

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

26TH MARCH, 1991

VOL. I

RECORD OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Eleventh Meeting of the First Session of the Sixth House of Assembly held in the Assembly Chamber on Tuesday 26th March, 1991, 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 QC - 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

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 23rd October, 1990, having been previously circulated, were taken as read and confirmed.

COMMUNICATIONS FROM THE CHAIR

MR SPEAKER:

For the record of the House, I have to inform Members that on the 5th February I received notice of the resignation of the Hon and Learned Mr Peter Montegriffo. I am sure that the House will wish him and his family all the very best.

DOCUMENTS LAID

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

The Tourist Survey Report, 1989.

Ordered to lie.

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

The Employment Survey Report - October, 1989.

Ordered to lie.

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

- (1) The Barclays Bank Loan Agreement.
- (2) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.13 of 1989/90).
- (3) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.14 of 1989/90).
- (4) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.15 of 1989/90).
- (5) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.1 of 1990/91).
- (6) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.2 of 1990/91).
- (7) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.3 of 1990/91).

- (8) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.4 of 1990/91).
- (9) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.5 of 1990/91).
- (10) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.6 of 1990/91).
- (11) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.7 of 1990/91).
- (12) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.8 of 1990/91).
- (13) Statement of Improvement and Development Fund Re-Allocations approved by the Financial and Development Secretary (No.2 of 1990/91).
- (14) Statement of Supplementary Estimates of 1987/88 (Excess Expenditure).
- (15) Statement of Supplementary Estimates of 1988/89 (Excess Expenditure).
- (16) Statement of Supplementary Estimates No.1 of 1990/91.

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 CRIMINAL PROCEDURE (AMENDMENT) ORDINANCE, 1991

HON ATTORNEY-GENERAL:

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

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

SECOND READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, there really is not very much I can add by way of additional observations to the Explanatory Memorandum and to the objects which this Bill seeks to achieve. If I can begin at, or at least, near to the end of the Bill, firstly, to point out that Clause 17 introduces a new Schedule 6 into the Ordinance and that sets out the scale levels and amounts of maximum fines applicable to those scales referred to in the new Section 179A of the Ordinance which is Clause 10 that the Bill seeks to add. Clause 2 of the Bill limits the definition of a fine specifically and only for the purposes of Section 179A and is, of course, a consequential amendment. Clause 11 amends Section 180 which links with Schedule 5 dealing with the maximum periods of imprisonment which can be imposed by the Court in default of payment of a fine. Members will have seen, Mr Speaker, that Clause 13 of the Bill, which amends Section 185, adds a new subsection enabling the Governor by Order, to amend Schedule 5 in any way which may, in the future, become necessary and appropriate. Section 183 of the Ordinance is repealed and replaced by Clause 12 of the Bill. The new Section, Mr Speaker, linking with the new Schedule 6 referred to in Clause 17 limits the fines to be imposed upon children and young persons respectively. As Members are no doubt already aware, a child for that purpose means a person who has not yet attained the age of fourteen years and a young person means someone who has attained the age of fourteen years but has not yet attained the age of seventeen years. At present young persons are treated in the same fashion as adults for the purpose of liability to a financial penalty. The final clause, Clause 18 makes consequential amendments to the Interpretation and General Clauses Ordinance. Section 2 of that Ordinance is amended to provide for a specific definition of standard scale and the amendment imposed by Clause 18(b) to Section 23(b) of the Interpretation and General Clauses Ordinance is also important as this will enable subsidiary legislation to provide for a maximum fine of £500 in place of the present limit which is £100. Mr Speaker, the provisions contained in this Bill have been modelled upon the United Kingdom Criminal Justice Act of 1982 with suitable adaptations to meet Gibraltar's local needs. It has the full support of members of the judiciary and as will be seen when other Bills are presented at this meeting of the House, the standard scale of fines for various criminal offences will be established for the purpose of application to various Ordinances which contain criminal sanctions resulting in the imposition of a possible financial penalty. Sir, much reference will be made to this standard scale of fines and fine levels, etc when other Hon Members on this side of the House present various other Bills

which are listed in the Agenda for this meeting and I hope the explanation which I have given in relation to this Bill will be of some assistance to Members in understanding the measurement stick which Government considers it is now appropriate to introduce into Gibraltar. It is with that open mind that this Bill is being taken first in the Agenda, at my suggestion, and with Government's consent. I hope it will have the support of Members on both sides of the House and when I exercise my right of reply I shall be pleased to do my best to answer satisfactorily any questions on the general principles of the Bill which Members on either side may wish to raise. 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 K B ANTHONY:

Mr Speaker, we on this side of the House support this Bill fully. We think it is a very good Bill and we like the idea of having a standard scale of fines for offences. Though there are one or two points in the Bill that perhaps the Hon Attorney-General when he replies can just clarify for me on the new Section 179A, sub-paragraph (3) it says "if it appears to the Governor that there has been a change in the value of money since the date on which that level was last determined". What would be the criteria for this? Would it be reviewed six monthly, annually or even monthly because the cost of living goes up every month? Perhaps the Hon Attorney-General can answer this. In the same new subsection 179A, paragraph (4)(a) "that a person convicted for an offence shall be liable on conviction to a fine or to a maximum fine by reference to a specified level on the standard scale". I term this as meaning that the judiciary will have a degree of tolerance and not mandatory and it has been as laid out in Schedule 6. Looking at the various amendments to the Sections, we have no objection to any of these, although they may appear at first sight slightly draconian. Because increasing a fine from £50 by forty times that amount is in my mind draconian but I bow to the judgement of the Hon Attorney-General in this case. But I am rather surprised that the amendment to Section 267, Clause 16, which deals with a runaway child and I do not know whether this is a frequently occurring crime in Gibraltar or whether it refers to perhaps children who are in care and who abscond and are then hidden by families from the law. Perhaps the Attorney-General could explain that to me. But apart from that, Mr Speaker, we on this side of the House will support this Bill.

MR SPEAKER:

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

HON ATTORNEY-GENERAL:

Can I say firstly, Mr Speaker, I am most grateful to the Members of the Opposition for their support, that is very much appreciated by me. Of course this Bill really sets the scene, Mr Speaker, for what will be done in relation, with the passage of time that is, to all Ordinances which contain monetary penalties or contains the prospective liability for a monetary penalty where a criminal offence contrary to the provisions of that particular Ordinance is proved to have been committed. In relation to the fines, two things have been done, Mr Speaker, firstly, ascertaining which offences to pitch into which of the five scales or levels. We have looked, firstly, at the nature of the offence and we have looked at what the severity of that offence is and, of course, obviously, Mr Speaker, the most serious offences fall into scale 5 and then the least serious offences fall into scale 1 and those which fall somewhere between the two, we have made an effort and I hope it is appreciated, as it can only be an effort to pitch into what we see as appropriate order of severity the offences which our law makes criminal offences. And in certain instances, Mr Speaker, where offences in relation to the maximum financial penalties possible to be imposed, had not been revised for many years we have endeavoured to revise those offences by putting them into the appropriate scale to reflect what in terms of those penalties would be the equivalent of the maximum penalties imposed or capable of being imposed when the offences were first created. It is a constant exercise, Mr Speaker, because offences which were perhaps considered serious a number of years ago might not be considered quite so serious in modern times and conversely offences which were considered so serious many years ago might be considered extremely serious nowadays. One has to look at the circumstances as they change and pitch the offences accordingly. If I can endeavour to deal specifically with the two questions which the Hon Mr Anthony has raised on the Bill dealing firstly with the new section 179A which is imposed by Clause 10 of the Bill, Mr Speaker, and the flexibility that it gives to the Governor. I had wondered, Mr Speaker, whether we should give the Governor a general power, not only by reason of reflecting inflation but I wondered at one stage whether we should give the Governor a general power to revise the fines and then I thought: "Well, no, that is really for the Legislature to do and not for the Executive". But when it comes to purely inflationary measures, Mr Speaker, then the Governor is able, not at any specific periodic intervals, but if I or my successors whoever they may be, from time to time, go along to him and say: "Having regard to the level of money and the value of money and how it has changed since the Bill first became law in 1991, the standard levels and the maximum levels prescribed by these scales are now considered inadequate. You should increase them". Then the Governor can make whatever enquiries he thinks are appropriate to ascertain what an equivalent figure would be x years from now and he can by Order alter the scales accordingly. That is the idea, Mr Speaker. Not to say that he must alter it in

accordance with the level of the retail price index or any such thing like that. But to give the Governor flexibility to alter the scales from time to time having regard to inflation, as he sees it, affecting the maximum levels at which these scales are pitched. Dealing with Section 267 of the Criminal Procedure Ordinance, which is referred to in Clause 16 of the Bill, Mr Speaker, the Hon Mr Anthony is quite right when he says that we are introducing a maximum fine of £500 by this Bill in place of the present maximum fine which is £50. In the 6½ years that I have been in Gibraltar, Mr Speaker, happily I am not aware of any prosecution having taken place for the offence of harbouring or concealing a runaway child. I do not know if at any time such an offence has been prosecuted and I hope it never will. But if it ever does, Mr Speaker, it is something which I personally regard, as warranting on conviction a fine substantially more than £50. And I find it difficult to concede of any circumstances where conviction of such an offence would justify the imposition of a penalty as low as £50. I would say it would justify certainly a much higher penalty than that and in many cases, certainly a penalty as high as £500. So I accept the Hon Member's point that it is a very substantial increase indeed but in the context of the nature of the offence and the degree of severity with which in my respectful opinion it must be considered, I hope that Members will accept that it is a proper and true reflection for that particular type of offence. Mr Speaker, subject to any other points which may be raised, I do not think there is anything further I can add.

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

HON ATTORNEY-GENERAL:

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

This was agreed to.

THE GIBRALTAR HERITAGE TRUST (AMENDMENT) ORDINANCE, 1991

HON J E PILCHER:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Gibraltar Heritage Trust 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 J E PILCHER:

Sir, I have the honour to move that the Bill be now read a second time. In moving the amendment to the Bill, Mr Speaker, let me remind Hon Members opposite that the object of the change was made clear to me and, in fact, was made public by me when we opened the extension to the Museum where it was that I announced the fact that the present Curator of the Museum, Mr Bensusan, will shortly be retiring and that obviously it was in the interest of the Government to look at the possibilities of a person to substitute him and in doing so, the fact that the Gibraltar Tourism Agency had taken over, as a consequence of the Gibraltar Heritage Trust Bill in 1989, the administration and the day-to-day running of the Museum we felt that it was a golden opportunity for one of its employees, Dr Clive Finlayson, who had all the necessary qualifications to appoint him as the substitute for Mr Bensusan. Obviously, Mr Speaker, this has been done with the full cooperation of the Heritage Trust which ultimately is the body responsible for the Museum. Hon Members will recall that when we repealed the Museum Ordinance the Heritage Trust was the body that encompassed the care of the Museum particularly from the exhibition side. The amendment that we have here in front of us, Mr Speaker, is a very simple amendment which takes out of the Ordinance the words "an officer of the public service" and substitutes therefor the words "a fit and proper person". That obviously would allow us to appoint Dr Clive Finlayson who is at the moment doing a Curator course in the UK. We will then be able to appoint him once Mr Bensusan retires. By that time Dr Clive Finlayson will be fully qualified to take over as Museum Curator. Mr Speaker, with this 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 K B ANTHONY:

Mr Speaker, we on this side of the House have no objection whatsoever to this Bill and we will support it fully. We feel it is better that "a fit and proper person" as opposed to "an officer of the public service" should be appointed to such an important post. The other amendment to section 50 is simply a paper amendment because level 3 on the standard scale is the same amount of money, £500. Therefore we have no objection to this Bill and we support it fully.

MR SPEAKER:

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

HON J E PILCHER:

I have very little to add, Mr Speaker, other than to say that because Mr Bensusan's retirement is imminent, I would just like to express, certainly from this side of the House and I am sure from the House in general, our thanks to him for the great effort he has made in the past which has enabled us to bring the Museum to what it is today, an international Museum with exhibitions of a high standard that cannot be found in this area of the world.

HON A J CANEPA:

If the Hon Member will give way, Mr Speaker. We would like to associate ourselves with those remarks and wish Mr Bensusan a very happy retirement. He has done excellent work in what in the past were not easy circumstances. He has really lifted the whole tone of the Museum.

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

HON J E PILCHER:

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

THE LITTER CONTROL (AMENDMENT) ORDINANCE, 1991

HON J E PILCHER:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Litter Control Ordinance, 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 J E PILCHER:

Sir, I have the honour to move that the Bill be now read a second time. In moving the amendment, Mr Speaker, which is at this stage a very simple amendment and before I forget as, indeed, I did in the last Bill, I would like to remind Hon Members opposite that as a consequence of what the Attorney-General said in the Criminal Procedure (Amendment) Ordinance, we are also changing the levels of fines and substituting those levels for the different scales in the Ordinance. The purpose, Mr Speaker, of this amendment is to try and create a situation which has been causing some concern to the Litter Control Committee which, as you are aware, is

the Committee which meets every week and where all the enforcement bodies plus the Public Works Cleansing Department Supervisor to look at the various areas of the implementation of the Litter Control Ordinance. The main thrust, just to give Hon Members a bit of background information, has obviously been the creation of the litter control areas and I am glad to say, Mr Speaker, and it is there for anyone who goes down to Devil's Tower Road, which was the first area we nominated as a litter control area, the difference of what Devil's Tower Road is today and what it was three or four months ago. This has been done by all the bodies getting together and by the cooperation of the public and the private sector at large. But be that as it may, Mr Speaker, one thing that we have found out is that the Litter Control Ordinance does give the ability to the Litter Control Committee in particular areas where there are certain litter depositors in litter control areas and the Litter Control Committee and the enforcement bodies have the right to issue a notice advising the entity or the individual to remove the litter and if that does not happen within a reasonable period which is deemed to be between seven and ten days, then the Litter Control Committee can remove the litter and in taking the person to Court ask for the money to be recovered by presenting the invoices in Court. Unfortunately, that can only happen under the existing Litter Control Ordinance and in the areas which are nominated litter control areas but, of course, because this is a progressive step and it will occur that slowly but surely the areas which are litter control areas are being expanded and eventually we will find a great proportion of Gibraltar being nominated a litter control area. However, in the interim period and, of course, eventually, because all the areas will not be included, we find the situation where if the enforcement bodies find out who has deposited the litter there, and this is, of course, of particular importance as we are dealing with private sector entities. In most cases it is easier to find out if the accumulation belongs to a shop or to someone else. However, in the cases of private individuals, and we have had a couple of cases taken to Court, what we find is that if the accumulation has not happened in a litter controlled area the person is taken to Court and fined £20, £30, £40 or £50 but the removal of the accumulation could cost the Government and the Litter Control Committee anything between £200 and £500 depending on the accumulation. So we felt, Mr Speaker, that this was very unfair and that as in the litter control areas the Committee and the enforcement bodies should have the right to be able to remove the accumulation and recover the cost through the Court. So basically that is what the amendment in front of Hon Members today does. We are not proceeding, obviously, with the Litter Control (Amendment) Ordinance in this meeting because there are one or two other amendments which I will give Hon Members opposite enough notice of because the Litter Control Ordinance is a new Ordinance which we passed last year and there are many problems that are only being discovered as we proceed. The changes are not major changes but rather than bring them to another House we felt that we should leave it to the adjourned meeting which

hopefully will be at the end of April so that we can bring in a couple of more amendments. As I have explained the amendment before us is to allow the Committee to recover from a person convicted the cost of removal of the litter. 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 K B ANTHONY:

Mr Speaker, once again we on this side of the House have no bother at all in supporting in principle this Bill. We think it is an excellent idea. We fully support any efforts by the Litter Authorities to make Gibraltar cleaner. There is only one line in this Bill that I am a little bit doubtful about. In the amendment to Section 5, and I quote: "The Litter Authority may, where it considers it necessary in the interests of the neighbourhood". That is rather a strange sentence. Is that in the interests of the neighbourhood in the Government's opinion, in the Litter Authority's opinion, is it the neighbours who express an interest. It is a slightly ambiguous statement, and perhaps the Hon Minister could just clarify that for me. But apart from that very small point we will support this Bill fully.

MR SPEAKER:

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

HON J E PILCHER:

Mr Speaker, "where it considers it necessary" as defined certainly by me, is a mixture of whether the people in the vicinity, the Litter Control Committee or the enforcement bodies, the Police, etc because they are working as one entity and, for example, in the neighbourhoods we do work very closely with the Community Constables. So I think whether it is considered to be in the interests of the neighbourhood or anybody else in the Committee the important thing is to work together for a cleaner Gibraltar.

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

HON J E PILCHER:

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

THE NATURE PROTECTION ORDINANCE, 1991

HON J E PILCHER:

Sir, I have the honour to move that a Bill for an Ordinance to provide for the protection of wild birds, animals and plants and for the designation and preservation of protected areas for the purpose of nature conservation and matters incidental thereto be read a first time.

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

SECOND READING

HON J E PILCHER:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, it gives me great pleasure to present this Bill to the House today because, as we have said in the past, it shows my Government's great support for the Heritage Movement globally. We have said on many occasions, and the Chief Minister is on record as having said, that the Government not only supports heritage but that heritage means much more to us than just bricks, mortars and the conservation of buildings. Our heritage Mr Speaker, is also interlinked and interwoven with nature conservation and it gives me great pleasure because it puts us, in fact, ahead of other jurisdictions on nature conservation. Mr Speaker, the Bill in front of us is far reaching inasmuch as it protects all aspects of nature conservation ie wildlife, birds, marine life and its botanical aspect, as well as the plants of Gibraltar. The amendments and the new Endangered Species Ordinance, which we passed late last year Mr Speaker, puts us, as I have said, at par with other nation states. In looking at the Ordinance, Mr Speaker, it is divided into four parts, the first is the interpretation and application. The second part is the protection of wild birds, wild animals and wild plants. Under the wild animals is also included fish. Mr Speaker, species of which are also protected under this Ordinance. This part Mr Speaker, deals in great detail with protection and obviously it is a very wide reaching Ordinance which has a lot of different elements to it. Mr Speaker, I am prepared to answer any points relating to this part that may arise and on which Members opposite may like clarification on some aspects. Let me say, Mr Speaker, from the outset that in connection with Part II we have already received certain comments from the Environmental Health Department and from the Cage Birds Society and as a result we may need to make certain small amendments of which I will give Honourable Members opposite notice of for the next meeting of the House of Assembly, the adjourned meeting in April. However, Mr Speaker, as I say, I will not go over all the different clauses in Part II because it provides for the different methods of protection and it talks about which are the elements that cannot be used. It talks, Mr Speaker, about bird's eggs, and other such things which, as I say, I will explain if Hon Members tell

me of any specific clause where they require further information. The thrust, Mr Speaker, of this Bill comes under Part III which deals with nature conservation. Again Mr Speaker, it is public knowledge that it is the Government's intention to create a Nature Reserve in the Upper Rock and this Bill, Mr Speaker, will provide the enabling legislation for this to be done. The intention of the Government, Mr Speaker, at this stage, is to move relatively quickly in creating an area of the Upper Rock which will be immediately specified as a Nature Conservation Area. The area that we are looking at at the moment is the area from Jews Gate all the way to the Charles V Wall to where the Apes Den, in fact, starts. I am told that the area in question has very many species which require protection and the passing of this Bill will provide us with not only the enabling powers, but also to show that the Government means to take action under this Legislation. Mr Speaker, with regard to the way that the Nature Reserve will be run, there are still a lot of details to be discussed with the different societies and with the different organisations but, as I say, it is my intention to have this operating as soon as possible. This will not only show the different local Associations and the people of Gibraltar that we care about conservation but show also the international community that, in fact, we are prepared to protect nature and particularly as it refers to Gibraltar. As with the Endangered Species Ordinance we have specified wild animals, plants etc which are specific to Gibraltar, like for example the Barbary Macaque which are obviously particular to Gibraltar and not found anywhere in Europe. How the operation of the Nature Reserve will be run is at this stage too early to say but over the next couple of months we will hopefully be looking at different ways of operating it. It is our intention initially, at a very early stage, after having discussions with the Ornithological Society, I must say that we have already discussed matters with them, to provide for us Honorary Wildlife Wardens to look at the specifics of protecting the Nature Reserve in a way that at this stage at least will enable us to control the Nature Reserve without, at this stage, this costing the Government any money, Mr Speaker. As I have said it is a very extensive Bill and rather than go on talking about the general principles, Hon Members can have their say and I will then explain matters further. 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 K B ANTHONY:

Mr Speaker, we on the Opposition support this Bill. Our environment is vitally important and to protect our flora and fauna is of paramount importance not only for ourselves but for the next generation. However, I do feel that the Bill is extremely good in concept but rather woolly in

presentation. I have gone over it with a fine toothcomb and there are a number of points with which I am not too happy. I was delighted to hear, Mr Speaker, the Honourable Minister say that there are some clauses that they have to look at again. The Hon Minister said that he had had representations from the Cage Birds Society and I must say that they have also approached me, Mr Speaker, and I will be speaking about that in a moment. I however get the feeling that this is a Bill that has been drawn up by the Nature and Conservancy Council. They are the experts and as such have drawn up a Bill of what they would like. I however see in this Bill a slight danger, because they have given themselves an immense amount of power and if this Bill is passed and becomes law, because they will be the people who will be laying down the criteria for the future protection of our environment and I am not suggesting in any way that they are empire building but I think that they will make the type of recommendation to His Excellency the Governor that they after all would like to see because they are the experts.....

HON J E PILCHER

Mr Speaker, on a point of clarification. When the Ordinance refers to the Governor, it means the Governor-in-Council. This means the Governor after consultation with the Government of Gibraltar.

HON K B ANTHONY:

Yes, Mr Speaker, but nevertheless, once this Bill is passed into law, the Nature Conservancy Council will have very very great powers to make recommendations to His Excellency and alter this Bill by Regulation. If I can just go through the Bill and find out some of the areas, Mr Speaker, where I find problems. First of all could the Hon Minister or someone else clarify the distance of territorial waters in Gibraltar? Is it three miles?

HON ATTORNEY-GENERAL:

Territorial Waters, if I remember rightly Mr Speaker, is defined in the Admiralty Waters Order. It was also defined in the Chart which is attached to the Fast Launches Control Ordinance of 1987. If the Honourable Member opposite is interested in specific measurements then I suggest that he looks at that.

HON K B ANTHONY:

Mr Speaker, I thank the Honourable Attorney-General for that answer. I am going to go through the different points that have been raised. For example, the Section on wild birds in Sub-para 5 of this Section wild birds does not include any bird which is shown to have been bred in captivity. Well, Mr Speaker, some cage bird breeders have

already seen me and said that it is difficult to prove this particular point. If a Policeman comes up and says "can you prove that bird was bred in captivity"? That, Mr Speaker, is going to prove very difficult.

HON J E PILCHER:

Mr Speaker, if the Honourable Member will give way. I have already said that I had a meeting with the Cage Bird Society who are, in fact, producing a list of the amendments that they require. With reference to the Clause that the Honourable Member opposite has quoted I have already agreed with them the required amendments. After their meeting with me late last week they left quite happy that the amendments that they wanted would be included in the Bill, Mr Speaker.

HON K B ANTHONY:

I thank the Honourable Minister. I am not privvy to what went on at the meeting between the Minister and the Society so I thank him for that information. On the question of someone finding an injured wild bird, Mr Speaker. Whoever does find it must pass it on within a period of twelve hours to a person licensed under Section 13(1) to attempt to release it. We on this side feel that twelve hours is perhaps too short a time. For example we have the Easter weekend coming up and I should imagine that it is going to be easier to find a dentist than one of the persons under Section 13(1) to help a person with an injured bird. I think that this should be reconsidered and perhaps a more sensible period of time say twenty four hours or whatever time of that nature the Nature Conservatory Council feel would be right. Again, Mr Speaker, a person licensed under Section 13(1)? Is a list going to be published so that people know to whom one should pass on an injured animal? Is a list being made available by the Nature Conservatory Council? I know that some of the members of the Council are very keen Ornithologist and they may go on trips to Spain and it might be difficult to find an expert to hand over an injured bird. He might be out watching birds. Mr Speaker, in the list of banned weapons for the killing or taking of any bird there is a nice long list and yet missing from that list is an Air Rifle or an Air Pistol which I would have thought is one of the most obvious weapons that are used. Many boys have Air Rifles or Air Pistols and you do not need a licence. It has also been left out of the list in this Bill. I think that these two weapons should certainly be added to the list. Then under the protection of certain wild animals in paragraph 8 4(a), Mr Speaker, if any person intentionally damages, destroys or obstructs any structural place which any wild animal of a kind specified in Schedule 1 uses for protection then it is an offence. Now, Mr Speaker, Section 1 includes all lizards, if you destroy a small lizard are you committing a crime? I would like that point to be clarified. To my mind it is rather a strong application of the law. It would however be an offence

as it is laid out in this Bill. Then we have under powers to grant licences in Section 2(b) for the purpose of ringing or marking or examining any ring or mark on wild animals. Does one ring a wild animal? I thought one rings a bird. I do not think wild animals should have rings put on them. A licence under the foregoing provision in the same section may be granted either to a person of a class or a particular person. A person "of a class". I am not quite clear what that means. Does that mean any Ornithologist visiting from the United Kingdom will be given an Ornithologist's licence or Biologist's licence. It is a little bit vague, Mr Speaker. A licence granted for the purpose of allowing disabled wild birds to be tended should specify the arrangements to be made for registering with the Nature Conservatory Council any birds so tended. Who is likely to apply for such a licence? Who is going to get a licence to go out to tend wild birds? Do we have such humanitarians in our community? Are we likely to get them?

HON J E PILCHER:

Yes Mr Speaker, I think we have one sitting on the Hon Member's right.

HON K B ANTHONY:

I very much doubt that my Honourable colleague Adolfo Canepa is going to get a licence to go tending wild birds.

HON J E PILCHER:

But as a Member of the Ornithological Society....

HON K B ANTHONY:

Then any person that attempts to commit an offence according to Para 15(1), will be guilty of an offence and shall be punishable in a manner as for that offence. In other words, Mr Speaker, if you attempt to commit an offence you will be deemed guilty of committing that offence.

HON ATTORNEY-GENERAL:

No Mr Speaker, there is nothing unusual in the Criminal Provisions. It is simply saying that if you attempt to commit an offence you are liable for the same punishment as if you had actually succeeded in committing the offence.

HON K B ANTHONY:

I thank the Honourable and Learned Attorney-General for his information. Will a Police Officer be automatically a wild life warden? Because under the terms of enforcement Section 16, a Police Officer or a person appointed for the purpose of enforcing this Ordinance under Section 21, Section 21 is the Section appointing Wild Life Wardens, therefore a Police Constable will be a Wild Life Warden?

Turning now to Part 3 Nature Conservation Section 18(1) states: "subject to the provisions of Sub-section 2, where the Governor is of the opinion after consultation with the Nature Conservancy Council that an area of land is of special interest". Will this apply to every part of Gibraltar? The City everywhere? I do take the point that the Honourable Minister made in his opening address that it is intended to begin from Jews Gate to Charles V Wall but if this Bill becomes law and if the Nature Conservancy Council say they want to extend the Nature Reserve to cover other areas can they do so? I think that this is a rather dangerous situation because when you look at 18(1)(b) it states by reason of being the habitat of any wild bird or wild animal of a kind in Schedule 1". For example swifts which nest in many houses in town could therefore be considered a conservation area. I have mentioned it once before swift live in many sheds in various places and they are all over the town as well and I feel that this is something that needs to be dealt with very carefully. "Any land covered (continuously or intermittently) by water or parts of the sea within territorial waters is of special interest" and be designated as a marine nature area. This covers any of our territorial waters. If a Marine Biologist says this is a very important area then you may deem it so and I am sure His Excellency will support it. Let me come to the banned area.....in Marine Conservancy areas and under Section 18(7). "Nothing in these Regulations made under Subsection (6) shall (a) prohibit or restrict the exercise of any right of passage by a vessel other than a pleasure boat". In other words a Spanish fishing boat could enter those waters but local pleasure boats could not? Then there is a little gem in this Section which is Section 8(b)" anything done more than 30 metres below the sea bed. Thirty metres below the sea bed! Are people going to drill down 30 metres below the seabed? Looking at this Bill, Mr Speaker, there are many things that need sorting out. It needs to be gone over very very carefully with a wide toothcomb. Looking at the Schedules at the end and I have looked at the Schedules right the way through and I have come to the conclusion Mr Speaker, that if you are going to be appointed as a Wild Life Warden then you have got to be a genius to be able to identify all the items in these Schedules. You have got to be a very very talented person indeed. I have looked at this list and "yes" I can tell a rabbit and "yes" I can tell a lizard but some of these the "hairy snails"? I did not know what that was and there are many things in this Bill that I have no idea what they are and I am sure that many Members of this House will look at the list of flowers and have no idea what they are and these are the ones that you can pick! In Schedule 2 are included those that in theory you can pick. So it is a very difficult exercise because it means that people going up the Rock in all innocence might pick flower A and it may be alright because under Schedule 2 you can do that. But if you pick flower B then the Wild Life Warden comes down on you like a Traffic

warden. So I will simply end, Mr Speaker, my short intervention by saying that we do support the Bill and we do believe in protecting the environment including our flora and fauna. I however hope that the Hon Minister will go over the points that I have made particularly with regard to the Nature Conservancy Council and try and sort out all the loose ends so that when this Bill is considered again by the House at Committee Stage both sides of the House are happy with it. Thank you Mr Speaker.

HON LT-COL E M BRITTO:

Mr Speaker I only wish to make one very small point and would be grateful if the Hon Minister can clarify it when he exercises his right to reply. With regard to the Nature Reserve that he mentioned and which bounded to the north and south by Charles V wall and Jews Gate, could the Hon Minister give us some indication of what the uppermost and lowermost boundaries are? Are we talking about both sides of Queen's Road, below Queen's Road or above?

MR SPEAKER:

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

HON J E PILCHER:

Mr Speaker, I lost the Honourable Member opposite after his first comment. The Hon Member seems to misinterpret certainly, the main thrust of the argument. I think the Hon Member has fears about the Nature Conservancy Council running to the Convent and protecting all the areas of Gibraltar. Well that is not possible, Mr Speaker. I will try to explain to the Hon Member how the system works. We have the Governor. The Governor-in-Council but the input is made by the Gibraltar Government, Mr Speaker. It is not a question of the Nature Conservancy Council going to the Governor and then part of Gibraltar being declared a Nature Protection Reserve. That is not the way that the Ordinance, once it is passed will work. If the Honourable Member had read the Ordinance, as undoubtedly he has to have been able to find all the little quirks, like he did on the Litter Control Ordinance where he asked "What happens if somebody puts a little bit of ash on the ground?" Will he be given a litter ticket"? Now with regard to the Nature Conservancy Council he asks "Will the experts be running this Ordinance?" The experts have been in contact with EEC experts to produce standard regulations which apply to all nature reserves and all nature conservation areas in Europe. So it is not that we are doing something here that is not done in any other Nature Conservation Bill anywhere else in Europe, or dare I say anywhere else in the world. Mr Speaker, other than the comments that have been made by the Cage Bird Society and to which I have already agreed to build into the Bill particularly as a protection for the Cage Bird Society, because obviously the Bill is meant to protect wild life, but if you have somebody who is rearing birds in captivity then

obviously it is not meant to apply to him and we have to make that absolutely clear. If the Member had understood that by Governor, obviously we are referring to the Governor-in-Council, ie Government imput, then he would have noticed that no order shall be made, page 35(3), no order shall be made under Subsection 1 or 2 by the Governor in respect of any land being Crown Land and held in the right of the Government of the United Kingdom without the consent first obtained by the Secretary of State. So obviously, Mr Speaker, what is quite clear is that all the other land is land which is controlled by the Gibraltar Government and it is the Gibraltar Government that designates the Nature Reserve after consultation with the different bodies and obviously the Governor as the official head of the Constitution of Gibraltar, Mr Speaker. So I think Mr Speaker, although I have sat here and I have seen the lighthearted side of the argument it is not the intention of anybody, experts or anybody else to go around town issuing conservation orders on buildings etc. This is meant to be for specific areas which have the right to be protected. We are trying to protect our heritage for future generations and it is a very serious subject to which we have given a lot of thought. Not necessarily by me because at the end of the day in matters like this although we take the decisions on policy, Mr Speaker, whether Schedule 1 or Schedule 2 exists is determined by the experts and not by the Ministers. As far as the different elements are covered I have read the Bill carefully, Mr Speaker, and I have looked at the different things and, as I say, there are a couple of minor amendments which have to be made to protect people like the Cage Bird Society. There are also certain amendments which have to be made as a matter of policy, Mr Speaker. However the main thrust is in keeping with Nature Protection Ordinances in Europe and in keeping with the basis created by the EEC in the different aspects of the protection of nature across the board, Mr Speaker. I will carefully read everything that the Honourable Member opposite has said, Mr Speaker, but I can assure the Honourable Member that in general it is meant as a protection of our heritage for future generations and although certain amendments may be required here and there, I think, we can all be proud of our first major step to protect nature for the future. With regard to the point made as to why we have chosen the area from Jews Gate to Charles V Wall I should say that it is a anything above the roadway leading up to Jews Gate. So it does go from Jews Gate all the way up passing St Michael's Cave up to the area of the Charles V Wall. We have chosen that area because that is not a normal picnic area for the people of Gibraltar. Normally they tend to stay at the northern side which has wider picnic areas, if one can call them that, and one does not necessarily find the Gibraltarians wandering in the area between Jews Gate and Charles V Ramp. Even Mediterranean Steps are away from the area that we are looking at. So, Mr Speaker, it does not take an expert to protect nature one just uses a bit of commonsense and if the Honourable Member opposite was saying it will prohibit people from going round picking flowers well then they should not go round picking flowers. If one does not understand about flowers then, Mr Speaker, you should not pick flowers because you

might be picking in an area of conservation and you might be picking the last specimen of the last flower of that particular species. So the idea, Mr Speaker, is that we will create this area so that there is a possibility of protecting that part from people walking round and picking flowers or disturbing this and that. They might not be doing it deliberately but out of ignorance which is what the Honourable Member opposite has said. It is quite a large area and obviously it would then be up to the experts to be able to try and get the maximum out of this Nature Reserve. These experts may be able to take to this area plants and things which are not normally found in this area, Mr Speaker. As regards the Wild Life Wardens as I have explained, although I think, that the Honourable Member missed the point. Wild Life Wardens at this stage are being appointed in conjunction with the Ornithological Society. They will appoint Voluntary Wardens who will walk around not with "litter tickets" or "clamps", Mr Speaker, but trying to protect the Nature Reserve and advise people who visit the area what they can do and what they cannot do. It is not an area where people normally walk although it is widely used by the Ornithological Society and therefore with their help with a voluntary Warden system will augur well for what we are trying to do and that is protect our natural areas and by that in protecting our heritage as a whole. With that, Mr Speaker, I commend the Bill to the House.

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

HON J E PILCHER:

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

This was agreed to.

THE PATENTS (AMENDMENT) ORDINANCE, 1991

HON M A FEETHAM:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Patents 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, this is a far more straightforward Bill than the previous one prohibiting the eating of snails at Easter. This only has the effect of removing the requirement that the Registrar of the Supreme Court should be the Registrar of Patents and empowering the Governor to

appoint a suitable person in the place of the present Registrar. It is a straightforward piece of amending legislation. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON LT-COL E M BRITTO:

Mr Speaker, in view of the fact that Registrars of the Supreme Court are not endangered species, as far as I know, we are pleased to support the Bill from this side of the House.

MR SPEAKER:

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

HON M A FEETHAM:

Sir, I have nothing further to add.

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

HON M A FEETHAM:

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

This was agreed to.

THE LIMITED PARTNERSHIPS (AMENDMENT) ORDINANCE, 1991

HON M A FEETHAM:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Limited Partnerships 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 object of the Bill is similar to what we have done in respect of the Patents (Amendment) Bill and that is to again substitute the requirement that the Registrar of the Supreme Court shall be the Registrar of Limited Partnerships and give the Governor the power to appoint a suitable person. 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 LT-COL E M BRITTO:

Once again, Mr Speaker, there is very little to say from this side except that we support the Bill.

MR SPEAKER:

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

HON M A FEETHAM:

I have nothing 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 the adjourned meeting of the House.

This was agreed to.

THE FINANCIAL SERVICES COMMISSION (AMENDMENT) ORDINANCE, 1991

HON M A FEETHAM:

Sir, I have the honour to move that a Bill for an Ordinance to amend The Financial Services Commission 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 amendments to The Financial Services Commission Ordinance are intended to enable the Commission to operate effectively as the Licensing Authority under The Financial Services Ordinance. It reflects the change in approach which has been developed since the Ordinance was originally drafted. It had been thought at the time that only three members of the Commission would be representatives of those organisations operating in businesses engaged in Financial Services matters in Gibraltar. The

diversity of business which has now been carried out in Gibraltar makes it clear that the Commission could not be representative of the industry as a whole. Therefore aware of the problems and practices of the industry, as a whole, it was felt that unless all six positions on the Commission in addition to the Commissioner, were filled by people from the business and administrative community it would not be representative of the industry. If the restrictions originally placed in Section 3 are not removed it will not be possible for the Commission to operate as a Licensing Authority under the Financial Services Ordinance. It is for this reason that the limitation of the appointment of Commissioners contained in Section 3(lb) of the Ordinance is removed by the amendment in Clause 2 of this Bill. As a result of removing these restrictions the amendment to Section 6 appearing in Clause 3 is necessary. At the same time as removing the references to Section 3(lb) from Section 6, the amendment in Clause 3 imposes on the Commissioner an obligation to appoint fit and proper persons with the skills and experience necessary to enable the Commission to carry out its duties in respect of licensing and regulation as the authority appointed under the Financial Services Ordinance. With the amendments to Section 6, a part of the restrictions of members of the Commission involving themselves in matters in which they may have an interest was removed. The effect of the amendment proposed to Section 10 and contained in Clause 4 of this Bill is to strengthen the requirement already in that Section for declaring any interest and abstaining from involvement in any matter in which a member has an interest. The professional and business interest which a member of the Commission might have had in any matter before the Commission was previously covered by Section 6. It is now introduced to Section 10. The amendment to Section 15 contained in Clause 5 is consequential on the amendments made in the last House to the Auditors Registration Ordinance. Finally, Clause 6 amends Section 18 of the Financial Services Commission Ordinance. Some anxiety has been expressed by members of the Commission about their personal liability in respect of actions carried out by the Commission in its Statutory role. The amendment in Clause 6 merely serves to strengthen protection afforded to the individual members of the Commission against a personal liability in respect of matters which they have done in good faith in their role as members of the Commission. It makes it clear that the Commission is liable on the contracts on which it has entered into, for example, for the supply of goods and services. I commend the Bill to the House.

MR SPEAKER:

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

HON LT-COL E M BRITTO:

Mr Speaker, in general terms we support the Bill. There are however a couple of items that I want to bring up which

we feel could be an improvement rather than anything else. First of all I would like to express our concern that despite the Ordinance being in place since mid-1989 and despite the Commissioner being in the saddle we are still without Regulations. We are, in fact, virtually with having a ship with no engine, a captain and a crew but with no Rules for running the ship. We urge the Government to do what is necessary in order to put teeth into the Commission and to get it up and running and working as they should be to provide all the security to the Finance Centre that we need. To come now, Mr Speaker, to the detailed clauses as the Honourable Minister has done. I will take them in reverse order and say that we of course have no problems with the amendments to Section 15 or to Section 18 as obviously they strengthen the Bill. Similarly, the amendments to Section 10 which extends the grounds of closure and increases the power of the Bill. Moving up to the top now, to Section 3, I am not quite sure that I can agree entirely with what the Honourable Minister has said that there was a need to abolish the need to have a Barrister, a Bank Manager and an Accountant as part of the Commission. Surely if it was felt by having these three persons appointed on the grounds of their profession it was restricting the scope of the Commission then it would have been better to extend the number of Commissioners rather than take away the expertise that would be inherent in the Commission by having those three persons inside. I will be glad for an explanation if there is an explanation. The one I am most concerned with, Mr Speaker, is the amendments to Section 6. I must admit that I was a little bit perplexed when I read Section 6 in the Ordinance as we passed it and it seems to me that somewhere along the line either through a printer's error or some fault in the drafting or certainly some fault in the House when we passed the Bill that we must have left something out. I remember when I was involved in cooperating with officials and with Government in the drafting of this Bill, the drafting of the original Ordinance, the intention of Section 6 was that a member of the Commission who was an Accountant or a Barrister especially, and who had an interest, a disclosable interest, in a matter that came before the Commission should not benefit by gaining knowledge through his post on the Commission. It seems to me and I did ask the Attorney General to have the text with him to see whether I am right or I am wrong. It however seems to me that in the original Ordinance after 6b, where it says "Any person appointed to the Commission by virtue of Subparagraphs 1, 2 or 3 of Paragraph B of subsection 1 of Section 3, the words that are missing are something like "when that person has declared a disclosable interest in the matter under adjudication". By eliminating the Section, as the Government is doing now, we are removing that safeguard. In other words, if that Barrister is sitting on the Commission and an application comes in and he has an interest in the matter then he is going to gain an unfair advantage over other people because of his post in the Commission.

HON M A FEETHAM:

No, he would not be there when such licensing application or whatever is actually being discussed. He would not form part of it.

HON LT-COL E M BRITTO:

Mr Speaker absolutely. He would not be there at the moment of discussion.....

HON M A FEETHAM:

Or, in any case, just for further clarification, it would not be his decision, the decision would be taken by the Commissioner.

HON LT-COL E M BRITTO:

Yes, Mr Speaker, that is correct, but he would still have access to the Minutes and to the Records of those meetings and he would still be in a position to gain information which could be of an advantage to him. I know that there was a lot of discussion on this at the time and that is why the wording says "No application should be adjudicated upon", which is what the Minister is saying. But the second part of the original wording is "No information as to the affairs of any particular individual, firm or company shall be disclosed". In other words as you are rightly saying, at the time of discussion, the person with an interest would have to leave the room and not take part in the discussion for a decision. However the Section which it is proposed to repeal now further prevents that person who has an interest from gaining any further knowledge or gaining the knowledge by having access to records.....

HON M A FEETHAM:

No, Mr Speaker, he would not have access to these. When I reply to the two previous points made the matter will become a little bit clearer. The Hon Member was saying that it would weaken the position of the Commission by doing that.

HON LT-COL E M BRITTO:

Mr Speaker, that is the point that I wish to make. I would ask the Minister and the Attorney-General to think about what I have said and to think whether it is a good idea to eliminate that particular Section. It seems to me that as Section 6 reads now, and the Attorney-General can bear me out, it is a nonsense and that somewhere along the line we have made a mistake. The Section states "No application to the Commission shall be adjudicated by" and then goes on to say "persons appointed by the Commission". But as it reads now, it seems to me it is a nonsense. As far as we are concerned it would not be a good idea to eliminate the provisions that were intended to be there in the first place.

HON M A FEETHAM:

Mr Speaker, I am quite clear on what is happening.

MR SPEAKER:

The Hon Member can reply to Col Britto in a moment. The Attorney-General wishes to speak now.

HON ATTORNEY-GENERAL:

Yes, Mr Speaker, perhaps I can come in on a point that the Hon Col Britto has raised. Firstly, Mr Speaker, what the Government seeks to do is perfectly lawful, in my opinion, and that is all that I am concerned with. I have said in this House before and I do not hesitate to say again that I do not and will not involve myself in matters of Government policy. That is a matter for the elected Government. Not for me I am only an ex-officio Member of this House and that must not be forgotten, at least it will not be forgotten by me anyhow. If the Government wishes to take into account the recommendation which the Honourable Member has made then that is a matter entirely for the Government, Mr Speaker. It is not a question for me personally as Attorney-General. The Section as proposed to be amended, Mr Speaker, will in my view, make perfect sense. Section 6, as it is proposed to amend it by this Bill will read as follows, at least Subsection (1) will; "Subject to the provision in Section 9, it shall be the principal duty of the Commission to carry out and discharge the functions pursuant to this or any other Ordinance or Regulation, so far as is practicable and for this purpose shall appoint fit and proper persons having the skills and experience necessary to enable the Commission so to do".

HON LT-COL E M BRITTO:

Mr Speaker, if the Honourable Member will give way. I think he may have misunderstood what I have said. In the first place on the question of lawfulness or otherwise, I do not for a moment question what the Government is trying to do. Mr Speaker, I am trying to be constructive and I am suggesting that the original Section 6 should be left in rather than be repealed. This should be done with the additional words or words similar to those that I have suggested. The second point is that the Honourable the Attorney-General may have misunderstood me when I said that the wording was nonsense. I was not referring to the amendment, I was referring to the Clause 6 as it stands in the Ordinance at the moment. Not the way that it is intended to be amended by this Bill. Under 6A, it says "No application shall be adjudicated upon".

HON M A FEETHAM:

It has been strengthened. It has not been taken away.

MR SPEAKER:

Let us stick to principles now and then at the Committee Stage Members can discuss the details. I think the Hon Member

has made his point. If there is no other Member who wishes to speak I will call on the mover to reply.

HON M A FEETHAM:

Mr Speaker, we will have a look at the point that the Hon Member is making and I will come back to him. I think the Hon Member has made two main points. One was the matter about the Commission requiring Regulations and I agree with him. We have the Commission in place and the Commission is functioning to a certain degree. It requires Regulations to be put in force on the wider aspects. The Regulations, as far as I am aware, are virtually on the point of publication. Quite a number of people would like to see them in place including DTI in the UK. So I can say that this matter is now very much in hand and I am personally very concerned that we should have these Regulations out as quickly as possible without any further delay. The Hon Member also made the point about removing expertise from the Commission to make way for members of the industry. Was that not the point made by the Hon Member?

HON LT-COL E M BRITTO:

If the Hon Member will give way. What I was saying, Mr Speaker, is that it seems to me we are removing the necessity to have a minimum of a Barrister, a Bank Manager and an Accountant and just having in general terms people with experience in the Financial Sector. It seems to me that by not having as a matter of obligation those three posts then we could be detracting from the expertise available to the Commission.

HON M A FEETHAM:

The whole basis, Mr Speaker, if you recall the history about this was that when there was opposition to the setting up of the Commission and that it should be exclusively carried out by employees of the Government that it was our administration that decided the setting up the Commission. It was precisely because we believed that the Financial Services, the industry as such, should be participating in the responsibility that was required in ensuring that we had reputable companies coming into Gibraltar. Therefore a licence has been issued to people of repute, and companies of repute, but that the industry should take that responsibility. Initially when we thought about the composition, we decided on the three main areas and that the additional members should be the ones appointed in the terms of the supervisory aspect, like the Banking Supervisor, forming part of the Commission. As a result of the diversity that is happening in Gibraltar, we have needed to bring in other people. What is clear irrespective of whether we say six persons today or maybe tomorrow we want to change it to eight, is that what is clear is that you are bound to have somebody from the legal profession and somebody from the accounting profession anyway. If we have done it this way it is because of the question of practicality more than

anything else. But it does not remove the expertise from the Commission because at the same time we are appointing people with the necessary expertise. As it says here, as the backup for the Commission and that their role should be one of advising the Commission. If something goes to the Commission, the kind of things that we are concerned about, vested interests, etc and if they have any information which as a result of the ground work done before could be used for other reasons the Commissioner would ensure that there would be no other information disclosed at that stage. This is why these changes have come about, in the light of experience and, in fact arising from the very essence of the point that the Hon Member was making before. Mr Speaker, I think, we have cleared the matter and explained that we have widened the Commission in the interest of the Financial Services industry and the expertise will be provided to give it the necessary back-up. We are not, in fact, losing that expertise. I commend the Bill to the House.

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

HON M A FEETHAM:

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

This was agreed to.

The House recessed at 5.05 pm.

The House resumed at 5.20 pm.

THE PORT (AMENDMENT) ORDINANCE, 1991

HON M A FEETHAM:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Port 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 majority of the Clauses in this Bill are concerned with the increase of fines under the Port Ordinance to a realistic level and to link them with the standard scale of fines introduced in this House in the amendment to the Criminal Procedure Ordinance moved by the Attorney-General. Clause 4 grants to the Captain of the Port a clear power to retain ships' papers where he believes it is necessary to do so to ensure that the provisions

of the Port Ordinance or any other Ordinance relating to a ship in the Port of Gibraltar or to the safety of ships generally are met. His power at the moment, Mr Speaker, is only to retain the papers where a ship is proposing to leave not having paid its Port duties. By the time the Captain of the Port discovers that the ship is proposing to leave without payment it is likely that the ship will be beyond his reach. Again at the moment he has no powers to retain the papers where he believes there may be an infringement of safety standards on a ship. Clause 4 therefore remedies that omission. Clause 5 gives to the Captain of the Port a power to dispose of a wreck or object which has been abandoned in the Port where the wreck or thing is not saleable. At the moment he is placed in a difficult position of having to sell even what is not possible to sell where they have been abandoned in the area of the Port. I hope the above Bill with therefore give Members opposite enough detail about the practicalities of the amendments that I am proposing. 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:

Yes Mr Speaker, we support the provision of this Bill. As the Minister has said there are two substantial amendments other than the question of fines under Section 9 of the Ordinance, and it does seem sensible that the Captain of the Port should have powers to retain the documents in certain circumstances. The other one is the question that in order to dispose of or to remove wrecks and so on, the law as it stands at present seems to impose an obligation of the Captain of the Port that the only way he can dispose of these objects is by selling them. It may well be that he may not find a buyer and be stuck with it. Therefore the Captain of the Port should have the powers to as it were "send the wreck down the chute"! So we support the Bill, Mr Speaker.

MR SPEAKER:

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

HON M A FEETHAM:

I have nothing further to say, 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 the adjourned meeting of the House.

This was agreed to.

THE PUBLIC HEALTH (AMENDMENT) ORDINANCE, 1991

HON J C PEREZ:

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 J C PEREZ:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, Honourable Members will have noticed that a lot of what is in this Bill arises again out of the Criminal Procedure Ordinance that was introduced earlier in the House by the Honourable the Attorney-General and updates the fines which were included in the Ordinance twenty years ago. The particular scale included in the Criminal Procedures Ordinance applies in future. There are four clauses in the Bill which deal with something completely separate and that is the ability of the Government to contract the obligations and responsibilities in the Public Health Ordinance in respect of the Water Service to a private company. The purpose of bringing the Bill to the House is because the Government is at the point of reaching agreement with the Lyonnaise Des Eaux from France to form a Joint Venture Company which will be called Lyonnaise De Eaux Gibraltar Limited and will be contracting out the whole of the fresh and salt water as well as the sewage pumping to the new company. Initially there were some problems with the Trade Unions, but these have now been resolved and everything is ready to commence and that is why we are bringing this Bill. Section 26 and Section 27 really replaces the responsibilities of the Director of Public Works given that there will no longer be a Public Works Department and replaces the Government as the responsible party. Section 41 is quite specific that that is what is intended and that is the main amendment. The other amendment arise out of that and Section 45 allows for Schedules to be changed by Regulation which will then be gazetted. The procedure for any alteration in the price of water sold to consumers would still have to be gazetted. 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 M K FEATHERSTONE:

We support this Bill and we notice the changes in the level of fines in certain areas and some of them are quite steep increases. They have gone up from £10 to £500 and that is a 500% increase. In another instance fines have gone up

from £20 to £2000 that is 10,000% rise. I am not sure that all these are absolutely necessary but since the Courts will have the jurisdiction not to apply the maximum fine we will accept them. We understand the situation in Section 41 where a company is going to be authorised to perform the functions on behalf of the Government. Once such function has been happening already, the taking by private lorries of refuse into Spain and it would be rather envidious for Government vehicles to be doing that job. But it does seem to be a little bit like shutting the door after the horse has gone. We are not fully happy with the announcement that the provision of water is going to be taken over by a Joint Venture Company. Water distribution and production in Gibraltar has been a success story and it seems rather a pity that this should be removed from the Government. However, the Government in its wisdom seems to think that privatisation is one of the things that this Socialist Government wishes to impose upon us so we will accept it. Apart from that we support the Bill, Mr Speaker.

HON A J CANEPA:

Perhaps Mr Speaker, being some years younger than the father of the House, I might show a more liberal attitude to these changes. We are aware of the fact of course Mr Speaker, that about a year or so ago the workforce were totally against being taken over by a Joint Venture Company and indeed they were very demonstrative about it as I recollect. I hope our attitude to Joint Venture Companies is clear because we are not, in principle, against a Joint Venture Company particularly where there is no competition with an established industry. Now, as my colleague says, we are very proud of the fact that successive AACR administrations could point, I think, to the management by the Public Works Department of the distribution or supply of water as a success story. I think it was a success story in that over the years on more than one occasion when clearly in neighbouring areas there were serious shortages of water we never went without and the expertise in the Public Works Department was used to great effect in managing the potable water system, and indeed the salt water system, so much so that on two occasions, I think, in the latter years of our administration we were actually able to lower the price of water. I think we were also very successful in the type of Desalination Plant which we commissioned in the latter years. That again has been a great success story and therefore from that point of view we are very attached to the fact that the potable water system has been a public service which has been well run. I would therefore ask the Minister, when he exercises his right to reply, because in fact we are going to support the Bill, to provide us with more reasons as why we should support the Bill. What are the considerations which the Government is taking into account and which have lead them to consider that a Joint Venture Company for the potable supply system is a good thing for Gibraltar? Because, Mr Speaker, we are open-minded about it. We have nothing against it, in principle. We were also in favour and we negotiated the GibTel Joint Venture. We are approaching this in the same spirit and

at the same time perhaps it might also give us an indication of what are the considerations that they have been able to put to the workforce in order to carry them along in supporting the Joint Venture. If the Minister can inform us then, not only do we vote in favour, but we will vote in favour enthusiastically.

HON CHIEF MINISTER:

Mr Speaker, let me say that although I would agree with the Member opposite about the history of the operation of the Water Undertaking, as a Public Utility in the days of the City Council, I do not think it necessarily operated as well after its intergration into the Government system as happened indeed in other areas. In fact we have had a situation where, I have no doubt the Honourable Member opposite will recall, they actually set up the Funded Accounts in 1976 and they discovered that all the Municipal Services which had been shown as an Annex to the Estimate of Expenditure between 1968 and 1976 had all under-represented the true economic operations of those Funds. They were running the Government Accounts of the Municipal Undertakings, once the Municipality had disappeared, and it was for that reason that eventually the AACR administration came up with the idea of setting up the Funded Services and created Special Funds for Electricity, Water, Telephone and eventually for Housing. However at the time they did it in 1976 for Electricity, Water and Telephone they had in fact to write-off substantial back-dated losses. This losses only appeared when that write-off happened. We, in fact, reverted the situation when we came into Office and removed from the Consolidated Fund £3½m of unpaid bills in the 1989 Budget as a consequence of going back to consolidating the Accounts into the main body. We feel that a Water Undertaking public or privately owned would operate better than as a Water Department forming part of the Civil Service of Gibraltar and working under Civil Service rules and with Civil Service Accounts. We feel that this is a system which under the Civil Service feel we have difficulty in keeping control over in so far as public expenditure is concerned. There is no particular reason as far as we are concerned why the Water Undertaking as a Public Utility should not be 100% Government owned but we feel it would be better outside the ambit of Public Administration. As indeed happened with the telephones which we removed in May last year. We feel that decisions that managers should take for commercial logic are better dealt with without having to go through the process of Council of Ministers and then as Government expenditure have to be brought to the House and being voted on. I remember perhaps the worst example of that system was in the Telephone Department before we had the Joint Venture with Nynex where we had to take a decision, as Government, on whether expenditure should be allowed to buy a number of fax machines even though the fax machines were being rented or sold at a profit. No business would actually look at whether they should buy a machine which they will then sell in a shop as an item of expenditure. Items of expenditure in commercial terms are the painting of the walls because it is a cost

on the business and the other one is a product that you are selling. So, Mr Speaker, we feel for those reasons that it ought to be outside the Government arena and it is consistent with the policy that we are taking of commercialising what we consider to be trading activities and concentrating the role of the Government on the policy making decisions of politicians in the public area where we think it ought to be. It is perfectly natural that there ought to be a policy making body in areas like Education where there is a matter of political philosophy at stake, if you like, but not in producing water by burning oil or by using electricity and whether it should be a reverse osmosis plant or a desalination plant using evaporation techniques. Because at the end of the day the decision taken by the politician is only to rubber stamp the view of the technical people. So it does make a nonsense of the political decision making and policy making in that area. Given that Lyonnaise approached us and given the fact that they are already well established, not only in France, but in other Countries in the European Community, including the UK where they have bought the Essex Water Company and some other Water Companies so we felt that having them in as partners would bring a level of expertise which in Gibraltar we could never have and would bring us into the ambit of a multi national group operating throughout the Community which would give us valuable contacts. Although we have had offers from UK companies who are particularly interested in developing a connection with French business in order to develop other French contacts with a view to selling Gibraltar as a Finance Centre and in other areas we need to be clear that in the Single Market, post 1992, the trend is going to be that companies are going to be operating throughout the twelve Member States and we feel that there is a strong political advantage provided it is something that at the same time makes economic sense to be in a situation where they have also a presence in Gibraltar and where we therefore have an institutional link with Community wide enterprises. At the same time there may be things about our own experiences here in terms of what we have done with desalination, with water storage and with the water catchments as well as the fact that we have a brackish water supply for sanitary purposes which nobody else has, then those are things that they feel in the group may be valuable to them. The part of the problem in so far as the workforce is concerned was that the people were naturally hesitant to move out of the Government Sector and into a private company. We have however been able by negotiation with the Union to achieve a situation where those who were most strongly opposed will in fact not move, and they are being re-deployed into other jobs that are satisfactory to them in other parts of the Government Service. As Members opposite know, who have had experience of these things, if you have a group of people who are very much against something then they tend to influence the way others feel. However once their worries are overcome then the others, since it is a free choice and nobody is being forced to move against their will, have been able to accept what was on offer from their new employers. In fact the Government has taken a back role and let the employing company do the running.

HON A J CANEPA:

Mr Speaker, setting aside the considerations that he has mentioned regarding the Municipal system of accounting and the Government's system, quite apart from that aspect, the kind of thing that I had in mind when I said that it was a success story was, he will recall that in the early 70's in particular, because water losses were running at around 30%, we used to get people from the Water Authorities in the UK telling us that that was satisfactory because they had water losses of well in excess of 30%. Well we never accepted that and as a result of the efforts made by the technical people employed in the Department over a period of time we were able to reduce those water losses to under 10%. Mr Speaker, I think that is indicative of the success story that I was quoting before and of the care taken by the staff. The desalination aspect was also successful and there was no need to bring tankers from the UK, a terribly high expense. These things were all part and parcel of the reason why we were able to supply water relatively cheaply at a price which the Government even now, three years later, has still been able to maintain. This is the sort of thing that we had in mind. However, as I say we are able to support the Bill and I think the considerations which the Chief Minister has put to us really give us no cause to take a different attitude on this particular utility than what we took with the telephones.

HON G MASCARENHAS:

Mr Speaker, will it be a Joint Venture in the purer sense. Will it be 50-50 or will it be 100% owned. Is it an investment of 100% by Lyonnaise.

HON CHIEF MINISTER:

Mr Speaker, I will let the Hon Minister for Government Services give those details because I have not been dealing with the matter myself. All I can tell the Honourable the Leader of the Opposition is that in fact on the technical side all the people involved are being employed by the new Company and they have been the most enthusiastic supporters of the idea from the beginning. The problem that we had of people that were reluctant to move were on the shop floor.

HON G MASCARENHAS:

Mr Speaker, the question of whether it is 100% venture on the part of the French company or whether it will be jointly owned by the Government and if not what is the cost to the French company? Can the Hon Minister provide us with details.

MR SPEAKER:

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

HON J C PEREZ:

Mr Speaker, I am glad that the AACR is moving from the old Stalin principles to Perestroika in the same way as the rest of Europe. I remember, Mr Speaker, when the Honourable Member opposite, the Father of the House, used to call me a Tupamaro! I can now afford to call him a Stalinist! A lot of the questions and the queries that Honourable Members had have been answered by the Honourable the Chief Minister. I would just like to add that the tremendous scientific backup as a result of the tremendous laboratory facilities which Lyonnaise has in Paris and which has access to EEC funds will be available to Lyonnaise Des Eaux Gibraltar Limited as well. There is also the possibility in the future of using the Lyonnaise links within the European Community for particular projects that might attract EEC funds and which is also an important element in the proposal. But quite apart from that and from what the Honourable the Chief Minister has said, we have found many interesting things particularly in our Joint Venture with Nynex, and one of them is that the relationship between the company and the customer improves tremendously and dramatically, even if the same people are the ones that are moving, once they are in a commercial environment. The concept of the Company being there to give a service to the general public is more entrenched in the commercial environment than it is a public service in the Government hands. We hope that this will also happen in the new Company. For example, how quickly they attend to the problems of breaks in water supply and breaks in brackish water supply to the public and the concept that they are providing a service to the customer and that the person that pays the bills, the customer, can demand a proper service. There has been a tremendous improvement in the telephone service and hopefully there will be improvement in the water service as well. The Honourable Mr Mascarenhas has asked about the shareholding of the company. We shall be taking a third of the shares of the company, Mr Speaker, but the assets will not belong to the company. The assets, ie the reservoirs, the pipes, the Desalination Plants and the buildings will continue to belong to the Government and will be leased to the company. So the Public Utility will always be in the ownership of the Government as such and will give the company a thirty year contract which can then be renewed at the end of the term. Another very important issue, Mr Speaker, which we face and which is another important reason why we should be moving in this way is that we had indications that the PSA/DOE might be commercialising themselves and that therefore the possibility, and I say the possibility, because it depends on what terms we can look at it of having one water system in Gibraltar instead of two, there would be a greater possibility of us taking over the PSA system if we are already commercialised than if we remain in the Public Service. That is why although it is a French company it is most probable that the company that will be taking the shareholding will be Lyonnaise UK because it owns the Essex Water Authority as well as other Water Authorities in UK and that will create a greater sense of comfort for

the Ministry of Defence than if it were a French Company. So, Mr Speaker, although the Shareholders Agreement of the Company has already been signed, there are still Contracts to be signed and Licenses to be signed before all this is given effect and if Honourable Members want more details of that then I shall happily provide them. I am certainly glad that the Honourable the Leader of the Opposition can see his way to supporting the Bill and to supporting the move given that yes it is true that the whole of Gibraltar has prided itself in having a water system like the one we have but in many areas it was in very bad need of investment because we need to change pipes from time to time and we need to invest heavily in certain areas particularly the automation of pumps etc. The experts, the people that Honourable Members opposite used to rely on before, are the ones that will be moving to the new Company so we are not losing any expertise to a third party. We are in fact consolidating our position in a commercial framework with the backup and the experts that have made it possible for the water system to run in Gibraltar as smoothly as it has in the past and which we trust will continue in the future. The other point raised by the Honourable the Leader of the Opposition was what had happened to the workforce and in particular to the section that was rather vociferous against the deal when the majority of the water section were in favour? Well, Mr Speaker, there came a point when the other group of workers, in fact, went to their Union and said "Look we are interested and there are people stopping us from doing so". Eventually what happened, as the Honourable the Chief Minister explained, was that some people gave up their resistance about seven of them decided to move sideways into other Government Departments doing the same work. The other people have agreed to the deal being offered by Lyonnaise and we hope that the effective date will be on the 1st May. However for the next three or four months certainly, the billing and the administration will remain the same until such time as Lyonnaise can open their offices and take over the billing, etc and put into effect the clauses in the contract which we are negotiating at present. I commend the Bill to the House.

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

HON J C PEREZ:

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 BIRTHS AND DEATHS REGISTRATION (AMENDMENT) ORDINANCE, 1991

HON ATTORNEY-GENERAL:

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

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

SECOND READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, most of the Clauses in this Bill merely removes the specific maximum fine provided for offences under the Ordinance and replaces them by reference to the relevant scales contained in the Criminal Procedure (Amendment) Bill, 1991 upon which I addressed the House earlier. However I am sure the House will want me to say something about those clauses in this Bill which are more fundamental. Clause 10 repeals and replaces Section 22 of the Ordinance dealing with the requirement to insert in the Register of Deaths the particulars given in the appropriate Doctor's certificate. The new Section will enable the Registrar to act also upon the Coroner's certificate as well as on a certificate from a Medical Practitioner. Mr Speaker, the next clause, Clause 11 repeals and replaces Section 23 dealing with the requirements concerning those persons who are entitled to give information to the Registrar of Deaths which occur in Gibraltar. The new Subsection 1 clarifies those persons so qualified and the new Subsection 2 clarifies those persons who may have a duty to give a declaration of the particulars required to be registered in respect of a death. Clause 13 merely reflects what in practice are the Registrar's obligations under Section 27 of the Ordinance concerning completion of the Register for the purpose of deeming a death to be fully registered. Clause 14 repeals and replaces Section 29 and clarifies and indeed extends the criminal liability for failure to supply information to the Registrar to those persons having a duty to do so. Clause 15 amends Section 30 which deals with the circumstances in which an inquest is held and a declaration is unnecessary by catering for a request held not only with the jury but also by the Coroner alone. Clause 16 makes a similar amendment to Section 31 dealing with the Coroner's duty to give particulars to the Registrar. Clause 17 amends Section 33 dealing with the Registrar's obligation to give a certificate to a person in charge of a funeral. The amendment caters for cases where only part registration has been effected and where the circumstances of death may but not necessarily must require an inquest to be held. Mr Speaker, Clause 18 similarly amends Section 35 relating to the need to supply to the Minister of Religion conducting a funeral the burial certificate provided by the Coroner and exempt from those provisions burials at the North Front Cemetery. Clause 20, amending Section 37 dealing with the burial certificate to be supplied to the Registrar by Ministers of Religion provides an exemption where the deceased was a member of Her Majesty's Forces. The obligation of the Registrar to enquire into the domicile of deceased persons, Mr Speaker, under Section 24 is removed by the repeal of that Section effected in the final Clause

of this Bill. Mr Speaker, the Bill has been prepared following consideration of representations made by the Registrar relating to specific difficulties which he has encountered in the past and seeks to rectify any possibility of those difficulties reoccurring in the future. 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? If no other Member wishes to speak I will call on the mover to reply.

HON ATTORNEY-GENERAL:

Sir, I am most grateful to the Members of the Opposition for their support and I have nothing further to add.

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

HON ATTORNEY-GENERAL:

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

This was agreed to.

THE PUBLIC FINANCE (CONTROL AND AUDIT) (AMENDMENT) ORDINANCE,
1991

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Public Finance (Control and Audit) 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. Clauses 2 and 4 of this Bill merely seek to correct longstanding textual errors in cross referencing contained in the principal Ordinance. Clause 3 is the principal operative Clause of the Bill and seeks to consolidate the separate and largely duplicating provisions that have been made in the past in defining the revenue Special Funds created under the Ordinance by a special provision within the Ordinance, on the one hand and on the other hand, by His Excellency the Governor and the more general powers conveyed to him under the Ordinance. It is considered appropriate that all such Funds should be treated on a similar footing in future. In so defining the revenue of all these Special Funds, the Clause, as I say, largely consolidates provisions that have been separately made for each type of Fund in the past. The principal material effect of the consolidation is that the Governor will be able to declare any revenue to form the revenue of either type of Fund rather than, as in the past, only those Funds which have been placed under his general powers. Under the proposal, the Governor's powers will relate to all revenue notwithstanding the provisions of other Ordinances. Finally, Sir, the opportunity is also being taken to enable transfers of monies between Funds in order to create more flexibility and scope for efficiency in fund management. 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 LT-COL E M BRITTO:

Mr Speaker, after, I think it is ten Bills which the House has gone through so far today in a spirit of friendly cooperation, if I can call it that, I regret to say that it falls upon me to strike the first note of discord. I have to say straightaway that we have difficulty with this Bill, Mr Speaker, and the explanation that we have heard so far does

not dispel those difficulties. Let me explain in more detail what I mean, Mr Speaker. We have obviously no objections to the amendments to Section 18 and Section 59 in Clauses 2 and 4 of the Bill. Neither, in fact, have we any great difficulty with the spirit of the Bill in trying to clarify the provisions by omitting repetition, as it says in the Explanatory Memorandum and which the Hon the Financial and Development Secretary has already explained. When I first read this Bill, Mr Speaker, I asked myself: "Why do we need this Bill?" And it seemed to me that the necessity of clarifying the provisions by omitting repetition were not enough to warrant the introduction of a Bill in a governmental programme which we are continuously led to understand by Ministers that there is a queue of people knocking on the Attorney-General's door to enact or amend legislation. The key words in the Bill, Mr Speaker, are the first line in the new Section 20 "Notwithstanding the provisions of any other Ordinance", and finally sub-section (e) "any monies transferred to the fund from any other fund". Mr Speaker, we find there is a certain danger inherent in the powers being sought in allowing these transfers in such an openhanded manner as sub-section (e) appears to do. It seems to us, subject to being advised otherwise from the other side of the House, Mr Speaker, that this will allow transfers of money from one fund and this is giving it the best interpretation, Mr Speaker, "the fund" meaning the Special Fund in the introduction to the Bill "from any other fund" meaning any other Special Fund although it does not say Special Fund. But giving it that interpretation for the moment, we find it dangerous that this will allow transfers of money without further authority from one fund to the other fund without taking into account the objectives of the originating fund or the donor fund. For example, Mr Speaker, we could have a situation where money from, say, the Savings Bank or from the Security Fund or even the Social Insurance Fund, to name three at random, could be transferred to, say, the Investment Fund and under the provisions of this Bill could then subsequently be transferred to a Joint Venture Company by this process of moving money around and we do not like that idea at all, Mr Speaker. It could even be, Mr Speaker, and it may already have happened that company tax is being transferred to the Investment Fund and that this could already be the subject of correspondence between the Attorney-General's Chambers and other parties involved' So I ask myself, Mr Speaker, is this the real reason for this Bill? Is it that already money is being transferred and this has been queried by the Principal Auditor? Or has been queried by the Accountant-General and this is why it has been found necessary to introduce this Bill? I look forward to an explanation on these points. Finally, Mr Speaker, if one gives that sub-section an even wider interpretation and interprets "any other fund" to mean even the Consolidated Fund then the mind boggles. So, as I say, we are not happy with the openness of the provisions as they stand, Mr Speaker, and we shall have

no option but to vote against the Bill. All the other amendments are purely of an administrative nature and the Ordinance as it stands now works well although obviously it will be neater if the amendments are passed but the two provisions I have mentioned together with the first line which states "notwithstanding the provisions of any other Ordinance" which widens it further that we cannot accept and we shall be voting against this Bill, Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, the speculations of the Hon Member opposite clearly have nothing to do with anything that there is in this Bill. It has to do with this great capacity that he has to tap into rumours within the echelons of the remaining areas of the Civil Service. Obviously, the Hon Member must have increasing difficulty in those areas because they are getting smaller and smaller with every passing day. He is, of course, wrong in the deduction that he is making because those deductions are based, as I have said, not on what the Bill says, but on what he might or might not have been told by people who might or might not know what they are talking about and what might or might not have been brought to the House and which might or might not have been changed before it got here. What the Bill, in fact, does is that it allows, as he would know if he had done his homework instead of depending on what somebody else has told him, is that it allows the receipt of money, not the payment of money, because this section deals with what constitutes the income of a fund and not the expenditure of a fund. Therefore, Section (c) says that the income of a fund constitutes the money transferred from another fund but, of course, there has to be a decision taken to transfer the money out and the rules of the other funds must enable that transfer to be charged to it. So the explanation that the Hon Member wanted as to whether Section (c) in the new Section 20, in fact, enables us to move money out of the fund then the answer is no, because Section (c) in Section 20 deals with the fact that it is the income of the fund that can be either monies appropriated by the House, Interest, Revenue or monies declared by the Governor, or monies transferred by the fund. So in each case even if the Hon Member did not know what the original Ordinance said, it would follow from a logical reading of what is in front of him that you are saying 'the income of a fund can be (a), (b), (c), (d) or (e)'. So we are talking about five sources of income. At the moment the other four are already provided in Section 20 in two different parts. We are applying the existing four in one part and we are adding, as a new element, the fact that a fund may receive money transferred from another fund provided, of course, the other fund allows the transfer out. That is not here but it follows logically that if the other fund does not allow the transfer out then these funds cannot receive the money. However the power that is being included here is the power to

consider the revenue of a fund by one of five things, either money appropriated by the House, either the investment income of the assets of that fund or monies that are revenue from an undertaking which is covered by that fund or money declared by the Governor to form part of the fund or (e) money that has been transferred because it is surplus to another fund and we want to shift it to a fund where we think it can be better employed. As I say, the receipt of the money is a new thing and therefore the other speculative elements that the Hon Member raised we may want to do or we may not want to do in the future but we are certainly not doing it here. He will have to wait for that.

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I think much of the grounds raised by the Hon Colonel Britto has been largely covered by the Chief Minister, Mr Speaker. If I can just add, by way of further comment, that certainly the interpretation that I have received of "a fund", as defined in the Bill, is that it relates purely to the Special Funds that are covered in the Bill. The reference to fund transfers therefore relates only to transfers between Special Funds. What we have in mind is that there may be circumstances in which the financial needs of funds do.....

HON LT-COL E M BRITTO:

If the Hon Member will give way. May I suggest, Mr Speaker, to the Hon Member that in order to make that absolutely clear that an amendment should be moved at the Committee Stage specifying "any other Special Fund", to avoid any possible misunderstanding at any time in the future.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I am quite happy to do that, Sir, at the Committee Stage of the Bill. The purpose of transferring funds is purely to reflect the situation where the financial needs of a particular fund may change from time and it may be more efficient in terms of managing funds as a whole to actually transfer the money from one to another. It is purely the Special Funds that are reflected in that objective. With that, Sir, I have nothing further to add.

HON A J CANEPA:

Mr Speaker, at this stage we will abstain and then in the light of what happens at the Committee Stage we can then perhaps vote in favour when the Bill comes out of Committee and we take the Third Reading.

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 Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

THE INCOME TAX (AMENDMENT) ORDINANCE, 1991

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

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

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. This Bill deals primarily with the Government's concern to overhaul Development Aid provisions hitherto contained in the Development Aid Ordinance and to specify that overhaul in a form of rules to be issued in accordance with powers now-existent in the Income Tax Ordinance. The purpose behind Clause 2 of the Bill is to provide the continuing tax relief on benefits in kind derived from the residential occupation of premises constructed under the Development Aid Licence. It also provides transitional arrangements in this respect between licences issued under the existing Ordinance and those from the arrangements in the rules. With your indulgence, Sir, however I will just mention, in the light of further consideration, that it has come to be seen that this provision or tax relief has become somewhat anachronistic and the House will be aware that I have already given notice of the intention to omit this provision entirely during the Committee Stage. Clause 3 is only partly related to the main purpose of the Bill and deals with Section 40 of the Income Tax Ordinance which is concerned with withholding tax arrangements. The view is taken that the discretionary powers available to the Commissioner of Income Tax, under that Section, as to when withholding provisions are imposed are primarily concerned with matters of fiscal policy and therefore it is more appropriate for the Financial and Development Secretary to exercise those powers albeit taking into account the advice of the Commissioner. In Clause 4 provision is made in Subclauses 1 and 2 to relate the benefits available under the Imports and Exports Ordinance and the Trade Licensing Ordinance respectively to the rules now to be made under the Income Tax Ordinance rather than to the Development Aid Ordinance. Subclause 3(a) of Clause 4 essentially repeats the wording in the existing Income Tax Ordinance with regards to discretionary powers to grant rating relief. However (b) of this Subclause has been added to provide for rating relief to continue to be given in respect of projects that are subject to Development Aid Licences. Subclause 4 repeals the Development Aid Ordinance in its entirety. Subclause 5 deals with transitional arrangements and seeks to preserve entitlement to benefits for existing licence holders. The point has been made to me that in (b) of that Subclause, the reference to Licensees is potentially restrictive where the benefit of Development

Aid as regards rating, in particular, is received not by the licensee himself, but by the occupier. This is not the intention and I am satisfied that sufficient powers are available under Subclause 3 of this Clause to achieve the desired effects of granting continuing relief to those people. Nevertheless to provide comfort to occupiers who are the beneficiaries from rating relief derived from the existing Development Aid Licence I will be proposing an amendment at Committee Stage to clarify the matter. Subclause 6 simply provides for a merging of registration in respect of Development Aid Licences derived both from the Development Aid Ordinance hitherto and under the proposed rules henceforth. Clearly Sir, Development Aid continues to be an important element in the Government's policy for generating development and economic activity in Gibraltar. It is Government's view that the move towards managing the licensing process through rules which can be kept speedily and regularly updated to meet the changing circumstances of Gibraltar will help to ensure and enhance the effectiveness of the incentives that Development Aid provides. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

Mr Speaker, we have no difficulty in supporting, in principle, the incorporation of the Development Aid Ordinance into the Income Tax Ordinance because, in fact, over the years the Ordinance has had to work naturally very closely with the Income Tax Ordinance so whether it is a separate piece of legislation or continue to be embodied in the actual Income Tax Ordinance makes no odds because the rules will deal accordingly with matter. Because I saw that the Bill was down for Committee Stage at this earlier part of the meeting I phoned the Financial and Development Secretary last week, after considering the Bill carefully, and put to him a number of points which I had and to which I sought clarification. Some of them had not been taken care of and I am not sure whether the Bill as it stands takes care of these points which I am going to mention in a moment. By putting these points to the Financial and Development Secretary then, I was giving him an opportunity to consider them and bring any amending legislation that might be necessary at this stage. The three points that I was making and which are really a matter for the political side of the Government are as follows. First of all I am concerned as to whether housing projects will continue to merit consideration for a Development Aid Licence to be granted in that the concession which is made in respect of payment of rates whereby there is a ten year scale before full rates are paid and which is an important incentive in the package of home ownership. This was something that we introduced and which the present Government has continued. Mr Speaker, to have to pay full rates from the word go together with

a hefty mortgage is a very serious burden and therefore if the payment of rates is scaled at intervals of 10% over a ten year period that is a very very considerable benefit to the owner-occupier and I would want to know whether it is still the policy of the Government to continue that in future. It maybe that I am not reading the Bill properly but I notice that from the first day of July 1991, the provisions of the Ordinance shall cease to have effect in respect of Section 15(b) to 15(e), but I do note as the Financial and Development Secretary has said that in their entirety the provisions of Section 40 are being reproduced in Clause 4(3). If that is the policy of the Government then the Government can lay down criteria so that the Financial and Development Secretary will exercise these powers in accordance with their guidance. So I would want an answer on that point. Also, Mr Speaker, what is the position therefore with present owner-occupiers of which I am one and therefore I should declare an interest in that I am benefitting from this provision together with a few hundred others thankfully now in Gibraltar. Two hundred or so in Vineyards and here and there owner-occupiers are benefitting from this provision I would therefore assume that this Bill, as drafted, is providing a safeguard for these people, in other words, these acquired rights I would assume are being maintained? Thirdly what is the position for those housing projects currently under construction which have already been the subject of a Development Aid Licence granted to the developer and therefore will in due course benefit the purchasers, the owner-occupiers, in a year's or two year's time. Will they also benefit from this important rating relief? Mr Speaker, if those questions can be answered satisfactorily then we have no difficulty in supporting the Bill because all that we are seeing really is streamlining and there is no departure, in principle, from matters which we have given a great deal of importance to in the past.

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I am pleased to answer in the affirmative Mr Speaker, to all three of the questions raised by the Leader of the Opposition. It is Government's intention that the advantage of rate relief attracted by housing projects constructed with Development Aid will continue. It is also intended that existing relief owner-occupiers are getting at the moment that will continue on in its natural course through the scale that has been set in the past and thirdly it is intended that housing development projects that are currently under construction with the benefit of Development Aid Licence will also attract that rating relief. I think as I have mentioned in my opening speech, Mr Speaker, that the proposed amendments that have been tabled to Members to the final Clause of the Bill, will make that position clear.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

THE IMPORTS AND EXPORTS (AMENDMENT) ORDINANCE, 1991

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Imports and Exports 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 greater part of this Bill is taken up with attaching to the standard scale of fines debated by the House earlier today the many and varying provisions in the Ordinance for fines committed against the provisions of the Ordinance. The fine levels in the Ordinance are considerably out of date and the imposed attachment to the standard scale reflect a thorough review in the light of modern circumstances. In general they represent increases of between 2 and 5 fold. In addition the opportunity is taken to amend those provisions of the Ordinance dealing with the prohibition of the importation or exportation of certain drugs to provide for life imprisonment for offences in connection with more serious drugs defined as Class A in the provisions of the Drugs Misuse Ordinance. This brings our penalty regime in line with that of the United Kingdom. Clause 16 of the Bill contains a tidying measure. The original form of Section 64 of the Principal Ordinance is rather ambiguous in terms of treatment of fuel and oil taken on board for the purposes of aircraft or ships travelling outside Gibraltar. The proposed revision to Section 64 makes it clear that all such fuel and oil to both aircraft or ships is intended to be exempted from duty. Finally, Clause 14 of the Bill in conjunction with Clause 33 gives effect to the Government's policy that levels of charges and taxes should be established by Regulation and make provision for the level of duties in respect of the Ordinance to be established by Regulation made by the Governor subject to there being laid before the House at the meeting following the Regulations having been made and published in the Gazette. Clause 6, provides that the Governor may by Notice make specified points in Gibraltar through

which goods maybe imported other than those that are already specified in Section 20 of the Principal Ordinance. Clearly in terms of the changing face of Gibraltar and its infrastructure some changes in this respect are likely to be called for over the coming years and the need for flexibility in this respect will be important. Sir, there being no other points of significance to draw to the Members attention 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, the Opposition will be abstaining on the Bill, simply because of the Government's declared principle of governing by Regulation and of taking away powers from the House of Assembly. So purely on the strength of Clauses 14 and 33 which is to what we object we shall be abstaining on the Bill as a whole. We feel there is need for the rest of it but we cannot support it because of what I have just stated. Equally we have some slight reservation about the increase to life imprisonment in relation to offences under Class A drugs, but we are glad to see that this in line with UK policy. In fact, Mr Speaker, this was one of the things that we wanted clarification on. We assume that Clause 6 is brought about because of the development of the New Harbours Complex and I presume does not apply to anywhere else? Perhaps the Hon Mover can clarify this? Could he also, Mr Speaker, clarify, just to make it absolutely certain, that we are talking about importation only and not exportation as well, in allowing all other points to be nominated by Governor's Notice.

HON ATTORNEY-GENERAL:

Mr Speaker, if I can just deal very quickly with the point of the imposition of life imprisonment. This is, of course, only for Class A drugs of which happily we have very few of in Gibraltar. Although I must say that the incidencies of Class A drugs has unhappily increased to some extent. However, nonetheless there has been an increase in cases involving Class A drugs in the last two or three years and I have not made a secret of the fact, and I share Government's view entirely, that Gibraltar should be free of people who import drugs and who are in possession of drugs especially in the most serious cases involving possession with intent to supply. The Ordinance does not interfere with Class B drugs, Mr Speaker, such as cannabis or cannabis resin which is the type of drug we are principally mostly concerned about in Gibraltar and of course it will be open to the Court when convicting a person of an offence involving Class A drugs, to which the Ordinance seeks to impose a maximum penalty of life imprisonment, to impose any lesser sentence it considers appropriate. I anticipate Mr Speaker, that it would be

very unlikely that the maximum sentence of life imprisonment will be imposed unless it is an extremely serious case or unless it is a case which involves an offender with a number of previous convictions of similar or identical offences. In some cases, of course, Mr Speaker, in some Countries for Class A drugs there is a mandatory sentence of death. We have not thought about re-imposing that yet in Gibraltar and I think I would have constitutional problems in any event if I endeavoured to do so. This however does reflect Government policy and it does reflect the policy of the Law Enforcement Officers of which I consider myself one, Mr Speaker, in seeking to alter the Ordinance to that effect.

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I recognise Honourable Members opposite decision to abstain. If I can just deal with the points that have been raised. The Honourable Member is correct in saying that the principle development in connection with the points of importation is the New Harbour's Complex. However as Gibraltar develops in the future there may be a need for others. I can also confirm Sir that in connection with Section 20 we are referring only to importation. I now commend the Bill to the House.

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

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J L Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon K W Harris
The Hon 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 Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

THE COMPANIES (AMENDMENT) ORDINANCE, 1991

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Mr Speaker 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. Again, Mr Speaker, the greater part of this Bill is concerned with linking the levels of fines provided for in the Ordinance to the standard scales which was the subject of debate earlier today. Since I think the principle is clear I will concentrate in presenting the Bill to the House on the other matters contained within the Bill. However I will point out that the level of increase in fines is generally of the order of tenfold, reflecting the extent which fine levels have become out of date, it indicates very well the importance of updating fine levels on a regular basis. Clause 14A deletes reference to Auditors exempted from registration. This reference is now redundant following the restructuring of the Orders Registration process which was approved by the House this last sitting. Clause 15 deals with the circumstances provided for under the Ordinance by which the Courts may appoint an individual to act as the Official Receiver for the purposes of winding up of a specific company. This Clause extends the provisions relating to such an appointment to the effect that the individual must provide proper security for the performance of his duties before he commences so to act and also provides that due and public notice shall be given of the fact of such an appointment. This tidies up the provision relating to such appointments and brings them more into line with the requirements relating to the appointment of the Official Receiver himself. Clause 17 updates to £1,000 the level of salaries or wages that stand to be given priority in the event of the winding up for each individual. Provision is made in Clause 20 for searches of the Company Registry by Government Departments not to be the subject of charge. Very many searches are undertaken by Government Departments particularly the Income Tax Department for a variety of different reasons and current practices make those accounting procedures in respect of those charges of no practical effect or gain. It is therefore proposed to remove the need. Clauses 22B and 23 are further in a series of measures which Government has already and will continue to bring forward reflecting the move towards greater intergration of financial services in Europe. In this case the proposed amendments provide that a prospectus which meets the requirements of other Member States maybe registered in Gibraltar for the issuing,

circulation or distribution of shares or debentures in the company registered outside Gibraltar without detailed compliance with their own information requirements. This move will assist in removing some of the procedural barriers which discourage companies structuring across European borders. The omission of in Clause 26 enables Orders made by the Governor under the provisions of Section 313 of the Ordinance or to tables, forms and fees relating to the Ordinance to have immediate effect without requirement for subsequent approval by resolution of the House. However any such amendment in tables, forms or fees shall continue to be published in the Gazette. Finally the proposed amendment to Section 10 of the Ordinance seeks to avoid any doubt as to the powers an inspectorate appointed by the Governor to examine the affairs of the company in relation to his ability to require access to all information necessary for his inspection including information contained within a bank account. This has been a matter for some dispute in the past. It is clearly important in the normally serious circumstances in which an inspector is appointed that such access should be available. Sir, all of the measures including those related to fines are designed to improve the speed and efficiency of operations in company related matters in Gibraltar and I commend the Bill to the House.

MR SPEAKER:

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

HON M K FEATHERSTONE:

Yes Sir, Clause 15 where a person is appointed under Section 3 to be an Official Receiver, it is presumed that the security he gives will be liable to the Courts. Clause 19 is a very swingeing increase from £100 to £5,000, this is more than the normal ten times that the Attorney-General has mentioned. We are very pleased to see that under Clause 20 the Attorney-General's Department will no longer have to pay for searches. We think this is an anomaly that should have been put right some time ago. We take the point in Clause 27 that banks will no longer be able to plead secrecy when they are required to provide information about the Accounts of certain of their people. This will help in the situation where there is a suspicion of money laundering. Basically we have no objections to the Bill and we will be voting in favour.

HON ATTORNEY-GENERAL:

Mr Speaker, if I can just raise purely for the purpose of drawing attention to the fact that there is a very minor error in Clause 27 of the Bill. The Clause seeks to amend Schedule 10 and begins "Section 10 of the Principle Ordinance is amended". It should of course read "Schedule 10 of the Principle Ordinance is amended", and perhaps I can invite the Honourable the Financial and Development Secretary to move that necessarily minor amendment when the Bill goes into Committee Stage.

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I thank the Honourable Members opposite for their generous support to this Bill. There is one point to pick up and that is to confirm the security of the individual referred to in that particular Clause is indeed liable to the Courts.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

THE PETROLEUM (AMENDMENT) ORDINANCE, 1991

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Petroleum 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. Spillage and leakage of oil related products is one of the most serious of modern day hazards to the health of our environment. As well as substantially increasing the fines relating to such offences by reference to the standard scale debated by the House earlier today, provision is made for offenders to be required to set about remedying the effects of such spillage or leakage. This is provided for in the proposed new Subsections 2 through to 6 of the existing Section 9 of the Ordinance. In the additional Subsection 7 to that Section provision is made for work to be carried out by the Government in advance of the conviction where time is of the essence and then for the Government to subsequently recover the cost of such work from any convicted party. Sir, I am sure that all Members will share concern both to discourage such incidents and to ensure that rapid and effective action is taken when they do occur. I commend the Bill to the House.

MR SPEAKER:

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

HON M K FEATHERSTONE:

Yes Sir, we fully support this Bill. We hope that the Regulation as such also includes the recovery from the guilty party of consequential damage. I remember some years ago there was a very big spill of oil around the Calpe Rowing Club and although the guilty party did repair a certain amount of the damage, a number of boats were severely polluted and I do not think they got any retribution whatsoever for cleaning up their boats etc. So I hope that any consequential damage will also be included. Thank you.

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I thank the Honourable Members opposite. There is a call for this Bill Mr Speaker and I take note of the point that has been made by the Honourable Mr Featherstone, certainly there is no interest in making the Regulations other than as tough as they need to be to enforce the effects of the Bill. It will certainly be taken into account in forming Regulations.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

THE LICENSING AND FEES (AMENDMENT) ORDINANCE, 1991

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Licensing and Fees 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. In essence the rather extensive framework of amendments contained in this Bill is for two main

purposes. Firstly provisions for fines contained in the Ordinance are again related to standard scales debated by the House earlier today. Secondly it is proposed to delete references to specific fee values contained in Schedules and to rely on the powers that already exist in the Ordinance for the Government to determine and to structure an amount of fees and charges by a way of order. The proposal as regards the maintenance of the level of fines has already been considered by the House at length and I will not dwell on it again in the specific context of this Bill. The intention of leaving Licensing and Fees Charge levels to be specified by Order is in accordance to what is now Government's stated policy of using Subsidiary Legislation in conjunction with a clear Statutory framework in order to provide the flexibility to ensure the level of charges are up to date and reflect one's circumstances. The key Clause in the Bill in achieving this effect are Clauses 11 and 16 which amends Section 40 and 52 of the Principal Ordinance respectively together with the existing Section 51 of the Principal Ordinance. The consolidated effect of these amendments and existing provisions is to convey the power to the Governor to amend by Order the framework of the itemisation of the charge provided for in the Ordinance, subject to the Order being subsequently laid before the House. As to the actual value of each fee or charge, as opposed to the framework of charges, the effect of the proposed amendment is that these may be specified by the Governor by rules subject to the usual gazetting requirements. Finally there are I am afraid two typographical errors that I propose to correct at the Committee Stage of the Bill but since they may affect Honourable Member's consideration I will mention them now. In Clause 17A of the Bill the £ sign should be deleted. In Clause 17K a reference to Part 2 should be Item 11. With that Sir, I simply 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:

Sir, we had a piece of legislation, the Licensing and Fees Amendment Ordinance, which required under Section 40 the prior approval of the House for certain charges or fees to be made. That is now going to be done away with. Obviously it is cumbersome and it takes time for that to be done because resolutions have to be brought to the House. If the House were to meet more often than it is doing then of course from that point of view life would be made easier. But to depart from that into a situation in which the amendments Section 52, the amendments of the Schedules, are now going to be carried out by Regulations, means that we do not have an opportunity until the passage of time. It could well be a number of months before we are able to make our views known.

Not only that but when we just see Regulations or an Order in the Gazette we are not able to know what is in the thinking, what is in the mind, of the Government by way of justification and in the same way as the Government can convince us of the reason behind a particular measure we can also occasionally influence Government's thinking if we get an opportunity to comment on the levying of such charges and fees prior to their becoming law. This is the principle that we have been consistently objecting to during the last three years, Mr Speaker, and therefore for those reasons we do not feel that we can support this Bill and we will be abstaining.

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I will simply note the position of the Opposition to abstain on this Sir. As I say the reference to the provisions to change fees by Regulation is a matter of policy for the Government. What I would like to point to Sir is that if one looks at the existing provisions in the Licensing and Fees Ordinance some of those fees and charges really are out-of-date and in many ways reflects the need for speed in amendments. I commend the Bill to the House.

Mr Speaker than 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 Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

THE STAMP DUTIES ORDINANCE 1991

THE HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to provide for the levying of stamp duties in certain cases 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. Stamp Duty is a useful source of revenue to the Government and yielded some £1.8m in 1989/90. With the growth in financial activity in Gibraltar it may yet assume even greater significance in the coming years. However even a cursory glance at our existing Ordinance is enough to see that it is out of date in both the level of charges and the structure of charges. Many of the documents referred to have simply ceased to be relevant whilst changes in the structure of business and legal documentation over the years are inadequately reflected in the itemisation of duties payable. In some cases the level of charge have not been increased for thirty years. This position is only protected in some instances by the value related nature of the charge scale. In the context of its growing importance as a Finance Centre it is important that Gibraltar should have a structure of charges relating to business activity and that it is up to date and is capable of speedy adaptation in the light of developments in the style and format of international business. This Bill seeks to introduce a new Stamp Duty Ordinance which enables the levying of duty to this effect. Clauses 3 through to 22 deal with basic procedural matters concerning the method of imposition of duty. These largely repeat provisions in the existing Stamp Duty Ordinance. In keeping again with Government policy on these matters, Clause 23 enables the Governor to make Regulations which will determine the structure and quantity of duty payable. Government intends that with the introduction of subsequent adaptation of these Regulations it will be possible to ensure the objective and realistic set of duties in the light of modern circumstances achieved. Clause 24 repeals the old Stamp Duties Ordinance and Clause 25 provides for transitional arrangements upon the Bill coming into effect which will be at the time appointed by His Excellency 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 of the Bill?

HON A J CANEPA:

Mr Speaker, on this Bill notwithstanding the objections that we have, in principle, we think that the practical considerations are really overwhelming in this case. It is a cumbersome piece of legislation which has many Schedules and therefore we see the sense, in practical terms, if we are to be a modern Financial Centre for it to be done by Regulation. Therefore, Mr Speaker, we can stretch the point and go somewhat further. We would like to be told, when the Honourable Member exercises his right to reply, what degree of consultation has there been. For instance, has the Gibraltar Lawyers Association been consulted in connection with this Legislation? The only other point that I feel one should comment on, Sir, is one where, unless I am mistaken, there seems to be a new and almost alien Clause to Gibraltar and that is Clause 21, where the Governor in his discretion may remit or mitigate any final penalty and reward any person who may give information of any offence or assist in the recovery of any fine or penalty. This provision for reward, Mr Speaker, as far as I am aware does not exist anywhere else. Perhaps we are breaking new ground and perhaps we might invite some comments from the Attorney-General as to why he feels that this is called for.

HON ATTORNEY-GENERAL:

Mr Speaker, I cannot say personally why the Government felt it appropriate to include such a position in this Ordinance. What I can say is that it has existed in the United Kingdom, certainly in the area in which I formerly practiced since 1952. The question of power of the Governor to remit Stamp Duty in his discretion is again something which exists in the United Kingdom Mr Speaker, and that power is vested in the Area Controllers of Stamps, as they are called, who have obviously in each major town or city in the UK power of remission in certain circumstances.

HON A J CANEPA:

No problem about remission, Mr Speaker. If the Honourable Attorney-General gives way, may I invite him to look at the rest of the Clause and it is the fact that the Governor may reward any person who gives information. A "chivato" in the Latin society is something to be scorned.

HON ATTORNEY-GENERAL:

Mr Speaker, I think sometime last year I had the honour to present a Bill which effected previous amendments to the Criminal Procedure Ordinance and I recall that those amendments empowered the Magistrates Court and the Supreme Court to give rewards to certain people who were instrumental in rendering assistance which enabled justice to be done and offenders to be brought to justice and it seems to me clear that Section 20 of Clause 21 of this Bill seeks to vest in the Governor a similar type of discretionary power.

HON A J CANEPA:

Again if I may, Mr Speaker. I think there is a difference surely because, I think that the other Legislation had to do with drug trafficking something which is a very sensitive matter. Perhaps, Mr Speaker, between now and when we get into Committee the Government may give some information on this peculiar matter and perhaps there are reasons to justify it.

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I am happy to assure the Members that we will certainly look at that at Committee Stage, Sir. I thank the Honourable Members opposite for their general support for this Ordinance. Whilst there has not been any specific consultation at this stage since the Bill is largely an enabling one but when the Regulations are drawn up as to the individual duty levels then certainly there will be a degree of consultation with the Finance Centre in particular given the importance of the level of charges.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

THE SUPPLEMENTARY APPROPRIATION (1987/88) ORDINANCE, 1991

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 31st day of March, 1988, be read a first time.

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

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. I think Members will be aware of the purposes behind this Bill which is to give formal sanction to expenditure incurred without proper authority in 1987/88,

and which was therefore commented upon by the Principal Auditor in his Report tabled in the House in July 1989 on the 1987/88 Accounts. Since that Report has been laid before the House and in keeping with normal practice, I do not intend to comment in detail seeing that this has already been commented upon by the Principal Auditor. Nevertheless I am concerned to see the regularity with which we appear to end up with excessive expenditure on certain Heads at the end of each Financial Year. A further Bill before the House today deals with excesses in 1988/89 and I am aware that similar problems arose in 1989/90. Controlling Officers should not be allowed to become complacent about the need for rigorous financial control and I took steps during the course of 1990 to reinforce their awareness to the seriousness with which I regard unauthorised expenditure and the need for them personally to maintain a regular and close watch on the financial performance of their Departments. Such incidences really should be the exception rather than the fairly common practice which we appear to have been used to for too many years. With that cautionary words, Mr Speaker, and with some regret 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? If no Member wishes to speak I will ask on the Mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have nothing further to add, 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 this meeting.

This was agreed to.

THE SUPPLEMENTARY APPROPRIATION (1988/89) ORDINANCE, 1991

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to appropriate further sums of money to the service of the year ending with the 31st day of March, 1989, be read a first time.

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

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. I have nothing to add to the comments that I made in respect of the previous Bill, Mr Speaker, and therefore simply 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? If no other Member wishes to speak I will call on the mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have nothing further to add 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 this meeting.

This was agreed to.

THE SUPPLEMENTARY APPROPRIATION (1990/91) ORDINANCE, 1991

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, 1991, 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 this case Mr Speaker, we are dealing with sums to be appropriated in respect of the current Financial Year. The Bill proposes the appropriation a further £1,178,000 in the case of the Consolidated Fund and £1,155,300 in the case of the Improvement and Development Fund. Details of the requirements that have given rise to the need for these further appropriations are set out in the Schedule to the Bill in parts 1 and 2 respectively. In keeping with established practice

my colleagues on this side of the House will be answering any points that arise in any of the details including the Schedules. Sir, I commend the Bill to the House.

MR SPEAKER:

Before I put the question does any Hon member wish to speak on the general principles and merits of the Bill? If no Member wishes to speak I will call on the mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have nothing further to add, 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 this 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 Criminal Procedure (Amendment) Bill, 1991; The Financial Services Commission (Amendment) Bill, 1991; The Public Health (Amendment) Bill, 1991; The Public Finance (Control and Audit) (Amendment) Bill, 1991; The Income Tax (Amendment) Bill, 1991; The Supplementary Appropriation (1987/88) Bill, 1991; The Supplementary Appropriation (1988/89) 1991, and The Supplementary Appropriation (1990/91) Bill, 1991.

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

THE CRIMINAL PROCEDURE (AMENDMENT) BILL, 1991

Clauses 1 to 13 were agreed to and stood part of the Bill.

Clause 14 to 15

HON ATTORNEY-GENERAL:

Mr Chairman, we can perhaps take Clause 14 and 15 together if the Opposition agrees and can I move that in each Clause the figure "3" where it follows the word "level" is omitted and replaced by the figure "4". That is in both Clauses 14 and 15, Mr Chairman.

Clauses 14 and 15, as amended, was agreed to and stood part of the Bill.

Clauses 16 to 18 were agreed to and stood part of the Bill.

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

THE FINANCIAL SERVICES COMMISSION (AMENDMENT) BILL, 1991

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

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

THE PUBLIC HEALTH (AMENDMENT) BILL, 1991

HON J C PEREZ:

Mr Chairman, there was a paper circulated this morning with several amendments which are really consequential to the main Clause in the Ordinance in respect of contracting. It is just that they are really clarifying certain descriptions of what a supply of salt water means, so that when it is contracted there is no misinterpretation, but it is clearcut what it is the responsibilities that are being contracted. If Honourable Members agree and if you agree, Mr Chairman, could we take the amendments as read?

MR SPEAKER:

The House agrees so the amendments will be taken as read.

Clauses 1 to 21 were agreed to and stood part of the Bill.

Clause 22, as amended, was agreed to and stood part of the Bill.

Clauses 23 to 27 were agreed to and stood part of the Bill.

Clauses 28 to 31, as amended, were agreed to and stood part of the Bill.

Clauses 32 to 45 were agreed to and stood part of the Bill.

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

THE PUBLIC FINANCE (CONTROL AND AUDIT) (AMENDMENT) BILL, 1991

Clause 1

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I gave notice earlier today of the amendment to Clause 1. I have discovered that the Bill lacks in

its current form a proper commencement Clause. I have given notice of the details of that commencement Clause in the usual form. With Members indulgence I will not read it out.

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

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

Clause 3

HON LT-COL E M BRITTO:

We will be abstaining on Clause 3. The Hon the Financial and Development Secretary indicated that he would be willing to amend subsection (e) of Clause 3.

HON CHIEF MINISTER:

It was just the word "special" before the word "fund", is that correct?

HON LT-COL E M BRITTO:

Yes. To insert the word "special" between the words "other" and "fund".

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

On a vote being taken on Clause 3, as amended, 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

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

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

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

THE INCOME TAX (AMENDMENT) BILL, 1991

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

Clause 2

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Again Mr Chairman, I gave notice earlier today that I proposed to amend Clause 2 by omitting everything after the word "omitting" and substituting therefor the words "the colon at the end of sub-section (1)(f), together with proviso thereto and substituting therefor a semi-colon". The effect of this, as I say, is to delete the previous proviso that was there that provided for development aid-related projects or beneficial occupation of that and to gain tax relief. This particular form of relief is considered to be an anachronistic in the modern circumstances and we propose to delete it.

Clause 2, as amended, was agreed to and stood part of the Bill.

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

Clause 4

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Again Mr Chairman, an amendment of this Clause is proposed. In sub-clause (5)(b) by omitting the words "by the Licensee shall be equivalent in amount to that which he would have received by virtue of the operation of those provisions of sections 15B to 15H inclusive of the Development Aid Ordinance applicable to his licence and" and substituting therefor the words "shall be equivalent in amount to that which would have been received by virtue of the operation of those provisions of sections 15B to 15H inclusive of the Development Aid Ordinance applicable to that licence and". The main impact of this is to take out the reference of licensee and this achieves the objective that we discussed earlier in the second reading of this Bill by providing for continuing relief to existing beneficiaries from the rating relief in domestic properties.

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

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

THE SUPPLEMENTARY APPROPRIATION (1987/88) BILL, 1991

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

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

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

THE SUPPLEMENTARY APPROPRIATION (1988/89) BILL, 1991

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

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

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

THE SUPPLEMENTARY APPROPRIATION (1990/91) BILL, 1991

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

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

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

THIRD READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to report that The Criminal Procedure (Amendment) Bill, 1991, with amendments; The Financial Services Commission (Amendment) Bill, 1991; The Public Health (Amendment) Bill, 1991, with amendments; The Public Finance (Control and Audit) (Amendment) Bill, 1991, with amendments; The Income Tax (Amendment) Bill, 1991, with amendments; The Supplementary Appropriation (1987/88) Bill, 1991; The Supplementary Appropriation (1988/89) Bill, 1991; and The Supplementary Appropriation (1990/91) Bill, 1991, 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 Criminal Procedure (Amendment) Bill, 1991; The Financial Services Commission (Amendment) Bill, 1991; The Public Health (Amendment) Bill, 1991; The Income Tax (Amendment) Bill, 1991; The Supplementary Appropriation (1987/88) Bill, 1991; The Supplementary Appropriation (1988/89) Bill, 1991; The Supplementary Appropriation (1990/91) Bill, 1991 the question was resolved in the affirmative.

On a vote being taken on The Public Finance (Control and Audit) (Amendment) Bill, 1991, 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

MR SPEAKER:

We will now recess until tomorrow morning at 10.30.

The House recessed at 8.00 pm.

The House resumed at 10.40 am.

PRIVATE MEMBERS' MOTIONS

HON A J CANEPA:

I have the honour to move the motion standing in my name which reads as follows:

"This House:

- (1) reiterates the views expressed about the Gibraltar airport by the previous House in resolutions from March 1984 to December 1987;
- (2) reiterates the view that Gibraltar should be included in EEC legislation on air liberalisation as a regional British airport without preconditions, and that this objective should continue to be pursued;
- (3) considers that the 1987 Anglo-Spanish Airport Agreement is capable of being construed as giving Spain the right to participate in deciding on the use of Gibraltar's airport, and has been so construed by Spain;
- (4) considers therefore that the terms of the 1987 Anglo-Spanish Airport Agreement, including the issue of sovereignty over the isthmus, are in conflict with the views adopted by this House and thus unacceptable".

Mr Speaker, this is the first occasion that this House is actually going to debate the 1987 Airport Agreement. The last House of Assembly debated the matter in December, 1987 just over a week or so after the Agreement had been concluded by the United Kingdom and Spain in London. On that occasion the House did not formally reject the Agreement but rather it was decided that it was a matter to be considered by the next House of Assembly, namely, this House of Assembly. Although I must say that I do agree with the Chief Minister when as Leader of the Opposition, in summing up the debate he said and I quote from page 186 of the Hansard of that debate "so in fact we are coming as close to rejecting it as we can without spelling it out. That is our estimation of where we have been able to reach a joint position". Certainly what was in mind at the time coincided with that view because without actually rejecting the agreement formally the then House of Assembly, by implication, did so. The message that went out was certainly that the House could not conceive of a situation in which it would enact the legislation that was necessary to give effect to the agreement. Since then, Mr Speaker, a General Election has been held and I think that it is fair to say that the Airport Agreement itself did not figure in the campaign to the same extent as the Brussels Agreement because there was a great deal of debate during the campaign about the Brussels Agreement. The Airport Agreement only figured as a consequence of the Brussels Agreement. What I am trying to say, Mr Speaker, is that the merits of the Airport Agreement were not discussed in any great length during the Election Campaign. The Government, the GSLP, have understandably since then consistently claimed that they

obtained a mandate for their stand on the Brussels Agreement. We have since then, Mr Speaker, effectively distanced ourselves from the Airport Agreement. That process begun the day after the General Election and, I think, it is appropriate for me to reveal now that the very next day, on the 25th March 1988, I received a letter from the then Secretary of State for Foreign Affairs, Sir Geoffrey Howe, in which he said and I quote "I hope that I can count on you to speak out in favour of a cool and dispassionate analysis of the advantages and disadvantages of the Agreement". The historical record shows that I have not, in fact, done so. What is more on the arrival of His Excellency the Governor in 1989 I stated here in this House during the course of my welcoming speech that the Agreement was unacceptable to my Party and subsequently having announced also that we were carrying out a review of foreign policy in February last year, during the course of a formal statement of foreign policy where we adjusted our Party's stand point on the Brussels Agreement, in particular with regard to the whole question that involves sovereignty and we took the opportunity to formally reject the Airport Agreement. There has been considerable debate, Mr Speaker, in Gibraltar and in the Campo Area about the Agreement since then and in fact right now there are commercial interests who are in the process of discussing it yet again, because it is not the first time that since the Agreement was signed that the Chamber of Commerce and Apymel have discussed it, as is their right, and perfectly proper, in a democratic society so to do. Therefore one can say that particularly in the last six to nine months there has been detailed consideration and analysis of the contents and the terms of the Airport Agreement. I suppose that consideration of the Agreement, from a political point of view, ended with the recent "Live from the Rock" programme broadcast by GBC when Campo Area politicians and the Chief Minister, myself and the recently resigned Member, Mr Peter Montegriffo, debated the matter publicly on television. Therefore from the Opposition we have taken the view that the time is now appropriate for this House to debate the matter and to adopt a considered view on the Airport Agreement. More so having regard to the fact that recent public opinion polls in the weekly newspaper "Panorama" have established that about 80% of the people of Gibraltar are against the Airport Agreement. The first paragraph of my motion invites the House to adopt the stand taken in various motions approved by the previous House of Assembly from March 1984 to December 1987. Members of this House who were Members then will be familiar with the contents of those motions and others will have had an opportunity to read about them in Hansard. By and large what those motions, that were approved by the House prior to the 1987 Airport Agreement, reflect is the attitude and the wishes of the people of Gibraltar and to lay down the principles which it maintained should be upheld in so far as the international use of the Gibraltar airfield was concerned inter-alia that Spanish airlines or passengers bound for Spain should not have any special privileges. The view also expressed was that we should not accept a deal which in the judgement of this House would have implications

for British sovereignty and that we should reject any agreement which would involve any concessions being made to Spain which could lead to any form of joint control of the airport of Gibraltar. On the more practical side this House also rejected in November 1987, in a motion adopted shortly after the now famous massive demonstration, the construction of another terminal, a proposal which is included in the 1987 Airport Agreement.

The second paragraph of my motion, Mr Speaker, is a reiteration of the decision adopted in December 1987 and subsequently acted on during the last three months of the GLP/AACR administration which I had the honour to lead. I was responsible for obtaining legal advice, at the time, on Gibraltar's exclusion from the Air Liberalisation Package, a matter which has been pursued by the GSLP since then, and therefore has had our support in their endeavours. The motion now before the House calls for this objective to continue to be pursued. That we should do so is perhaps today even more important than it was in 1987. I take this view because we have seen now that the European Community Council of Ministers is trying to prevent Gibraltar's case from being heard on a technicality. This is indicative of the fact that we have a strong case and that Britain, Spain and the rest of the Community will be highly embarrassed if we are successful. On the other hand if we are not and the Court in effect were to rule that the application of Community Law can be suspended for a part of the Community that will also be highly embarrassing, if not more so, in so far as the desire of a number of members of the Community have, and which they have expressed on a number of occasions, that those aspects of Community Law which go against their interests should not apply to them. Therefore one can see that the attitude of letting sleeping dogs lie and not hear Gibraltar's case on the basis of a technicality will be the preferred course of action for the whole of the EEC. Moreover, Mr Speaker, our position is today even more disadvantageous than what it has been during the intervening period, because during that period the EEC having included Gibraltar in the 1983 Inter Regional Airport Agreement, as a British Regional Airport, has subsequently enacted amendments to that Agreement but has excluded Gibraltar from the application of these amendments unless we implement the 1987 Airport Agreement. In other words unless we bring legislation to this House in order to amend our Customs and Immigration requirements in a manner that would enable, by granting special privileges to passengers bound for Spain, Britain to inform Spain that this legislation is now in place and they can go ahead and build a terminal on the other side in order to give effect to the 1987 Airport Agreement. We therefore have a situation, Mr Speaker, in which the amendments made to the 1983 Inter Regional Airport Agreement, the Liberalisation Package, applies to the whole of the EEC. It is therefore an important principle in our view regarding the nature of our membership of the Community. It is an important matter which is at stake in the case which we want to be heard by the European Court. The third paragraph of my motion deals with a matter that has also become abundantly

clear in the last three years. Perhaps I should say, Mr Speaker, abundantly clearer. We knew at the time that there was the danger, prior to the Airport Agreement, that an Agreement would emerge from the discussions and negotiations between Britain and Spain that could have implications for the view that Spain takes about sovereignty over the isthmus. We knew that Spain would try to present an Airport Agreement as evidence of her having made inroads, having made an advance, on the issue of sovereignty over the isthmus because this area was not ceded at Utrecht and is therefore a separate issue. That is why we say that not only is clause 1 of the Agreement capable of being construed as giving the right to Spain to participate in the use of Gibraltar's Airport but that it has so been construed by Spain and that no doubt Spain in the presentation of her case on the matter now before the European Court, I understand, takes the view that that is indicative of the fact that she has certain rights, if only by implication, with regard to sovereignty over the isthmus. I think, that in her preliminary presentation of her claim there are indications that that is the case and she is taking that view. Today there are no indications that Spain takes any contrary view notwithstanding the efforts that Senor Patricio Gonzalez and the Partido Andalucista are making to obtain clarification of what view the Spanish Government makes of the word "consultation" or in the questions which, I understand, they have put in the Spanish Cortes and to which they have had no reply as yet on clarification of the view that the Spanish Government takes on the word "consultation". The motion which this House adopted in November 1987 dealt with this aspect of the matter in the fourth paragraph of the motion where the House rejected the proposals which the Spanish negotiators were discussing during the course of the technical talks on the Airport and which were published in "El Pais" on the 29th October 1989 and which, in my view, were the immediate course of the massive demonstration that took place here. Mr Speaker, any careful reading of the resolutions which have been adopted by previous Houses, often after much debate, not only in this Chamber but also outside this Chamber in order to arrive at a consensus motion that could be supported by all members, will lead to the inevitable conclusion, particularly now with the benefit of three year's hindsight, that the terms of the 1987 Anglo-Spanish Airport Agreement including the issue of sovereignty over the isthmus, as laid down in the fourth paragraph of my motion, are in conflict with the views adopted by this House over the years. I have included the issue of sovereignty over the isthmus in this paragraph, Mr Speaker, not only because of the manner in which Spain has been pursuing her case, on what she regards a separate issue, at every opportunity, and in particular, in presenting her case to our challenge in the European Court, as I previously mentioned, because, I think it is a matter which this House at this juncture also needs to express a view. The 1987 Anglo-Spanish Airport Agreement does not contain specific reference on the issue of sovereignty but by implication it is an issue that arises from the terms of the Agreement. If there were any doubts or confusion in the minds of some in December 1987 regarding the unacceptability of the 1987 Anglo-Spanish Agreement, I think, there can surely be none today, if the terms of the Agreement

are considered objectively and dispassionately, and if they are judged against what I would consider to be the main stream views and standpoint adopted by previous Houses in this Chamber. Accordingly, Mr Speaker, I commend the motion to the House.

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

HON CHIEF MINISTER:

Mr Speaker, this is the first time that I am speaking to a motion on the use of the Airport which has not been moved by the GSLP. Let me say that we support the motion although I shall be moving an amendment to the motion. The amendment is not going to alter anything that is contained in the motion issued by the Leader of the Opposition. In fact I am proposing to amend just clause 4. where I am simply shifting the reference to a British Regional Airport from where it is now, to a different line. I shall explain why when I move the amendment, Mr Speaker. Speaking to the motion and before I proceed to move the amendment I have to say that the views that we have expressed in this House consistently, and I had considered adding the words "unanimously agreed" but I have checked the Hansard and they have all been unanimously agreed although on a number of occasions we, in the opposition, have abstained on the final version of the motion because it was not as tough as we had proposed initially. In fact in one of the early motions Members may remember that it was as a result of an appeal by the Hon Mr Canepa, from the Government benches, that we abstained rather than vote against on the basis that he put it to us that the hands of the Government should not be totally tied as the original wording of the motion implied. The Hon Member argued that there was really no difference in the spirit of the motion and therefore in answer to his appeal we abstained rather than voting against. I remember also that the Hon Member said at the time that it was a red letter day in that we were able to move forward on a consensus basis on the matter of the Airport although we had fundamental differences in other areas of foreign policy. The position, of course, of the use of Gibraltar's Airport is a very simple one from the point of view of the people of Gibraltar. We have an Airport which has been a European Community Airport since the 1st January, 1973 and nobody has questioned it since that time until our neighbours joined the Community in 1986. Now, Mr Speaker, there can be no doubt that just like we were included as a British Regional Airport in the 1983 legislation we would have been included without question in 1987, in 1988 and in the Regulations of 1990 if Spain had not been there and used its veto in Luxembourg in July 1987. In fact one of the motions that we brought to this House in 1987 was a motion congratulating Sir Geoffrey Howe for the robust stand that he took in July in Luxembourg in condemning the Spanish attempt to deprive us of our Community rights. It is a matter of regret that the UK Government did a complete about turn on this issue between July and October of that year. They might have had to do it for reasons that might be

understandable because of the considerable pressure that there may have been from the other ten Members of the Community. However the worst thing that they did about the 1987 Airport Agreement was not only to suspend the application of Community Law in Gibraltar's case but also to agree beforehand the terms upon which that suspension could be removed and which effectively left Gibraltar with no negotiating position at all. Because we were taken out of the EEC system without our agreement, having been told three months before that that was contrary to Community Law and then at the same time as we were taken out the conditions for us to be put back in were laid down. Of course, it is this question of having to have preconditions to enjoy Community rights which had been ours for thirteen years before Spain joined, which is extremely dangerous for Gibraltar not just in the context of the use of our Airport but in the precedent which it creates in relation to the whole question of our status within the Community and our relations and privileges as a Member of the European Community. It is not acceptable to the Government, and indeed I am sure to Members on the opposite side of the House, that we should accept on the one hand that we have to bring our legislation into line with that of the Community, and the Hon Member opposite has asked how many Directives on Consumer Protection are still outstanding and we need to implement, because we accept that we have a requirement to change our laws in order to conform with the standards laid down by the Community. Well, if we have a requirement to do that, independent of whether we wish or we do not wish to do it, as Members of the Community, it must then follow that we are either in for all the laws or we are not in for any of them, or we choose for which ones we are in. What we cannot have is a situation in which other people decide which laws apply to Gibraltar and which laws do not apply and decide if we wish to see community law applied in Gibraltar what conditions they are able to impose on us, extraneous conditions, and which no one else has imposed on them. That, Mr Speaker, is totally and fundamentally unacceptable and therefore no agreement for the greater use of the Airport is worth paying that price. And we have not yet even touched on the question of sovereignty of the isthmus which we now know is at the root of the problem in this particular instance. The position as we left it when we last debated the matter prior the Election, as the Leader of the Opposition has correctly said, was that as far as we were concerned, on that side of the House, we considered that it was tantamount already to a rejection of the Airport Agreement although it said that a decision should be left until the matter had been pursued in the European Court. We are still pursuing the matter or perhaps I should say attempting to pursue the matter through the European Court. However as the Leader of the Opposition has said it was not a controversial issue in the 1988 General Election because, in fact, in the Election of 1988 the Hon Member opposite was not defending the implementation of the Agreement. It was not a question of the AACR saying if I get elected I will implement the 1987 Airport Agreement and the GSLP saying the opposite.

It was therefore not an issue over which we had an ideological difference. We have however maintained that there is an intrinsic link between the 1987 Airport Agreement and the 1984 Brussels Agreement and that you really cannot support the one totally and reject the other totally because at the end of the day one flows from the other one inevitably and that is the Spanish view. I therefore think that it is important to understand at which stage we are, in the perception of the Spanish Government, as to what had been agreed in 1987 on the use of the Airport and what had been agreed in 1984 in Brussels which led to the partial removal of the restrictions. The importance, I think, of understanding the Spanish position is because there is no sense in saying that you support an agreement with somebody if that person's understanding of the agreement is different from yours because by definition you must agree what it is that you are agreeing to. So really that is the field that we would like to develop as a result of the motion brought forward by the Leader of the Opposition, which as I say, we support and to which I now propose to move an amendment. I would like to amend the Leader of the Opposition's motion by replacing the second paragraph so that it should read "reiterates the view that Gibraltar should not be deprived of its rights as a British Regional Airport to be included automatically in EEC legislation on Air Liberalisation with preconditions, and that this objective should continue to be pursued". Mr Speaker you will note that no new words have been included in my amendment. It is simply that the words "British Regional Airport" have been moved from the third to the second line and by having done so what we are saying is that we do not need to be included as a British Regional Airport because we are already included as a British Regional Airport. This, Mr Speaker, is because we were so included in the 1983 legislation and although I am sure that that was not the intention, the way it was drafted, after having given it more thought, it appeared, in fact, that what we were saying was that we should be included as a British Regional Airport as if that were not already the case and already been established. So effectively what we are saying is that we are already in and people have taken us out. We do not need to get in. We need to stop them taking us out. The 1990 Regulation creates an extraordinary set of events because here we have a situation where the latest position in Community Law is one where all previous Directives have been repealed by the 1990 Regulation and the 1990 Regulation is primary legislation requiring no further action on the part of any member state. Now here you have primary legislation, the application of which is suspended in one part of the Community. This creates, I think, fundamental issues of parliamentary democracy and on the whole edifice of the system of law. I think, Mr Speaker, that it is practically unprecedented that you should pass a law and say this law will apply to 320 million Europeans except 30,000 and the application of the law is suspended until they meet certain conditions. It would be easier to understand if you had a Directive, because a Directive is really an instruction to Member States saying that they

want a Member State to do certain things and logically when giving an instruction you can say we want you to do certain things which includes building a second terminal and then give facilities later. But if you are actually passing primary legislation in Europe and the Regulation of 1990 has the same validity in Community Law as the Regulations which give people in the Community pension rights, and we all know what is the interpretation of the applicability of the Regulation on pension rights from the Social Security Fund in Gibraltar, in that case it cannot be suspended. Well either laws can be suspended in their application to Gibraltar or they cannot be. We cannot have some laws capable of being suspended and others not being capable of being suspended. We are therefore in a situation where having been included as a British Regional Airport in 1983, the Directive that included us has now been repealed. So have we ceased to be a British Regional Airport? Because if the Directive that described us as so is no longer on the Statute Book and if the law that repeals the Directive says all the previous laws are repealed and incorporated in the new one and if the new one does not apply to Gibraltar, do the old ones, which no longer apply in the Community, remain in force in Gibraltar or have they been repealed in Gibraltar? It is an incredible situation, Mr Speaker, from the point of view of the role that we have in this House as law makers. Because if we were to think, in Gibraltar, in the context of passing a law and we say this law repeals a previous law but the new law does not apply in Catalan Bay. Is the old law still in effect in Catalan Bay? Or are they now lawless over there? That is the kind of absurdity of the situation that we are in. So the Leader of the Opposition is quite right in thinking that part of the difficulty that we are having in getting the case heard and part of the reason why there seems to be such a determined attempt to argue that we do not have locus standi is because if the case is heard those fundamental issues will have to be addressed by the Court. The Court will have to make rulings not just about the use of the Gibraltar's Airport but about the application of Community Law and the suspension of the application of Community Law. Also whether laws that are being repealed continue to be in existence in areas where the new laws are being suspended. The whole mess, Mr Speaker, is symptomatic of the way our foreign affairs are sometimes handled, on our behalf, by the British Government where in order to get over a particular problem something is done and then we have to live for years with those repercussions. I think the case of the liability of the Spanish Pensions is a case in point. That, Mr Speaker, was something that was gone into without sufficient thought being given as to how that liability was going to be met. I think, Mr Speaker, that the Leader of the Opposition, in fact, in a previous debate on that matter, brought to the notice of the House how that was suddenly sprung on him and Sir Joshua Hassan at the time when the meetings were taking place and when they least expected it. It is something which we must insist in this House, that the responsibility to our people and to our electorate rests with us and therefore when matters are being agreed which apply to

Gibraltar they can only be agreed on the basis that we support those agreements and we are prepared to defend them here. It is no good other people agreeing to them for us and then landing us with the job of having to live with what they have agreed. Moving on now to the rest of the amendment that I wish to move, I propose to add three additional new paragraphs, Mr Speaker. These read as follows :-

(5) "Notes that the 1987 Anglo-Spanish Airport Agreement was arrived at taking into account the Brussels negotiating process which aimed at overcoming all the differences between UK and Spain over Gibraltar and at promoting cooperation on a mutually beneficial basis;"

That Mr Speaker is a direct quote from the text of the 1987 Airport Agreement.

(6) "Supports the promotion of cooperation on a mutually beneficial basis;"

Which, Mr Speaker, this House has always supported even before there was a Brussels Agreement. We only need to remember that we kept our gates open for 16 years to demonstrate our willingness to be co-operative, and

(7) "Rejects that such cooperation should be linked to any negotiations involving Gibraltar's status, sovereignty or decolonisation as suggested in the Brussels process".

Mr Speaker, in commending my amendments to the House and I hope that in reaching a unanimous decision on this we will be able to reach a position where we put behind us once and for all a division on approach because I have never argued, in all the years that I was on that side of the House, that the AACR, in Government, ever wanted Gibraltar to become Spanish. I have argued that perhaps the line that they were taking might have encouraged the Spaniards into thinking that and that therefore the philosophy, which I think was perhaps more in keeping with the approach of Sir Joshua Hassan than the approach of the present leader who I think has less difficulty in being undiplomatic than his predecessor had and certainly as little difficulty as I have in being undiplomatic, of being diplomatic with our neighbours which, I think, can sometimes be misconstrued and misunderstood as a sign of fudging the issue, as a sign of weakness. I believe that the only kind of relationship we can have with Spain, which can be based on friendship and cooperation, has to be a relationship in which we call a spade a spade. Because if we are afraid to call a spade a spade because that might upset them and become nasty with us then it cannot be a genuine friendship. Mr Speaker, the real test of friendship between two communities is no different from the test of real friendship between two individuals. The trust of that friendship must be that two individuals can be honest with each other and say things to each other honestly which might be unpalatable

but the friendship survives that test. That, Mr Speaker, is the test of real friendship. We therefore have to make clear that being blunt about where we stand does not mean being hostile and being anti-Spanish but on the other hand being concerned about Spanish sensibilities should not spill over to being seen by them as being weak. It is that dividing line, Mr Speaker, which has been at the root of many of the divisions in this House in all the years that we were in opposition starting from the Strasbourg talks in 1976 and which I remember when they started in 1977, in fact, with a motion that I brought to the House, I was already on my own, and I brought a motion to this House of Assembly saying that Gibraltar's sovereignty was not a matter for negotiation with Spain. In fact during the course of that motion which Sir Joshua Hassan supported, the Government and the main opposition both supported the motion, Sir Joshua announced that over a cup of tea with Dr David Owen he had the idea of having these meetings with Senor Oreja. The whole purpose of meeting Senor Oreja was to tell him about the motion which had just been carried unanimously saying that we were not prepared to discuss sovereignty with them. What I could not understand, Mr Speaker, was why it was so necessary, having done this in 1977, to still have to be doing it in 1987, 10 years later. Clearly Senor Oreja, whatever his name, was not very good at hearing because he had to have the same message repeated again and again. It is obvious, Mr Speaker, and I am sure that the Leader of the Opposition is better informed than I am, that the Spaniards even then were floating the idea of joint use of the airport, even as far back as 1977, and in the book written by Senor Moran, a public document, he describes the Brussels Agreement as his greatest achievement as Spain's Foreign Minister. His greatest achievement! He says that for the first time the Gibraltar issue was put on the rails leading to a solution acceptable to Spain on the basis of the intergration of Gibraltar into Spanish territory. That, Mr Speaker, is the understanding of the architect of the Agreement, in his memoirs, that it was his greatest achievement. It is our function in this House, Mr Speaker, to make sure that it is not his biggest achievement. Because the Government of Gibraltar at the time never interpreted the Agreement in that line and did not defend it in this House in that light. Mr Speaker, in 1984 when we opposed the Brussels process, it was defended on the basis that all that we were doing was anticipating by a matter of months something that was going to happen anyway with the entry of Kingdom of Spain into the European Community. Now, Mr Speaker, if we take the Brussels process of 1984 in that light, then you could argue that Spain could have opened the frontier and removed the restrictions as required by Community Law on the 1st January 1986. Instead they did it in February, 1985 and the rights that they would have had in 1986 they obtained in 1985. Right, so therefore that Agreement should have significance in those 10½ months when they were effectively doing something 10½ months early and Gibraltar was doing something 10½ months earlier, but post 1986 the relationship should be governed not by the Brussels Agreement but by Community Law. Therefore if there is then a conflict between Community Law and the Brussels

Agreement it is Community Law that must rule and not the Brussels Agreement. It is obvious that the Spanish position is to argue the opposite. The Spanish position is to argue that the Agreement anti-dates their entry into the Community and that therefore the application of Community Law in Gibraltar is suspended because it has to be conditioned by a bilateral agreement and I can tell the House that they have spelled this out in no uncertain terms in their submission to the European Court a fortnight ago. It is not a document that I can make public but it is a document that I am prepared to make available to the other side of the House so that they can read it for themselves and see for themselves the logic of the sequence of the Spanish argument fundamentally, for example, on the Airport but it is an argument that can be extended, logically, to anything else. It is used specifically in the case of the Airport to say "under the 1990 Regulation if an airline in one member state wishes to fly to another member state they cannot be refused permission, or at least if they are refused permission they can appeal against that refusal under Community Law to the European Courts". This is what we are excluded from. I think, we must be clear about this, Mr Speaker, that although we are fighting to be included in the Air Liberalisation process, we are fighting to be included in Air Liberalisation process for political reasons and as a matter of principle. However in practice the fact that we are outside the European system does not mean that we cannot fly anywhere or that nobody can fly here. What it means is that we are the only part of Europe that has the right to say no. It is not that we do not have the right to say yes. If Air France wants to fly to Gibraltar tomorrow we can say yes and we can say no. This is because we are outside the 1990 Regulation and if we say no there is nothing the Air France can do about it. However if Air France wishes to fly to Malaga and Spain says no, Air France can take them to court and win. Therefore Air France can fly to Malaga whether Spain wants them to or not. We however by being outside have more power over the use of the Airport than anybody else has in the other twelve member states. However that is not the point at issue. The point at issue is that we wish to be part and parcel of the Community for the good and the bad. The Spanish position put very simply is to say if Gibraltar won its case tomorrow and therefore it was decided by the Court that the Clause in the 1990 Regulation which suspends the application of Community Law to Gibraltar was not valid and was declared to be ultra vires then the Regulation would automatically apply to us because the Regulation says that this will not apply to Gibraltar because there is a clause which says so. However if that clause is removed then it applies. Spain says "if Air France wishes to fly to Gibraltar they need to seek permission of the Member State where the Airport is located and I am that Member State." "So they need my permission to fly to Gibraltar because the Airport is in my territory." The United Kingdom does not accept that the Gibraltar Airport is in Spanish territory. However, this is a dispute over territory between two member states and under Community Law the commission cannot intervene and has no jurisdiction over territorial disputes between member states. So

therefore the Agreement that we have is the only way that European Community Law on Air Traffic can be applied to Gibraltar because you have a dilemma in the absence of the Agreement as to whose permission you need to fly there. If Air France goes to Spain for permission they are taking sides in the dispute and if Air France goes to London for permission they are also taking sides in the dispute. So the only way that one can reconcile that is that they need the permission of both. Now it sounds quite a logical argument and it must sound quite a logical argument to a lot of people in Europe because essentially the argument is to say "well here is an Airport, that belongs to nobody, that is being claimed by two parties. The two parties are unable to reconcile their difference so lets split the cake and we share the Airport and we act as it belongs to both of us". Except for one minor detail, that it used to belong to us until 1986 when they came in and it was undisputed until the 1st January, 1986. Because before that date there was no dispute as to who it belonged to. It was a British Regional Airport under Community Law. So, Mr Speaker, we are not talking about an Airport that has always been disputed, we are talking about an Airport that Spain has started disputing since they joined. When they joined it was on the basis that it was already a British Regional Airport for use by aircraft with less than 70 seats under the EEC 1983 Inter Regional Air Services Agreement. What we have here, Mr Speaker, is a classic clear cut example of how, if we approach the utilisation of Gibraltar's Airport on the basis of Community Law, we come up with one answer and if we approach it on the basis, of the Brussels Agreement, we come up with another. Now what the Spaniards are saying basically is that when they joined the EEC they already had the Brussels Agreement. The Brussels Agreement was circulated to everybody. It was sent to the General-Secretary of NATO, to the European Commission and put everyone on notice that this was in effect and they are using this now in the European Courts. Therefore what you cannot do, Mr Speaker, is come back a number of year's later and try to supercede what is a bilateral agreement between two Member States which pre-dates the entry of Spain into the Community. This Agreement according to them conditions the position of Spain and has to condition the position of the UK. Now, Mr Speaker, if we look at the arguments that were put at the Transport Ministers Meeting in Luxembourg in July, 1987 one can understand why the Spaniards took the line that they took and were prepared to go to the extent of vetoing the entire process for the whole of Europe. What the Spaniards said in Luxembourg in 1987 was "wait a minute we have been talking about this for a number of years and now through the back door Gibraltar simply gets included in the Air Liberalisation process and all the negotiations that we have been having with the United Kingdom go out of the window". So they thought that the UK was pulling a fast one on them. The fact that we reject their position should not blind us to the logical contents of some of their arguments because we need to rebuff those arguments with third parties if we are to make any headway. We have to take a very clear cut line of rejecting their

position. We have to make it absolutely clear to Spain, to the United Kingdom and to the rest of the Community that, as committed Europeans, we believe in cooperation, we believe in the application of Community Law but we are not prepared to trade that for the future of our homeland. That is precisely what I believe the Spaniards have tried to do through the medium of the Brussels Agreement. Mr Speaker, although I have no doubts in my mind that at no stage did the Government of Gibraltar see the Brussels process in that light, when they felt that it was in Gibraltar's interest to support it, it is clear that that is how Senor Moran saw it from the first day that he put pen to paper. It is clear that that is how they saw it a fortnight ago when they submitted their case to the European Courts. I believe that if we are able to put behind us the difference of approach on how we handle Gibraltar's foreign affairs or how we ask the United Kingdom to handle them, on our behalf in the developing constitutional relationship between Gibraltar and the United Kingdom, and we have to bear in mind the fact that the United Kingdom is responsible for our foreign affairs on the basis that they conduct our foreign affairs for us as we want them conducted. Not that they conduct them first and tell us afterwards. We tell them what we want. I was recently asked by the Spanish media why I did not think that there was a need for me to attend the talks between the Foreign Secretaries in London and I pointed out that they sent their Foreign Secretary and we sent ours. I said that we employ Douglas Hurd to conduct our foreign affairs and they employ Senor Ordonez. Mr Speaker, Her Majesty's Government is very clear that they must not repeat the mistakes of the past of letting the Spaniards think that something is going to happen and which then does not happen. Because all this does, Mr Speaker, is create problems for all the parties concerned. If we give the green light to something then we must take the political responsibility of defending it in Gibraltar, in this House and with our people outside. We are however not prepared to defend something that we have had nothing to do with. And Her Majesty's Government has no right to land us with something with which we have had nothing to do with. That message, Mr Speaker, got to London from day one, from the 25th March, 1988, and I am happy to say that they have now got used to it. I have no problems on that score, Mr Speaker. I believe that proceeding on this basis opens for us an opportunity to act in unison, in a way which has not been possible for some time. In the motion we had in the House dealing with the suggestion made by General Sir William Jackson on the Constitution in November, 1989, during the course of the debate the member that is no longer with us suggested that we ought to have a united front. My response was that as far as I was concerned his position of having left the AACR and still holding on to his seat was one that we could not take into account because as far as we were concerned there were two parties elected to the House. The AACR and ourselves. For us to take a common position on constitutional development we first had to be able to reconcile our differences and find common ground on the Brussels Agreement. That position still holds today. We believe that there is an area of foreign affairs, of

constitutional development, of relations with the European Community, of the use of the Airport, the on-going discussions between the UK and Spain which are going to continue with or without Brussels, with or without Lisbon, and which have been going on and on since 1965 when the issue was first raised in the United Nations because the UK has got a resolution from the UN which requires it to have periodic meetings with Spain and those periodic meetings have still got to take place. We do not think that they should happen and I believe that we should not be present because we legitimize them by being there. We then have a situation where the Gibraltarian representative is an extremely difficult position simply by his presence, Mr Speaker. We have had a situation where the Spanish Government not so long ago argued, and Sir Joshua had to come out publicly rejecting the argument, that Sir Joshua's presence in London, not even in the same room just the same city when the Airport Agreement was signed meant that he had endorsed it. Well, Mr Speaker, if he had done as I do and gone to Madeira when they were in London they would not have been able to do it. So, Mr Speaker, what I am proposing is not only that we re-affirm in unequivocal terms our position on the greater use of the Airport which does not mean sharing the Airport, making it an Anglo-Spanish Airport, having joint use leading to joint control as Lord Bethel very rightly pointed at the time that the Agreement was signed where it is implicit in the terms of the agreement, but taking the logic of that position one stage further and saying that it is clear today, even if it was not clear in 1984, that the use to which the Brussels process can be put is one which conditions what is normal in the Community to making it abnormal in Gibraltar so that what everybody else in the Community as a matter of course obtains in the case of the Gibraltarian there is a price attached to it and you have a price tag. So that if Community Law says that there has to be no impediment to services between ports in Europe, in different Member States, a ferry between Algeciras and Gibraltar is not covered by Community Law but requires a bilateral agreement because the Brussels Agreement talks about improving Communications and then Spain says "right if you want a ferry service what do I get in exchange". That mentality I regret to say, Mr Speaker, is still prevalent on the other side and one with which I have great difficulty in understanding. I remember in the debate which took place over Canal Sur in which I took part with Senor Caracao, Senor Caracao argued that they wanted to sell us water, which we do not want to buy, and they wanted to know what we would give them in exchange for the water. Well, Mr Speaker, presumably what you would give them in exchange for the water would be pesetas! Now it is not enough, Mr Speaker, that they would be selling us the water at ten times the price at which they produce it but on top of that for privilege of buying expensive water we are also supposed to be willing to make some concessions. Well, Mr Speaker, we are not going to be able to do business with our neighbours like that. They need to understand that, Mr Speaker, and we need to help them in their evolution towards becoming modern twentieth century Europeans. I think, Mr Speaker, that we have a role to

play in helping Spain become a part of the European family because we have been in the family for a long time. So we should not be hostile towards them, Mr Speaker, because we should understand that they are in the process of learning and we should help them. However in order to be able to do that we have to mark a certain turning point in our historical relationship, where we assert our right to be in command of our destiny and we would like, as a Government, to be able to do that, Mr Speaker, on the basis that we are working together, the AACR and the GSLP, for a common goal of the protection of our city and our people and for its future security and prosperity and for ensuring that there is never any danger of it becoming a part of Spain, much as we like them as neighbours. I hope, Mr Speaker that it will be possible for the Leader of the Opposition to support the amendments as giving us an opportunity to create a bi-partisan approach in this area where we can decide the policy jointly and still have our differences on domestic politics but can work together for the benefit of Gibraltar. I commend the amendments to the House, Mr Speaker.

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

HON A J CANEPA

Mr Speaker, let me dispose first of all of the amendment to paragraph two of my motion. What the Chief Minister's amendment does is to make the position more factually correct in that it is not so much that we are seeking to be included but seeking not to be deprived, of being taken out, of an Agreement in which we are included. So it is factually more correct and therefore also stronger than my wording. Because if rights have been extended to someone and there is an attempt to deprive you of those rights then your moral standpoint is stronger than if you have no rights and you are seeking to be included. So, Mr Speaker, we welcome that amendment. The Chief Minister made a reference to what Spain has been trying to do with the Airport since 1977. The question of joint use. Well, Mr Speaker, historically, I think, one can go further back. Because back in 1966 Britain was taking the standpoint that it could not have any talks with Spain about Gibraltar under duress. She was not prepared to have talks in a situation in which Spain was implementing restrictions at the frontier. The frontier had not yet been closed but a number of measures were being adopted and Britain took the view that there would be no talks under duress and then they abandoned that decision. It is astonishing that a very strong Labour Government, in 1966, having just won a landslide majority in March, 1966, a majority of over 100 in the House of Commons, abandoned that position and in response to what were termed "the Castiella proposals", Senor Castiella made a number of proposals to Britain on the future of Gibraltar, in response to that, I said yesterday that one of the things that Britain offered to do was to remove the frontier fence. Well Michael Stewart went further he offered joint use of the Airfield and to my mind it is the first time, the first

historical record, because there is a booklet by Her Majesty's Stationery Office, very detailed, and therefore it is to my mind the first historical record that we have of the term "joint use" being carried. I think, it was carried on that occasion and over the years we have resisted that because it had all sorts of connotations that went further than the concept of using jointly or using to a greater extent. Because implied in the concept of joint use was an element of joint control and that is how we have always seen it here in Gibraltar. Let it also be said in fairness that even though the British Government abandoned the standpoint about no talks under duress, Britain also offered to submit the issue of sovereignty of the isthmus to the International Court at the Hague. Britain felt that her position was so secure, was so strong, that she could afford to have it submitted to the Court at the Hague. Spain, of course, did not agree. One can only conclude as to why they did not agree. Our difficulty with the Chief Minister's amendment, and I mean we the people of Gibraltar, viz a viz Spanish public opinion and the perception that there is in certain quarters in Spain, not in all quarters in fairness, about what we do and how we assert our rights, and the lack of understanding that there is, is as the Chief Minister said in his contribution at one stage, that the view taken is that we are anti-Spanish when we assert our rights. I remember about two weeks ago shortly after Douglas Henrich made a Party Political Broadcast on GBC TV expressing our Party's views about decolonisation, being interviewed by Radio Cope from Madrid on what our views were about decolonisation and free association and immediately the response of the interviewer was that I was "anti-hispanista". He did not say that I was "anti-espanol" but "anti-hispanista" i.e. anti all things Spanish. Now nothing could be further from the truth, Mr Speaker. On the contrary I am in love with Spanish literature, her music, her history and Spanish culture in general. We in Gibraltar, we Gibraltarians have been able to benefit from and appreciate both the English and the Spanish culture but they do not seem to understand that we are pro Gibraltar but not necessarily anti-Spanish. Just pro Gibraltar and that in 1991 the people of Gibraltar have consolidated their identity in no uncertain terms. Mr Speaker, if we were big enough our natural aspirations, as a people, would be to be independent. The British Government knows this because it is fundamental to want to be independent. We are not able to exercise that right, Mr Speaker, we realise that for a variety of reasons we are not able to be independent, not the least historical, but for a variety of reasons. If we cannot have that then we want the next best thing and in wanting that we are not anti-Spanish. Therefore, Mr Speaker, we must be aware of the fact that our difficulty is that what we are discussing here today and the resolution that we pass will be misinterpreted, it will be seen as yet another exercise in Spain bashing and, of course, it is not that. Over the years I must say that there has been misunderstanding of our position in some quarters, perhaps in Andalucia and certainly in Catalonia they understand our position perfectly. And I am sure that when the Chief Minister has interviews with journalists from "La Vanguardia"

for instance there is an element of warmth towards the point of view that we are expressing which is not found in the more centralist minded journalists from Madrid. This is why I say, Mr Speaker, that our problem is fundamentally with Madrid. It is good that other Spanish politicians, those from the Partido de Andalucia, are beginning to understand that, because they also have problems with Madrid. This arises from the lessons of Spanish history and are very much indicative of the struggle between the regions and the centralist forces in Madrid. As I say they are beginning to understand our position and therefore what is required is for us to be allowed to get on with promoting co-operation on a mutually beneficial basis with our neighbours and there would not be any problem. If our neighbours could free themselves from the chains of Madrid there would not be any problems. I used to find a dichotomy of approach with Senor Caracao because when I had dealings with him across the table there were no problems we could agree on many things, however when we met either in Madrid or in London and the two Foreign Secretaries were there he was a changed man. He was just not the same person. Everything that we seemed to agree to when we met here and which he was very appreciative of at a local level, he then at the other meetings painted the matter differently, he gave it a different gloss, of us Gibraltarians trying to achieve what was good for us and not interested in anything else. An extraordinary dichotomy which is found moreso in the PSOE politicians than with the PSA politicians. Mr Speaker, as a result of the Brussels Agreement there is no doubt that there is provision for some form of agreement on the Airport having to be concluded because the terms of the Brussels Agreement did provide for a negotiating process aimed at overcoming all differences and promoting cooperation on a mutually beneficial basis on a number of matters, including aviation. Between February 1985 when the Brussels Agreement was signed and the summer of 1987 we, the then AACR Government, carried out a process of stonewalling, in other words putting across in a very clear cut manner our objections to what Spain was trying to achieve, in particular, independent of discussions at official level between Britain and Spain, and I think, that the exercise that we were carrying out was a pretty successful one. It was not just being obstructive it was a positive approach because there were a number of features that were contrary to the views that had been adopted in this House and we were resisting those. However the deadlock of the European Air Liberalisation Package was the immediate catalyst which led to the dramatic "U turn" on the part of Britain whereby from defending our rights to be included, in the summer of 1987, we found in the autumn of 1987 that Britain had almost done a "U turn" really and insisted that we could not be included unless we implemented the Airport Agreement. I do not know, Mr Speaker, what the result would have been of the whole process if events and the European forum had not acted in the dramatic way that they did. That we shall never know, Mr Speaker. I do however recall on a number of occasions, privately, because we used to have plenty of opportunity to informally discuss where we were going with Sir Geoffrey Howe, asking were was Brussels

leading us? Where in a situation in which every year the two Secretaries of State were meeting and Spain was raising the question of sovereignty and Britain was repeating her well known answer about abiding by the wishes of the people of Gibraltar as expressed in the Preamble to the Constitution, where was this leading? And how long could we have Anglo/Spanish talks with Spain raising the issue of sovereignty? I think, that the view that, he took was different to Senor Morans view, in that he thought that Spanish politicians should be content with the initiation of a process that would lead to a better understanding, a longer term view, whereas Spanish politicians look at the problem in the short-term because they would all like to go down in history as the ones that brought about the return of Gibraltar to Spanish sovereignty. On the other hand our view, at least certainly mine was, that eventually a breakthrough was going to be required and a halt would have to be put to this process of giving rise to expectations on the question of sovereignty which would not be fulfilled and would lead to difficulties. Again, it is my view also shared by my colleagues, that seeing the strength of feeling on this issue which was shown during the 1988 election, something that perhaps we who were involved in this matter could not see, because we were to closely involved and could not detach ourselves and consider the matter coldly. As I say, Mr Speaker, I was surprised, I must say, by the result of the election and the opposition and resistance that there is in Gibraltar to the sovereignty issue being discussed as part and parcel of the Brussels process. My party has taken this very much on board and we have deliberated very carefully about the matter and the view that we take on Brussels is that whilst in favour of practical cooperation on a mutually beneficial basis, although we think that it is not necessary, at least I do not think so, after having attended talks during the years, for the two Secretaries of State to be involved in the process of practical cooperation on a mutually beneficial basis. I remember, Mr Speaker, one occasion in London in January 1987, where it was farcical to have Senor Jesus Esquerria, who hijacked the Spanish Minister of Transport in Luxemburg in June 1987, because the Minister was not objecting to Gibraltar's inclusion in the Air Liberalisation Package, do the same thing to Senor Ordenez in January 1987, in London. He hijacked the talks and instead of Sir Geoffrey Howe and Senor Ordenez discussing the matter it was he who was arguing the toss with Sir Geoffrey on matters which were not of the kind that Senior Ministers discussed and I remember Baroness Young, Tristan Garel Jones's predecessor, remarking afterwards that she never thought that such matters could be the subject of discussion between two such busy men. But as I was saying, Mr Speaker, Senor Esquerria kept coming back to the subject of the importation of Bimbo bread into Gibraltar! Mr Speaker, it is no exaggeration, it is true. I remember the British Ambassador subsequently saying to us "for God's sake do not allow Bimbo bread into Gibraltar it is awful!" Therefore, Mr Speaker, it is not necessary for the two Secretaries of State to get together to discuss matters of practical cooperation. If they wish to, let them review progress periodically but not every year and

on sovereignty the view that we take is that we are not prepared to form part of the British delegation at talks where sovereignty is being discussed. The reason, Mr Speaker, is that the people of Gibraltar have made it abundantly clear that they do not want that to be the case. We went along with it but we do not think that it should. We, in the AACR, believe in Free Association. We think that, we should be able to discuss Gibraltar's status with Britain and decolonise Gibraltar and therefore we do not want British sovereignty to be the subject of discussion every year at an annual jamboree between the British and Spanish Foreign Ministers. The reason is very clear. The people of Gibraltar, and we who are part of the people of Gibraltar, do not desire that that should be the case. We have guarantees under the Preamble to the Constitution and because Spain ceded formally sovereignty to the Crown of Great Britain in the Treaty of Utrecht, the Crown of Great Britain will continue to be the Monarch of Gibraltar for evermore and therefore there is no change in sovereignty and nothing further to discuss. That is the pragmatic view that we take. Gibraltar is British and will continue to be British for as long as the people of Gibraltar want. We are therefore not prepared, Mr Speaker, to participate, a future AACR Government will not participate in such discussions. It is a change in our standpoint as a result of considerable debate, as a result of reflection, on the realities. Now, Mr Speaker, if I am going to be told that leadership has to do with trying to stick to a position for evermore then you may find that yes you are giving leadership but you may find yourself with no one following you! That, Mr Speaker, is also a reality. I think, Mr Speaker, that leadership and courage in politics also has to do with a sensible detached assessment and analysis of the realities and moving in consonant with that. That is the reality and therefore, Mr Speaker, having made the position clear we can support the Chief Minister's amendments and we think that the resolution that this House is going to adopt does not just open up a new chapter in the attitude of Gibraltar politicians on matters to do with Spain, it is a continuation of the chapter which in my view was, if anything, opened in 1963 when two other Gibraltar politicians, Sir Joshua Hassan and Peter Isola, defended the rights of the people of Gibraltar at the United Nations. The process continued, because there was a bi-partisan approach and it was only interrupted for a relatively short period between 1984 and the present. We think, Mr Speaker, that it is important on matters affecting Gibraltar's most fundamental interest that we should endeavour to speak with one voice. Therefore if other politicians have done it in the past, Sir Joshua Hassan and Peter Isola, Sir Joshua Hassan and Maurice Xiberras and occasionally Sir Joshua Hassan and Joe Bossano, because they did go on one occasion to Strasbourg with a joint approach to the EEC, what is wrong with today it being Joe Bossano and Adolfo Canepa, at present leading the two sides of the House, trying to speak with one voice and trying to defend Gibraltar's interest on matters external to us in the manner in which they should be defended. Therefore to speak with one voice and to have a bipartisan approach is a good thing because it is a reflection on Brussels and

the Airport and it is a reflection on what the vast majority of the people of Gibraltar want. Over 80% of the people of Gibraltar have agreed on these matters and we should be reflecting that. Therefore, Mr Speaker, we are very happy to support the amendment of the Chief Minister and the message that should emerge from this House is that not only is the House rejecting the Airport Agreement today but we are committing ourselves to a process for the future in which we will be speaking with one voice on behalf of the people of Gibraltar on external matters.

MR SPEAKER

Does any other Member wish to say anything on the amendment? Does the Hon the Chief Minister wish to exercise his right to reply?

HON CHIEF MINISTER

Mr Speaker, I do not wish to take up the time of the House very much but the reaction of the Leader of the Opposition to the amendment clearly is one which gives us a lot of satisfaction and I believe, will give a great deal of satisfaction to the supporters of both parties and to the people of Gibraltar generally. It is a good thing for Gibraltar, a good thing for this House and a good thing for our people that we are able to reconcile the differences we have had in the past and to restore, as the Leader of the Opposition says, the position where nobody can try and find a chink in our armour because we might have a difference in approach and therefore any difference which we might have we will thrash internally and take a common position on anything that has to do with our external affairs and I believe that Gibraltar will benefit from it. I also welcome the fact that we have been able to take a historical step today because in recent years this has not been possible.

Mr Speaker then put the question in the terms of the Chief Ministers amendment to the Leader of the Opposition's motion which was resolved in the affirmative.

HON G MASCARENHAS

Mr Speaker, I do not think that there is anything that any member from either side of the House can add to what has already been said by both the Chief Minister and the Leader of the Opposition. Only to reiterate the words of the Chief Minister a few moments ago that this is indeed an historic occasion and hopefully both members of the GSLP and the AACR will welcome it. It shows that we can have our differences in domestic issues, and no doubt we shall have many differences, but on the major issue that concerns all Gibraltarians we are united in the face of any external threat be it from Spain or anybody else.

HON A J CANEPA

Mr Speaker, there is very little for me to say because when speaking on the amendment I went somewhat further than

speaking to the amendment. I think, Mr Speaker, that it is good even at this stage that we should have come out publicly with an agreed standpoint on these two issues and it has had to be done publicly because the controversy from 1985 to 1988 was a public controversy and therefore whatever we did to clear the air had to be done in this forum. I look forward therefore to a period of much greater understanding on this matter. In the event what has happened since the last general election in this field with regard to the interests of Gibraltar, because we had made clear our position on the Airport Agreement well before, as I said at the beginning of my contribution, was that there was a long period when we were silent about it because it was really an exercise in distancing myself from my involvement in the matter at the time since the Brussels Agreement was something that, as a Party, we had subscribed to at the time. There was a lot of pressure on us because we saw the economy almost disintegrating in a very difficult period but as I said earlier, it did not seem to me, that it could be a long term process and it is also opportune that the House should adopt this stance today, because there may well be a change of Government in the United Kingdom in a year's time. The Labour Party may come into power or the Conservatives could in effect have a fresh mandate, a new Prime Minister, and therefore it is a good thing that once there is a General Election whichever party comes in they will know that this is the stand point of Gibraltar politicians and that in taking the matter forward from now on we will be approaching it on the basis of the principles which have now become enshrined in the Motion which we are going to adopt.

Mr Speaker then put the question in the terms of the Hon A J Canepa's motion, as amended, which was resolved in the affirmative and which read as follows :-

(1) Reiterates the views expressed about the Gibraltar Airport by the previous House in resolutions from March 1984 to December 1987;

(2) Reiterates the view that Gibraltar should not be deprived of its rights, as a British Regional Airport, to be included automatically in EEC Legislation on air liberalisation without preconditions, and that this objective should continue to be pursued;

(3) Considers that the 1987 Anglo-Spanish Airport Agreement is capable of being construed as giving Spain the right to participate in deciding on the use of Gibraltar's airport, and has been so construed by Spain;

(4) Considers therefore that the terms of the 1987 Anglo-Spanish Airport Agreement, including the issue of sovereignty over the isthmus, are in conflict with the views adopted by this House and thus unacceptable.

(5) Notes that the 1987 Anglo Spanish Airport Agreement was arrived at taking into account the Brussels negotiating process which aimed at overcoming all the differences between UK and Spain over Gibraltar and at promoting cooperation on a mutually beneficial basis;

(6) Supports the promotion of cooperation on a mutually beneficial basis; and

(7) Rejects that such cooperation should be linked to any negotiations involving Gibraltar's status, sovereignty or decolonisation as suggested in the Brussels process.

ADJOURNMENT

HON CHIEF MINISTER:

Sir, I have the honour to move that this House do now adjourn to Monday the 29th April, 1991, at 10.30 am.

Mr Speaker put the question which was resolved in the affirmative and the House adjourned to Monday the 29th April, 1991, at 10.30 am.

The adjournment of the House to Monday the 29th April, 1991, at 10.30 am was taken at 1.00 pm on Wednesday the 27th March, 1991.

MONDAY THE 29TH APRIL, 1991

The House resumed at 2.40 pm.

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 K W Harris QC - 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

ABSENT:

The Hon J L Moss - Minister for Education, Culture
and Youth Affairs (away from Gibraltar)

IN ATTENDANCE:

C M Coom Esq - Clerk of the House of Assembly

SUSPENSION OF STANDING ORDERS

HON J E PILCHER:

Sir, I beg to move under Standing Order 7(3) to suspend
Standing Order 7(1) in order to proceed with the laying
on the table of the Air Traffic Survey, 1990.

This was agreed to.

DOCUMENTS LAID

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

The Air Traffic Survey 1990

Ordered to lie.

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

The Employment Survey Report - April, 1990

Ordered to lie.

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

- (1) Draft Estimates of Revenue and Expenditure 1991/1992.
- (2) Statement of Consolidated Fund Re-Allocations
approved by the Financial and Development Secretary
(No.9 of 1990/91).
- (3) Statement of Consolidated Fund Re-Allocations
approved by the Financial and Development Secretary
(No.10 of 1990/91).
- (4) Statement of Consolidated Fund Re-Allocations
approved by the Financial and Development Secretary
(No.11 of 1990/91).
- (5) Statement of Consolidated Fund Re-Allocations
approved by the Financial and Development Secretary
(No.12 of 1990/91).
- (6) Statement of Improvement and Development Fund Re-
Allocations approved by the Financial and Development
Secretary (No.3 of 1990/91).

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE FACTORIES (AMENDMENT) ORDINANCE, 1991

HON M A FEETHAM:

Sir, I have the honour to move that a Bill for an Ordinance
to amend the Factories 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, I am not sure that our Factories Ordinance was ever relevant to the needs of Gibraltar. It reflected an industrial environment wholly and untypical of work activities in Gibraltar. As it is, it requires special regulations to apply it to our major industrial activity, such as the Shiprepair Yard. I am absolutely clear that as the Ordinance stands it neither reflects the need to protect people at work, nor the industrial and work environment which is Gibraltar today. The amendments contained in the Bill before the House, would enable the framework of the Ordinance to be used in a practical way to protect people at work. First of all, it recognises that operating the provisions of the Ordinance and Regulations made under it, is not necessarily appropriate to a Government Department without either the technical or commercial experience in the industrial world, by allowing for a person other than the Director of Labour and Social Security to administer the Ordinance. Whilst in terms of the Clauses in the Bill, the bulk of the Bill is concerned with transferring from pecuniary amounts to references to the levels to the standard scale of fines, the punishment for infringing the Ordinance, the real substance of the Bill is in the provision it makes to enable regulations to be made to give effect to EEC Law and to apply to those regulations to places of work other than factories. For example, Clause 2 as well as changing the definition of Director, also introduces the new definition of "place of work". This will enable the relevant parts of the Ordinance or any regulations to be applied to any particular or to all places of work. So, for example, we have outstanding for implementation in Gibraltar a Directive of the European Economic Community dealing with the operations of VDUS, I suppose like me you have trouble with initials, it means Visual Display Units. By the use of mechanisms contained in this Bill we will be able to create regulations to implement those rules and to apply them specifically to the areas covered by the EEC Legislation. The object of the Ordinance and the amending Bill is to provide a safe and healthy working environment. Whilst this is important for all workers, it is particularly important for the young. Our Cadet Scheme is well established and we have included the definition of Cadet within the area of legislation in order that there be no doubt that these youngsters are protected. In part the Ordinance works by requiring some inherently dangerous activities to be licensed in advance. This obviously involves administrative expense and a provision has been made to allow for fees related to the cost of administration to be charged for such licensing. Another amendment to give the flexibility necessary to reflect the changing situation in Gibraltar is that in Clause 14, it allows for the powers of Inspectors to

be determined by Regulation, so when Regulations are introduced to apply a new safety provision the appropriate arrangements can be made in relation to the Inspector. Clause 15 deals with the fact that under the responsibility for health, safety and welfare of workers there is some overlap between the Factories Ordinance and the Public Health Ordinance. Clearly there also needs to be some joint administration in that area. Essentially this Bill turns the Factories Ordinance into a piece of enabling legislation which will allow us to respond to the changing working environment in Gibraltar and to ensure that we meet our international obligations in respect of health, safety and welfare at the work place. I commend the Bill to the House and I hope it will receive your support.

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, in general terms the Opposition supports this Bill because we see what the Government is trying to do and we appreciate the general principle of extending the cover from the restricted area that the Bill was covering previously to the wider area of other places of work as newly defined in this Bill. Therefore any increase in the protection to be afforded to the working element of the population is obviously welcomed. The reference made by the Honourable Minister to Regulations to be introduced is of course necessary in what has been done to the Ordinance and perhaps he could give us an indication of how advanced or otherwise we are in producing these Regulations and when we can expect to see them. Thank you Mr Speaker.

MR SPEAKER:

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

HON M A FEETHAM:

Mr Speaker, I would like to thank the Opposition for their support. In terms of producing Regulations, we are identifying certain areas of employment because some Regulations have to be different particularly if a work practice is vastly different to another one and what we are doing at the moment in consultation with people like the Transport and Workers Union obviously, and other organisations in our community, is identifying the main areas where there is a need to tighten up on Regulations and then work through as it were. We are fairly well advanced in some areas. In others we will have to wait.

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 EMPLOYMENT (AMENDMENT) ORDINANCE, 1991

HON R MOR:

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

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

SECOND READING

HON R MOR:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of this Bill is to amend three Sections of the Employment Ordinance, that is Sections 21, 71 and 72. The part of Section 21 that is being amended refers to the discretion that the Director may use to refuse the granting of a work permit. As the Ordinance stands at present, Mr Speaker, nothing contained in this Section allows the Director to exercise any refusal of a work permit when it may well be the case that it may not be convenient to grant a work permit due to the situation in the Labour Market. That is to say, Mr Speaker, if we were to have a situation where we had a substantial number of employees threatened with unemployment and because of this the Director thought that in his opinion he should not issue a work permit, as the law stands at present, he would find that he does not have the power to refuse the granting of a work permit under the circumstances. It is my belief, Mr Speaker, that the most important and fundamental factor that should be taken into consideration when considering the issue of work permits is in fact the condition of the labour market. As it is generally known we are currently facing a situation where a substantial number of employees with the Ministry of Defence are threatened with unemployment. A considerable proportion of these employees and non-EEC Nationals who require work permits and in many cases they have worked in Gibraltar for many years. It is therefore very much in their interests that the prospects of continuing working in Gibraltar are protected and this cannot obviously be done if further job opportunities in other areas are blocked because the Director under the present law cannot take into account these cases. The proposed amendment to Section 21 is therefore to allow discretionary powers to the Director to refuse granting a permit where in his opinion such a refusal is warranted by a situation in the labour market. Mr Speaker, the proposed amendment to Section

71 is consequential on the amendment to Section 72 and therefore need no comments. As regards Section 72, Mr Speaker, this has rather a lengthy history and in fact dates back to 1985. In 1985 the Conditions of Employment Board recommended to the then Government to amend Section 72 of the Employment Ordinance regarding the amount of compensation which could be awarded by an Industrial Tribunal for an unfair dismissal. This recommendation was approved by the Government and the Bill was presented to the House of Assembly on the 28 January 1986. It received the First and Second Reading, however my Honourable Colleague Mr Michael Feetham, who was in the Opposition at the time, proposed to the House that the Bill should be further amended to provide a payment for a basic award on the same lines as is practiced in the UK. The Government decided at the time that the Committee Stage and Third Reading of the Bill would be taken at a subsequent meeting of the House. The matter apparently was referred back to the Conditions of Employment Board and it never reached the Committee Stage and Third Reading in the then House of Assembly. Finally, the Conditions of Employment Board came back with some proposals which have been considered by the Government and the amendment to Section 72 therefore allows for a basic award in cases of unfair dismissal as well as any further compensatory award as determined by the Tribunal. Mr Speaker, I have already given notice in writing that I intend to move a very minor amendment at the Committee Stage and Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON A J CANEPA:

Mr Speaker, my Colleague Lt-Col Britto is also going to speak on various aspects of this Bill and it may well be that in Committee when we come to Clause 2, which introduces a new paragraph empowering the Director to refuse to grant a work permit where that decision is warranted by the situation in the labour market that we may in Committee be able to argue the matter in greater depth. My initial reaction when I heard the Honourable Minister was one of surprise because when he said that under the law, as it stands at present, the Director of Labour does not have discretionary powers, he may not have discretionary powers in respect of the situation as it refers to the labour market but he does have discretionary powers in respect of a number of other matters. Mr Speaker, not only that, but, in fact, Section 21 requires that he will not issue a permit unless certain conditions are satisfied. First of all he shall not issue it unless certain conditions are satisfied and these conditions, and there are quite a number of them, in fact, nine conditions are laid down which have to be satisfied before the Director of Labour does issue a work permit. Additionally he already has some discretionary powers to refuse to grant a permit if he is not satisfied that the applicant is over nineteen, if the application is in order to fill a vacancy which could

have occurred, in his opinion, as a result of a trade dispute or as a result of a dismissal which if that were to be filled could bring about a trade dispute and thirdly for the employment of a worker who has entered Gibraltar and does not satisfy e, f, g, h of the nine conditions that I have referred to previously. Taking account of that I am frankly surprised by the remarks of the Minister and really my intervention at this stage is to ask him, either when he exercises his right to reply, or later in Committee to go into the matter in rather more detail and to clarify these aspects. I say that because apart from looking at the law, I know during all the years when I was Minister of Labour that there were numerous occasions when the Director of Labour and Social Security did refuse to give a work permit and then we had representations from the aggrieved worker and from the prospective employer and so on. Therefore my initial reaction is one of surprise. So perhaps the Hon Minister can clarify that point. Having said that, Mr Speaker, I leave the other points to my Colleague Lt-Col Britto.

HON LT-COL E M BRITTO:

Mr Speaker, there is, in fact, a little bit of overlap so my contribution will be probably shorter than I had originally intended. What I would like to add to what the Leader of the Opposition has said, is that we also feel that the wording of the amendment to Section 21 seems to widen the powers of discretion of the Director, rather more than is perhaps desirable at some unforeseen stage in the future. It is appreciated that the Government has a specific situation in mind when they talk about the MOD redundancies but in fact the definition of the situation in the labour market is a very subjective one and at any time could be something that a Director could interpret in a totally different way in the future. In that sense we are not entirely happy with the wording of the Clause because of the rather wide interpretation that could be given. The second point arising out of that, Mr Speaker, in Section 23 of the Employment Ordinance, obviously there is a right of appeal against any such decision by a Director within the new powers that have been given now or the powers that exist already. But perhaps the Honourable Minister could tell us whether the Control of Employment Appeals Tribunal, as detailed in the Ordinance, in fact exists at this moment in time and has been appointed, and if so, perhaps he could give us an indication whether it has met and when was the last time that it met. Finally, Mr Speaker, on the amendment or rather the repeal and replacement of Section 72, a little bit of untidiness we feel in the wording the end of Subclause 1 and Subclause 3 where there is reference to the prescribed amounts. I have been able to elucidate in order to save the time of the House that the intention is for the amount to be prescribed by Regulation, but I put it to the Minister that as it reads there is a certain degree of confusion and ambiguity. One could be forgiven for believing, as I did originally and could not find it, that the prescribed amount is prescribed by Ordinance and not by Regulation and perhaps the law would be clearer and therefore a better law if it was made clearer that the amount is prescribed elsewhere by Regulation.

HON CHIEF MINISTER:

First of all, Mr Speaker, the Member opposite is quite right in thinking that we are giving the Director more power to say no to a work permit for a new immigrant, because that is what we are talking about. It is a permit for new entrants basically. We feel that the situation that has developed warrants that and there are really three factors apart from the one that my Colleague has already mentioned that we are facing. The Government, as the House knows, is investing in re-training people for private sector jobs and clearly we want the people that we are re-training to be able to compete for those jobs effectively and to some extent to give them a measure of protection. We also have a situation where two traditional sources of labour for Gibraltar. Labour recruited from the Spanish and the Portuguese markets cease to require permits after 1992. So you have a situation where we will already be unprotected against 320,000,000 Europeans over which the Director of Labour will have no discretion. It does not seem to me unreasonable in those circumstances to seek to introduce greater controls over the few remaining areas where we still have control. The third factor is that somebody has come up with the ingenious invention of having registered a company in Gibraltar, which one can do with two £1 shares, they then open a vacancy in order to employ themselves and of course, they can register a company in Gibraltar from anywhere in the world and then the company that they have registered in Gibraltar can then create a job on conditions which are somewhat peculiar. We have had an application from somebody that was supposed to be an expert in shrimps born in Asia and living in Africa. You can define the job in such a way that the Director of Labour with the best will in the world will find it impossible to fill from the local labour market and therefore the job can be structured, and in fact we have studied a number of these incidences, in such a way to be able to enter Gibraltar. It is in order to close that loophole that effectively we are saying "if the Director of Labour feels really that the labour situation is one where if it is a genuine job it should be possible to meet it from local resources". We are giving him absolute discretion. It is a matter which is a matter of policy. We feel really that this is required, as I said by new factors which I have mentioned. The fact that there exists a loophole as the law now stands and therefore you have a situation where as it is at the moment, somebody can create a company and even though that somebody is not here, he can then create a vacancy to which they themselves apply and then that person can appeal against the decision of the Director not to give it him even though they have never been in Gibraltar. In fact the Appeals Tribunal is constituted and has met very recently to deal with one of these types of cases within the last couple of weeks and to my knowledge it had not met for the preceding twenty years. That is the answer to the Honourable Member's question.

MR SPEAKER:

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

HON R MOR:

Mr Speaker, unless any other specific points, there is not much more I can say.

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.

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 Factories (Amendment) Bill, 1991; The Employment (Amendment) Bill, 1991; The Nature Protection Bill, 1991 and The Litter Control (Amendment) Bill, 1991. Mr Speaker, can I just clarify the fact that my proposal is if the House should resolve itself into Committee to consider only the four Bills I have mentioned and not in fact the five Bills which is being indicated to Honourable Members on both sides, I have just been instructed a few moments ago that it is not Government's wish at the moment to take the Companies (Amendment) Bill, 1991 through its remaining stages today.

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

THE FACTORIES (AMENDMENT) BILL, 1991

Clauses 1 to 20 were agreed to and stood part of the Bill.

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

THE EMPLOYMENT (AMENDMENT) BILL, 1991

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

Clause 2

HON LT-COL E M BRITTO:

Mr Speaker, in view of the explanations from the other side of the House, we will be supporting the Clause as it is.

HON R MOR:

Mr Speaker, I wish to move an amendment to Clause 2. The amendment reads: "(a) paragraph (a) is omitted and replaced by the following paragraphs (a) and (b):- (a) by omitting the word "or" at the end of paragraph (b); (b) by omitting the fullstop at the end of paragraph (c) and substituting therefor a semi-colon followed by the word "or". (b) paragraph (b) is redesignated as paragraph (c)". Just minor amendments, Mr Speaker.

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

Clauses 3 and 4 were agreed to and stood part of the Bill.

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

THE NATURE PROTECTION BILL, 1991

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

Clause 3

HON J E PILCHER:

Mr Chairman, I have already given notice to the Opposition of various amendments to the different clauses. Mr Chairman, perhaps just to explain to the Opposition as we go through the different amendments that the points raised by the Honourable Mr Anthony in the last House, together with comments received from the Cage Bird Society and the Gibraltar Ornithological and Natural History Society have been taken into account and we have agreed on a couple of matters to take into account a monitoring exercise that both societies are to make and to proceed along the path that I have mentioned. We have taken all the birds bred in captivity out of the equation under Clause 3 and also included in it any bird, animal etc which has been imported into Gibraltar in accordance with the requirements of any other relevant Ordinance. Since the Honourable the Minister for Housing has also been very worried, Mr Chairman, we have added the hairy snail and in case, Mr Chairman, he is still worried when he looses his hair I must say that wrinkled snails are also now protected, Mr Chairman.

HON K B ANTHONY:

We have no objection to Clause 3. It does cover the importance of birds, this was the loophole existing in Clause 3.

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

Clause 4

HON K B ANTHONY:

Mr Chairman, I did raise this point at the Second Reading of the Bill and that is the question of the twelve hour period when somebody finds a damaged injured wild bird. They have to pass it on within a period of twelve hours and I did point out at the Second Reading that I felt this was a little limited and I would appreciate it if the Honourable Member will look at this again and see if it could be extended.

HON J E PILCHER:

Mr Chairman, we have looked at this in consultation with the various parties and we feel that normally it does happen immediately, virtually within a couple of hours, so we feel that the twelve hour period, which let me again add will have a certain amount of flexibility, and nobody will query if it has taken twelve and a half hours. I am told that when something like this happens normally it is in fact within the first couple of hours that the Authorities are notified and that the bird or whatever is taken into care, Mr Chairman.

HON K B ANTHONY:

Mr Chairman, my concern was because there are occasions, for example, long weekends, where the competent authorities are in Spain or wherever and they may not be available within Gibraltar, that is the only reason why I raised it.

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

Clause 5

HON K B ANTHONY:

Mr Chairman, I did also raise on the Second Reading the fact that air rifles, pistols were not included in the list of prohibited weapons or methods of capturing or killing birds. Is there any reason why this has been left out deliberately?

HON J E PILCHER:

Yes Mr Chairman, I did check this, I think it is because they require a separate licence and I think normally licenses are not issued without checking the person etc. So it is an offence to use these kind of rifles without the necessary licence. That was the explanation given at the time.

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

Clause 6

HON K B ANTHONY:

Yes Mr Chairman we have no objections. I presume it covers for example rabbits being imported by butchers etc.

HON LT-COL E M BRITTO:

Mr Chairman, with your leave, could I come back one clause and take up the point made by the Honourable Minister. I am a little bit confused by the explanation given, because some of the items mentioned in Subclause C, for example any shotgun, automatic or semi-automatic weapon, the same arguments could apply to those that have been mentioned. In other words the need to be licensed. I think I am right in saying that what a firearms licence prohibits is the use of that firearm in a public place. It prohibits anything and everything, but this Ordinance tends to go further and tends to limit the methods of killing and as my colleague has said it seems to me that is one of the most likely ways of the law being broken.

HON J E PILCHER:

I will double check it, Mr Chairman, but having mentioned it, I think, I was satisfied. I will have to check it again but I was told that it was covered in the Ordinance. Perhaps the Attorney-General might check it for us?

HON ATTORNEY-GENERAL:

I can confirm, Mr Chairman, at this stage that the Honourable Member opposite is perfectly correct on his interpretation on the relevant provisions of the Firearms Ordinance not only that the mischief at which that Ordinance is aimed, is to prohibit the use of unlicensed firearms as the Honourable Member rightly said public places as opposed to private places.

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

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

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

Clause 8, as amended, was agreed to and stood part of the Bill.

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

Clause 10

HON K B ANTHONY:

Mr Chairman, I am a bit confused, I think that there is a spelling error in this particular amendment the "seign" refers to the rights of the sovereign to have his own way. I think it should be "seine"?

Clause 10, as amended, was agreed to and stood part of the Bill.

Clauses 11 and 12 were agreed to and stood part of the Bill.

Clause 13, as amended, was agreed to and stood part of the Bill.

Clauses 14 to 23 were agreed to and stood part of the Bill.

Clause 24

HON K B ANTHONY:

Mr Chairman, we have received the rather hasty amendment to Clause 24, I am a little confused because it says in the amendment "by deleting the semi-colon". In fact in Clause 24 there are four semi-colons.

HON J E PILCHER:

No Mr Chairman it is obviously to add it at the end. I did not have any other semi-colons in my draft. It should read: 24(a) "by deleting the semi-colon and adding the words "or any other matter in the administration of this Ordinance".

MR CHAIRMAN:

I think what the Honourable Member is saying is will you put the semi-colon at the end, is that right?

HON K B ANTHONY:

Is it purely financial?

HON J E PILCHER:

Yes Mr Chairman, it is a purely financial. It is in controlling the fees or charges payable in respect of any applications, licence or other document under this Ordinance or any other matter in the administration of this Ordinance. We felt that without putting that particular addition, Mr Chairman, we would then only be able to charge fees or charges in respect of those points that have been raised, when there are other areas as I have advised the House previously that we want to put fees and charges on Mr Chairman.

HON LT-COL E M BRITTO:

Mr Chairman it would also make sense to include the same wording as an additional Subclause (f) to allow regulations to be made for any other matter which is not covered at the moment.

HON J E PILCHER:

Mr Chairman, having looked at the ability of the Governor under this Regulation, under this Ordinance to regulate and looking at (a), (b), (c), (d) and (e) Mr Chairman, it seems to us that with the added extension to Clause A, we already have enough power under the Ordinance to be able to regulate in any other matter, Mr Chairman. I thank the Honourable gentleman opposite for trying to help, but we have looked at this and we feel that we are able to regulate in other areas.

HON ATTORNEY-GENERAL:

Mr Chairman, can I just support the Minister in what he has just said and point out I hope for the assistance of the Honourable Lt-Col Britto that the enabling provision begins in Clause 24 by empowering His Excellency the Governor after consultation with the Nature Conservative Council to make regulations to bring into effect the provisions of this Ordinance. So that is the general enabling provision, Mr Chairman, and without in any way delegating from that general power the paragraphs which follow are merely examples but without limitation of the purposes as to which such regulations can be made. That is the idea behind that enabling provision.

Clause 24, as amended, was agreed to and stood part of the Bill.

Clause 25 was agreed to and stood part of the Bill.

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

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

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

THE LITTER CONTROL (AMENDMENT) ORDINANCE, 1990

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

Clause 2

HON J E PILCHER:

Mr Chairman, I have given notice that I want to move a new Clause 2 be inserted in the following terms "Amendment to Section 4". The Litter Control Ordinance. The purpose of this amendment Mr Chairman, when we originally drafted the Ordinance the appeals mechanisms was left out totally, it was an oversight on the part of the Law Draftsman. What we have done Mr Chairman, is just put the appeals mechanisms back in order obviously not to handicap anybody that wants to appeal under this Ordinance. There will be then a set procedure for appeals against the system and the Ordinance, Mr Chairman, and that is what the new Clause and the amendments set out to do.

HON K B ANTHONY:

Mr Chairman, we have no objection to that. We think it is a good idea, there should be an appeals mechanism, we hope it will never have to be used. But with the appeals mechanism it makes the Bill more attractive, we supported it, in principle, at Second Reading, we will support it now.

Clause 2, as amended, was agreed to and stood part of the Bill.

HON J E PILCHER:

Clause 2 Mr Chairman now becomes Clause 3 and 3 is renumbered as Clause 4.

New Clauses 3 and 4 were agreed to and stood part of the Bill.

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

THIRD READING

HON ATTORNEY-GENERAL:

Mr Chairman, I have the honour to report that the Factories (Amendment) Bill, 1991; the Employment (Amendment) Bill, 1991, with amendments; the Nature Protection Bill, 1991, with amendments; and the Litter Control (Amendment) Bill, 1991, 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 Factories (Amendment) Bill, 1991; the Employment (Amendment) Bill, 1991; the Nature Protection Bill, 1991; and the Litter Control (Amendment) Bill, 1991, the question was resolved in the affirmative and the Bills were read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that this House do now adjourn to Tuesday 4th June, 1991, at 10.30 am.

Mr Speaker then put the question which was resolved in the affirmative and the House adjourned to Tuesday 4th June 1991 at 10.30 am.

The adjournment of the House to Tuesday 4th June, 1991, at 10.30 am was taken on Monday the 29th April, 1991, at 3.40 pm.