought the Rock, even with the levanter is sufficiently noticeable, but my reaction was to say "look I do not want to get involved, I do not want to negotiate with Spain on the basis that if they apologise we do not prosecute people who have broken the law". My position is irrespective of whether it upsets Spain or it upsets Gibraltarians I want the people who are paid to take this decision to take it and we will live with the consequences. If the Attorney General decides that he should not prosecute and we have an upheaval of irate public opinion in Gibraltar, then I will defend the right of the Attorney General against my citizens, and if the Attorney General decides to prosecute and we have upset Spaniards and queues occur as a result then I will defend the Attorney General, because I am not defending the decision to prosecute, I am defending the Constitution of Gibraltar and that is what I said in London to the Foreign and Commonwealth Office when they approached me and the Foreign and Commonwealth Office could not argue with that. I mean they have enough trouble getting me to work within the Constitution and once I am prepared to do it they are not going to argue. So really if I were to be asked not, as Chief Minister, Mr Speaker, but as Joe

Bossano, a Gibraltarian what do I think of the decisions of the Attorney General and of the successive decisions, let me say, not just on the most recent one, then probably as a Gibraltarian I will say "look I would not have charged the Spaniards with possession of firearms and illegal entry, I would have charged them with using them", that is what I would have said, which is a much more serious offence and which is what people were upset about. They were supposed to have fired the guns on Eastern Beach, not simply carried them, because it is quite obvious that if they are armed on the other side and if they stray on our territory, they are not going to start ditching the guns overboard, so they arrive wearing them and therefore they are in possession of them. Secondly if I am asked what do I think of the decision of the former Attorney General, not to oppose bail, then I have to say I do not agree with it, because anybody in Gibraltar could have told the Attorney General that the Spaniards were not going to come back. Anybody, Mr Speaker, and therefore if the Attorney General in the exercise of his judgement does not oppose bail, it must be assumed that he expects the person who is being granted bail to reappear. We did not bring any motions here about the fact that they had not been prosecuted for using their firearms and we did not bring any motion here criticising the decision not to oppose bail and frankly if I am asked now, as a Gibraltarian, what is my view about the decision not to continue with the criminal proceedings, then I have to say that I disagree with it. I disagree with the decision of the Attorney General. However, I am not the Attorney General and it is a good thing that I should not be the Attorney General. Otherwise I might finish locking up all the members opposite and then I would not have to pass the Gibraltar Development Corporation to get rid of democracy.

Laughter.

MR SPEAKER:

Not the Speaker I hope.

HON CHIEF MINISTER:

Not the Speaker, we will keep you. You, the Clerk and the Usher. It is a fact of life that it is not a bad thing that however irate and emotional we might feel as we do about everything that affects our relationship with our neighbour, that this should not in fact influence the decisions of the Attorney General and the decisions of the law enforcement agencies in Gibraltar. And, I think, it is a reflection of the fact that our system of democracy is in fact based on the UK. I mean it might be that not everybody in the western world behaves like that. We would not put it past, Mr Speaker, if in other areas, certainly



we must not forget that the Senator that paid a short visit to us which lasted longer than he intended when he appeared in court was very surprised to discover that the fact that he was a Senator made no difference to the law in Gibraltar and that he could not argue that because in Spain he could not be tried or charged or whatever, the same applied in Gibraltar. There we have got a clear example of where the laws of Gibraltar and the laws of Spain differ and therefore clearly members of this House are strongly recommended not to arrive in their yachts carrying cocaine or whatever it was that he was carrying because they would not be above the law. Having I think explained where it is possible for us, as politicians and as citizens and as members of this House to say well look we do not agree with any of the decisions that the Attorney General takes. That does not mean that we should try and stop him taking them or sack him because we do not like them, because I think the danger of following that road and it is something that we need to tell our people so that they understand it.

MR SPEAKER:

I think in fairness to the Leader of the Opposition, I think right from the beginning he meant that this was not the case and that it was not a motion of "No confidence".

HON CHIEF MINISTER:

No, I accept that Mr Speaker, but I am talking about, for example, that both he and the Attorney General himself recognise that there were people that were offering to buy him a one way ticket. And I am saying we must explain to our people that there is a distinction between saying "I disagree with the judgement of the Attorney General", and another thing is because I disagree with his judgement I will sack him and put someone else in who will do what I think is right. That, Mr Speaker, is what we must not do, or condone and make sure that people understand that that would not be correct. So, Mr Speaker, I am going to do something that was often done to me, when I was on the other side of the House, and which I will try and avoid doing as frequently as possible on this side of the House and which is, in fact, to move an amendment which starts with the semi-colon after this House. I have prefaced the amendment with the remarks that I have made, in the hope that the Leader of the Opposition will see the amendment not as an attempt by me to destroy his motion because, in fact, I am removing what there is there, but because I believe, in fact, that we could not support the motion as it stands without really doing something that is not tenable, constitutionally, for us or for the Attorney-General or for anybody else. What I have tried to introduce, Mr Speaker,

into the new motion is, in fact, a reflection of the relationship that, I think, does exist between the independence of the Attorney-General and our independence to disagree with the Attorney-General.

I am therefore proposing, Mr Speaker, the deletion of all the words after "This House" and substitution by the following:-

"(1) notes that in accordance with Section 77 of the Gibraltar Constitution Order 1969 the Attorney-General has the power:

- (a) to institute and undertake criminal proceedings;
- (b) to take over and continue any criminal proceedings;
- (c) to discontinue at any stage before judgement any such criminal proceedings;

and that in the exercise of these powers the Attorney-General shall not be subject to the direction or control of any other person or authority.

(2) accepts that:

- (a) the decision of the former Attorney-General to press charges of possession of firearms and illegal entry and not to oppose bail; and
- (b) the decision of the present Attorney-General to enter a "nolle prosequi";

were taken in the exercise of their own judgement and without any form of influence from the Gibraltar Government.

(3) consider furthermore that the exercise of these powers must be conducted without reference to the nationality of those accused or the political popularity or otherwise of any such decision if the rule of law is to be upheld.

(4) accepts that it is therefore for Her Majesty's Attorney-General to judge to what extent he feels he should make public any or all of his reasons for taking any such decision in the light of all the circumstances of any given case".

Mr Speaker, I commend the amendment to the Hon A J Canepa's motion to the House.

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

HON P C MONTEGRIFFO:

Mr Speaker, I fully commend the Hon the Chief Minister for his contribution to this debate which, for what it may be worth, I think has been a sensible and balanced exposition of the background to this matter and the position this House should take, formally, in any motion that it will pass. The fact remains, Mr Speaker, that in bringing a motion to the House we are not just expressing views as individuals or as Gibraltarians, but as Members within a Constitution that has certain constraints, whether we like them or not, and that because of that passing a motion of this nature would not be good for us because it would be a complete denial of that basis of constitutional relationship which regulates the way Gibraltar is run. Mr Speaker, until this is changed formally it should not be challenged in such an open way. I also think, Mr Speaker, that the amendment that has been introduced clearly states that the independence that the Attorney-General has as a matter of Constitutional right is reiterated by this House and that is the proper way to deal with the matter. It should be up to us, as individuals to express a view as to whether we consider the Attorney-General's decisions were popular, not popular, right or wrong. I do not think it is necessary for us to express a view as to whether the decision was right or wrong. I myself, Mr Speaker, have a personal difficulty in this matter because although my inclination, as a Gibraltarian, is to say that anything which undermines the jurisdiction of Gibraltar and the sovereign rights attached to that is wrong. However, out of fairness to the man who takes that decision and because I cannot be privy to facts which may have induced him to take such a decision to have taken that view, to actually form a view which is anything other than purely speculative would be totally unfair. So although I can express an inclination, Mr Speaker, there must certainly be very good reasons for the Attorney-General to have taken this series of decisions. I cannot think otherwise and would, if this were not so, very difficult to understand. We can however, Mr Speaker, merely speculate on this because we have no facts available, and we certainly do not want to have these facts available, in order to form a judgement. I think, Mr Speaker, that the motion expresses something from the heart, if I may say so with respect, rather something from the mind. To that extent I am happy to identify myself with it sentimentally but to urge that the motion, intellectually or academically, should be the Chief Minister's amendment so that the message that goes out today could be that whereas our hearts are all in the same place it is not for us to take these decisions, it is not for us to be able to form a view on how the decisions were taken, because we do not know how they were taken, and that therefore what we should be doing is actually be reiterating and bolstering the independence of the Attorney-General, not judging his actions but simply recognising his right to take such decisions in this context as he felt were appropriate. I therefore, Mr Speaker, support the amendment to the motion.

HON A J CANEPA:

Mr Speaker, I am going to be very brief when speaking on the amendment. We are not going to support the amendment but on the other hand we can hardly vote against the amendment when nine tenths of it is purely factual, in that it quotes what the Constitutional position is. Therefore, Mr Speaker, having said, both in a Press Release and in my earlier intervention, that we accepted what the Constitutional position was we can hardly vote against. I however notice, Mr Speaker, that the second paragraph of the amendment rather cleverly limits the statement about any form of influence having been exercised on both the former and present Attorney-General to the Gibraltar Government. In other words the Honourable Members opposite, the Gibraltar Government, is making no judgement whatsoever as to whether influence may have been exercised by some other quarter. I would find it extremely difficult to accept that the Honourable Mr Kenneth Harris is a bigger man than Mr John Havers, than Mr David Hull, than Mr Eric Thistlethwaite in any matters to do with the Foreign and Commonwealth Office. I think it would be, if he says so, I am not going to say that he is lying, no. But, it would be extremely difficult to accept that because if he did not consult the Foreign and Commonwealth Office, if the Foreign and Commonwealth Office did not know or if they did not exercise any influence so that he would drop charges and something went wrong, if he had not consulted them and they said "yes, we encourage you, go ahead, of course have an initiative on law and order and by all means let us wipe the slate clean, drop charges and let us start afresh because we have got these awful problems of drugs smuggling and the helicopter and so on and we are being embarrassed". If that did not happen then if anything went wrong his head would roll. His head would roll because he had not consulted the Foreign and Commonwealth Office and because he had not communicated with the Foreign and Commonwealth Office. I speak this, Mr Speaker, with the experience of sixteen years in Government and a very close involvement over the last six or seven years of my time in office with dealings with the Foreign and Commonwealth Office. We know, Mr Speaker, how things are done and if they have not been done that way I would be extremely surprised and I would say Mr Kenneth Harris is a bigger man than his predecessors. That is just one point. As regards my former colleague on my left, Mr Speaker, he says that the amendment, of course reiterates the independence that the Attorney General has. But what does he expect us here to do about this? To say amen. To get excited about it. We would not have wasted time in bringing this motion to the House. What would have been the point of

making a song and dance about the whole issue, bringing it here, wasting everybody's time, quarrelling with the Chief Minister because he did not give me the opportunity to raise the matter before. And all that to reiterate the independence of the Attorney-General? However that is acting with your head, Mr Speaker, that is your head and not your heart. Come on, Mr Speaker, I have too many things to do and I am aware of the fact that we all have too many things to do to be wasting anybody's time. So what is he saying? I say, as a Gibraltarian and as a politician, as a Gibraltarian politician, and I act as I have always acted with my heart and with my mind and I pursue it with my intellect, my integrity, my commonsense, I pursue every aspect of my political activity in that manner, if he wishes to be as clinical as that, because they have let him off the hook, because if the Government have not introduced these amendments, how would the Honourable Mr Montegriffo vote on the initial motion? That would have been terribly interesting.

HON P C MONTEGRIFFO:

Mr Speaker, if the Hon Member gives way he will know or he might know, from conversations that I have had with colleagues of his that I never thought the motion was a good motion because it was not something which this House of Assembly was competent to discuss. But I was the first person, who in fact when the people landed on the beach and when Mr Canepa was not in Gibraltar, who wrote to the then Foreign and Commonwealth Secretary, I believe it was, or to certainly his Deputy Foreign Minister actually complaining on Gibraltar's behalf. Nobody felt more strongly about the matter but I maintain the view which is that despite the strength of our feelings, that there are ways and means of channelling those views.

HON A J CANEPA:

He has got something wrong, Mr Speaker, I was in Gibraltar, I was in bed for three days ill and I was phoned about the matter and I gave my blessing to the fact that he should write in the terms that he did. He did so with my knowledge and with my full support. Therefore he can see that I conduct my public affairs with my heart, with my mind and thank God I am blessed with a very good memory which is absolutely vital in this business. Of course we will not go beyond abstaining on this motion and we are very glad to see that he is let off the hook.

MR SPEAKER:

If there are no more contributors to the amendment to the motion I will ask the Hon the Chief Minister to reply.

HON CHIEF MINISTER:

I do not want to say anything in addition to what I have already said, Mr Speaker.

MR SPEAKER:

If the Honourable Leader of the Opposition would like to wind up.

HON A J CANEPA:

Mr Speaker, I think that the Chief Minister has obviously taken a great deal of thought and care over what he was going to say. He has given the matter a great deal of thought. In that sense perhaps he was not even ready back in January to have come up with the contribution that he has made today and that could have been the real reason why he really felt he needed to be given time to think more about it. You see, Mr Speaker, whether the Hon Chief Minister likes it or not, the Attorney General who earlier told us that he did not think that he was right having regard to how busy the Chief Minister is working twenty-five hours a day and eight days a week and having all the problems that he has, that he should burden him further with the problem. But what in fact has happened is that the Chief Minister has been burdened with the problem. That on some days he has had to work twenty-five and a half hours and perhaps during some of the intervening weeks he has had to work eight and a half or nine days a week in order to come up with this amendment and with the contribution that he has made. So in that sense of course the Attorney General did perhaps deprive the Chief Minister of his sleep. I know, Mr Speaker, that, the Chief Minister only needs about four hours sleep a day because he is one of those lucky people who do not need much sleep, and I would not like to think that the Attorney General has deprived the Honourable the Chief Minister of any of his beauty sleep which he needs as much as we do. I was glad to see that speaking, as a Gibraltarian, the Chief Minister disagreed with the decision not to oppose bail because that reflected the views of people, of the parliament downstairs, which is the one that matters. Immediately that morning downstairs they were saying "What does the Attorney General think", the then Attorney General, "that these people are going to come back. We will never see them here again". Of course that was the public reaction because we all knew that they would never come back. Of course he has also said that as a Gibraltarian, he disagrees with the decision to drop charges. I am glad to see that the Hon the Chief Minister has agreed with the validity of

why he really felt he needed to be given time to think more about it. You see, Mr Speaker, whether the Hon Chief Minister likes it or not, the Attorney General who earlier told us that he did not think that he was right having regard to how busy the Chief Minister is working twenty-five hours a day and eight days a week and having all the problems that he has, that he should burden him further with the problem. But what in fact has happened is that the Chief Minister has been burdened with the problem. That on some days he has had to work twenty-five and a half hours and perhaps during some of the intervening weeks he has had to work eight and a half or nine days a week in order to come up with this amendment and with the contribution that he has made. So in that sense of course the Attorney General did perhaps deprive the Chief Minister of his sleep. I know, Mr Speaker, that, the Chief Minister only needs about four hours sleep a day because he is one of those lucky people who do not need much sleep, and I would not like to think that the Attorney General has deprived the Honourable the Chief Minister of any of his beauty sleep which he needs as much as we do. I was glad to see that speaking, as a Gibraltarian, the Chief Minister disagreed with the decision not to oppose bail because that reflected the views of people, of the parliament downstairs, which is the one that matters, immediately that morning were saying "What does the Attorney General think", the then Attorney General, "that these people are going to come back. We will never see them here again". Of course that was the public reaction because we all knew that they would never come back. Of course he has also said that as a Gibraltarian, he disagrees with the decision to drop charges. I am glad to see that the Hon the Chief Minister has agreed with the validity, of my interpretation, as in the third paragraph of my motion, and I would certainly maintain that it would make sense if the two matters had been connected. If the initiative on law and order and the question of the proceedings had been contested it would have made great sense, and as I said earlier, I might still have disagreed with the decision but I could have understood it and I could have explained it to people and say "well look obviously it was silly not to have contested the granting of bail, but it is a new climate, we really have a very serious problem with drug trafficking and crime and so on and really you know, as a Gibraltarian, I disagree with the decision but as a practical politician and being pragmatic I can understand that he should have been motivated by certain considerations in proceeding in the manner in which he has". I think I must repeat that my first paragraph does not criticise the decision, but the failure to give reasons and as I have just said, and as I said earlier, I indicated my willingness to give consideration and to understand the reasons for the decision if reasons had been made. Turning to the Attorney General, Mr Speaker. The explanation that

he has given about his constitutional powers underlines, of course, why we did say immediately at the time that we were not questioning his right to drop charges. It was the very first public statement that we made on the matter and immediately the preamble to that statement made that position clear. He has a right and no obligation indeed to give reasons. Now I accept that explanation and I understand it perfectly when applied to any case where charges are dropped involving any defendant and the matter is shall we say uncontroversial. Where there is no political dimension to the standing of that defendant or to the charge with which he has initially been charged. But in the case in point it is naive to think that that would be the end of the matter and some of the comparisons that he has made, some of the cases that he gave us examples, for instance where someone is suffering from a terminal disease that I do not think is comparable. Because the only terminal disease there could have been in this case was if someone had got in the way of the bullets that were allegedly fired that night. The two matters are not connected, Mr Speaker. I would have thought that after spending five and a half years here in Gibraltar, that would have been long enough for him to understand that it is only natural that the assumptions, the conjectures, the suppositions that he has referred to at the beginning of his contribution would always be part and parcel of the reaction of the people of Gibraltar on the sensitive issue of the Spanish attitude to Gibraltar for all the reasons that have been stated here this afternoon. Now because he has no obligation to give reasons that is why there is all the more reason why he ought to have kept a low profile vis-avis the press and been particularly careful about the timing of events which I made reference to in my first contribution. Mr Speaker why does the Hon the Attorney-General ask "Why has the Leader of the Opposition brought this motion to the House?". The answer is because the people of Gibraltar, as a whole, do not agree with his decision because, as Gibraltarians, we feel strongly about it and because the decision is a major decision for the reasons that I made abundantly clear in my opening speech. I am now going to conclude, Mr Speaker, with the second paragraph and why I say that his remarks about Sovereignty were inappropriate, and I think that both the Attorney General and the Chief Minister both of them have missed the significance of part of the report in the Chronicle of the 4th January. The Honourable the Attorney General explained the circumstances in which he was quoted by the newspaper. It was in response to Press Questions the Attorney-General said. He explained that it was in furtherance of the initiative which had been taken for many years by the Commissioner of Police and in response to questions about sovereignty he told the press "This has got nothing to do with me". I think that if that is the case, and I accept

that that is the case, then both he and the Chief Minister should pay very careful attention to the Chronicle of the 4th January where it says quoting Mr Harris "That instead he wanted it to show a willingness by Gibraltar to put to one side the question of sovereignty which is a political matter". A willingness by Gibraltar. Gibraltar is not the Attorney General, Gibraltar is not the Chief Minister, Gibraltar is not this House of Assembly. A willingness by Gibraltar and because that is contrary to what both he and the Chief Minister have said in the House today about his remarks about sovereignty, that is why I consider.....

MR SPEAKER:

I must interrupt the Leader of the Opposition because he is introducing now new matters that were not touched before and I think it is only fair to give.....

HON A J CANEPA:

Yes I did, Mr Speaker.

MR SPEAKER:

Did the Hon Member quote that? I beg your pardon then.

HON A J CANEPA:

Yes Mr Speaker, and that is why, in conclusion, at least the second paragraph of my motion would not have appeared in the text of the motion. Because what the Attorney-General should have done, and it may have escaped his notice, but this is why I say that when someone like the Attorney General has words attributed to him and appear in print then they are going to be analysed. Does the Hon the Chief Minister want me to give way?

HON CHIEF MINISTER:

Yes, Mr Speaker. In the brief that I have the reference that I wanted to track down was the Chronicle of the 30th December which is where it says in an interview "Mr Harris emphasised that his initiative is totally unrelated with politics and insisted that matters related to sovereignty were for the politicians". I thought those were the remarks that the Honourable Member was talking of.

HON A J CANEPA:

That is the Chronicle of the 30th December, Mr Speaker. In the Chronicle of the 4th of January, which is the one which reports on Gib dropping charges and where it states, Mr Harris. "I do not want this to be seen as a sweetener

instead he wanted it to show a willingness by Gibraltar to put aside".

HON CHIEF MINISTER:

Where does sovereignty come there?

HON A J CANEPA:

In that context I see this statement as inappropriate and therefore I accept that perhaps the significance of the interpretation that could be put and I obviously accept what the Chief Minister has said that it escaped his notice and it may even have escaped the notice of the Attorney General. But what I would have expected on it being clear that this was appearing in the Chronicle was that the matter should have been clarified, if necessary with a letter, explaining that this was not accurate and that is why earlier in my intervention I expressed the advice that I gave the Attorney General which he said that he had received previously that he needs to tread very very carefully with the press. I think to sum up, from my point of view, Mr Speaker, I think the exercise has been eminently worthwhile notwithstanding the intervention of my colleague on the extreme left, because I think on the one hand the Attorney General has been given an opportunity to explain very very fully to a greater extent than of course he would have done in the press what his constitutional position is and why he has proceeded in the manner in which he has and I think that also the intervention of the Chief Minister in the context of everything that has happened and has been said since then and in the context of what has been said today I think that it is valuable and it is a useful exercise in the people of Gibraltar I think understanding that matters are complicated and that they are complex and that they are sensitive. It underlines the sensitivity of it and why we feel about this matters like we do.

MR SPEAKER:

I think I should say that I do not consider either the amendment or the original motion to be motions of censure. Obviously the amendment clearly is not and in the original motion there are two ingredients that have to be done. One is that the Opposition should have said that they considered it to be a motion of censure and they have clearly said that it is not. Or the Government should have assumed it to be a vote of censure and they would have said so and they have not. So therefore all the Members of the House can vote on both the amendment to the motion and the motion itself.

Mr Speaker put the question in the terms of the motion moved by the Hon A J Canepa 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 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 P C 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 P J Brooke

The motion was accordingly defeated.

Mr Speaker then put the question in the terms of the amendment moved by the Hon the Chief Minister 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 P C 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 P J Brooke

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 amendment was accordingly carried and the motion, as amended, read as follows:

"This House:-

(1) notes that in accordance with Section 77 of the Gibraltar Constitution Order 1969 the Attorney-General has the power:

- (a) to institute and undertake criminal proceedings;
- (b) to take over and continue any criminal proceedings;
- (c) to discontinue at any stage before judgement any such criminal proceedings

and that in the exercise of these powers the Attorney-General shall not be subject to the direction or control of any other person or authority.

(2) accepts that:

- (a) the decision of the former Attorney-General to press charges of possession of firearms and illegal entry and not to oppose bail; and
- (b) the decision of the present Attorney-General to enter a "nolle prosequi"

were taken in the exercise of their own judgement and without any form of influence from the Gibraltar Government.

(3) consider furthermore that the exercise of these powers must be conducted without reference to the nationality of those accused or the political popularity or otherwise of any such decision if the rule of law is to be upheld.

(4) accepts that it is therefore for Her Majesty's AttorneyGeneral to judge to what extent he feels he should make public any or all of his reasons for taking any such decision in the light of all the circumstances of any given case".

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that this House do now adjourn sine die.



MR SPEAKER:

I now propose the question and in so doing inform the House that the Honourable K B Anthony has given notice that he wishes to raise on the adjournment matters relating to the question of the non-collection of rubbish on Sundays and before I ask him to speak I will now call Mr Anthony and in so doing may I remind the House that the debate is limited to forty minutes and that there will be no vote.

HON K B ANTHONY:

Thank you Mr Speaker. Mr Speaker, as you recall a few weeks ago the collection of domestic rubbish within Gibraltar was taken over by the Gibraltar Industrial Cleaners and one of the first things that happened was the discontinuation of the Sunday collection of rubbish and I queried the necessity for this cut in the cleansing services during question time and I was told by the Honourable Minister for Government Services that there were two reasons. The first reason was that the men themselves had asked for this. The second reason was that the Honourable Member told the House that the men were working a seven day week and they never had a day off. Now this is a sentiment, Mr Speaker, which I and all the Members of the Official Opposition fully agree with. Nobody should have to work seven days a week, but there are other ways in which this problem could be solved. For example, they could have roster shifts with each man only working six days out of the seven but the seven days are covered. This is one possibility. The new operation, the new system went into operation a few weeks ago and I can find no fault with the work they are doing during the six days. In fact, I have heard people say, Mr Speaker, that Gibraltar appears to be cleaner now than it was before. However it is cleaner for six days out of the seven only. On the seventh day, the Sunday, it is dirtier than it was before. When I raised this point during supplementaries at Question Time I did point out that the success or failure of this scheme depended upon the cooperation of the public and the Minister also said that the Government were appealing for public cooperation and asking people not to put out their rubbish until Sunday night for collection on Monday mornings. And I said then Mr Speaker, that human nature being what it is and that with the onset of warmer weather very few people would be prepared to keep rubbish, sometimes smelly rubbish, within their homes for twenty four hours plus. It is with regret, Mr Speaker, that I am bringing to the House these facts and that what I said a few weeks ago has been proved correct. Every Sunday morning on street corners throughout Gibraltar you see piles of rubbish. Every Sunday we get visitors to Gibraltar and if they have a drive around or a walk around our city they will see piles of rubbish and this is a sight

which does not enhance our touristic image. This, Mr Speaker is a matter with which everybody in this House recognises as being of great importance to Gibraltar. We are now in February and the hot weather has not yet arrived, but already one of the hazards that I did fear from the non-collection of rubbish has happened. We have received from an incontrovertible source a report of rats being seen in the centre of town on a Sunday morning running over a heap of refuse that had been put out by a local restaurant. Now we may well, Mr Speaker, have rats in town all the time, but nevertheless having bags of rubbish left out on a Sunday morning is an invitation to encourage rats not to discourage them. I agree, Mr Speaker, that the cause of the incident was the refuse that should not have been put out in the street in the first place, but on the other hand, what does a restauranter do with his rubbish on a Saturday and Sunday. Is he going to keep it in the kitchen tied up in black bags? Is he going to put it in some part of his premises? Or is he going to put it out in the street knowing that it would be collected if not the next day then the day after. I think that he and the majority of people do put out their rubbish no matter what appeals are made to them by the Government. Mr Speaker, I am convinced in my own mind that for the overall good of Gibraltar, in terms of hygiene, in terms of our visual appearance to our many visitors, that the Government should accept the truth of what I am saying and look into ways in which the Sunday collection of rubbish could be re-started. What all of us want is a clean and hygienic Gibraltar. An attractive Gibraltar which is clean and presentable seven days of the week and not just six days of the week. I am convinced, Mr Speaker, that every member of this House is in agreement with what I am saying and I look forward to hearing what steps the Government is prepared to consider to remedy this current state of affairs, thank you Mr Speaker.

HON J C PEREZ:

Mr Speaker, when in answer to questions from the Honourable member, the Government gave details of the arrangements that had been instituted at the beginning of January in this House, we said that it was on a trial basis, that is still the case, but it is on a trial basis but not as to whether Gibraltar is dirtier if you do not collect on a Sunday. We all know that if there is no collection of refuse on one particular day that Gibraltar will be dirtier than on other occasions. The trial basis was to see whether the system would be workable with the staff having one day off. To have rostered work would mean the employment of more staff and further escalation of the cost of Refuse Collection and this is something which the Government is not prepared to contemplate. The Government believes that

the arrangements are working satisfactorily as far as the staff is concerned. It is now trying to enforce the law in respect of refuse being left out on the streets on Saturday nights. There is a particular problem and I think this the one that is causing the greatest grievance. Most bars and restaurants close on a Sunday and are putting their refuse out on a Saturday night and is left out until Monday morning. We are appealing and we are talking to the victuallers so that they keep their refuse inside their premises, given that the majority of them are closed during that particular day, and that they should come in early in the morning, on Monday, and put their refuse out. The legislation that there is in Statute Book does not oblige the Government to collect any commercial refuse. The Government has no legal responsibility whatsoever to collect commercial refuse. We do so and we do so at a very high cost because of arrangements and agreements that have had to be entered to over the years with the Refuse Collectors who knew that there was no responsibility and demanded extra payments for that to be collected. We are not going to stop collecting commercial refuse, but we would certainly insist on their cooperation. They could make arrangements for putting out their refuse on a Monday rather than on a Sunday night and we would use all the influence that is in our power to be able to get them to enforce the law. I take the point of the Honourable Member that a very good source saw a rat on a pile of refuse and that can happen at any time on any pile of refuse any night and it is not a fact that Gibraltar is full of rats because of the policy of non collection on Sundays. Someone might have seen a rat, fine, they should have called the Public Health. As far as domestic refuse is concerned the reports that we have is that less and less domestic refuse is seen on Sundays, people are gradually becoming aware of it. It is not a very great inconvenience to keep a plastic bag or two inside the house until Monday morning. In fact Sunday was chosen because many people tend to have less refuse over the weekend because many people tend to go across the border or in the summer to the beaches. Therefore the impact on the householder is less on the day that we have chosen for the men to have a free day that it would be if we had chosen another day. As I said before, the biggest problem we have is with the Victualling trade and we are dealing with this at present. We have got the cooperation of a lot of traders in Main Street and members will notice that the majority of traders in Main Street do keep their refuse indoors when they close on the Saturdays and come early in the morning on Monday and put it out that morning and this is working fairly well. We do not see why Victuallers should be able to do the same given that on occasions, when there have been disputes, it has been known for them to keep refuse inside their premises for a few days. We do not see that

it is a very great inconvenience, particularly considering that most close on Sundays that they should keep it indoors and that they should make arrangements for someone to come down early on Monday morning, say 8.30 and put the refuse outside. So notwithstanding what I have said, I take the point that the Honourable member has made and I can assure the Honourable Member that everything possible is being done and will be done to enforce the law and to make sure that people refrain from putting refuse out on Sundays. Thank you, Mr Speaker.

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

The adjournment of the House sine die was taken at 6.45pm on Friday the 19th February, 1990.

