

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

30th APRIL 1992

Vol. 1

RECORD OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Second Meeting of the First Session of the Seventh House of Assembly held in the House of Assembly Chamber on Thursday the 30th April, 1992, 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 L Baldachino - Minister for Housing
The Hon J C Perez - Minister for Government Services
The Hon R Mor - Minister for Labour and Social Security
The Hon M A Feetham - Minister for Trade and Industry
The Hon Miss M I Montegriffo - Minister for Medical Services and Sport
The Hon J L Moss - Minister for Education, Culture and Youth Affairs
The Hon J E Pilcher - Minister for Tourism
The Hon K W Harris - Attorney-General
The Hon P J Brooke - Financial and Development Secretary

OPPOSITION:

The Hon P R Caruana - Leader of the Opposition
The Hon F Vasquez
The Hon H Corby
The Hon Lt-Col E M Britto OBE, ED
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge

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 14th February, 1992, having been previously circulated, were taken as read and confirmed.

COMMUNICATIONS FROM THE CHAIR

MR SPEAKER:

I must inform the House that the Honourable Attorney-General will soon be leaving us and this will be

his last meeting. I would like to thank him for his very useful contributions in this House during the years that he has been with us and wish him a very happy time with his dear wife Lissie wherever he may go.

ATTORNEY-GENERAL:

Mr Speaker, thank you very much indeed for those kind words. It has indeed been a pleasure and privilege for me to be a Member of this Honourable House and I have always found these proceedings most interesting. My predecessor made no secret of the fact that he would rather be elsewhere when the House of Assembly was sitting. Happily I cannot go along with that because I thoroughly enjoy the meetings and I have made no secret of that fact either and this is undoubtedly one of the aspects of my job that I shall miss. But, as everyone knows, I am not saying goodbye to Gibraltar, I shall be in future spending the winter months in my house in Spain and I will be popping in and out of Gibraltar and renewing the many friendships I have made during my time here and you may well see me in the House, Mr Speaker, but on those occasions, of course, I will be sitting in the strangers gallery and not in my present seat. Thank you again very much indeed.

DOCUMENTS LAID

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

The Employment Survey Report April 1991

Ordered to lie.

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

The Accounts of the John Mackintosh Hall for the year ended 31st March, 1991

Ordered to lie.

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

Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.6 of 1991/92)

Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.7 of 1991/92)

The House resumed at 2.30 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 L Baldachino - Minister for Housing
The Hon J C Perez - Minister for Government Services
The Hon R Mor - Minister for Labour and Social Security
The Hon M A Feetham - Minister for Trade and Industry
The Hon Miss M I Montegriffo - Minister for Medical
Services
and Sport
The Hon J L Moss - Minister for Education, Culture and
Youth Affairs
The Hon J E Pilcher - Minister for Tourism
The Hon P S Dean - Acting Attorney-General
The Hon T J Brooke - Financial and Development Secretary

OPPOSITION:

The Hon F R Caruana - Leader of the Opposition
The Hon F Vasquez
The Hon H Corby
The Hon Lt-Col E M Britto OBE, ED
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge

IM ATTENDANCE:

C M Coom Esq - Clerk of the House of Assembly

MR SPEAKER:

There is every indication that it is going to be a very hot afternoon, so Members who wish to take off their jackets may do so. They must not roll up their sleeves or use their fists but they are free to take off their jackets.

ADMINISTRATION OF OATH OF ALLEGIANCE - ATTORNEY-GENERAL

The Hon Peter S Dean took the Oath of Allegiance.

Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.8 of 1991/92)

Statement of Consolidated Fund Re-Allocation approved by the Financial and Development Secretary (No.9 of 1991/92)

Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.10 of 1991/92)

Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.11 of 1991/92)

Statement of Improvement and Development Fund Re-Allocations approved by the Financial and Development Secretary (No.1 of 1991/92)

The Annual Report and Accounts of the Gibraltar Broadcasting Corporation of 1989/90

The Draft Estimates of Revenue and Expenditure 1992/93

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 1.00 pm.

The House resumed at 3.05 pm.

Answers to Questions continued.

The House recessed at 5.15 pm.

The House resumed at 5.35 pm.

Answers to Questions continued.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that this House do now adjourn to Tuesday 26th May, 1992, at 2.30 pm.

Mr Speaker then put the question which was resolved in the affirmative and the House adjourned to Tuesday 26th May, 1992 at 2.30 pm.

The adjournment of the House to Tuesday 26th May, 1992, at 2.30 pm was taken at 8.05 pm on Thursday 30th April, 1992.

MR SPEAKER:

Before we start the business of the House I would like to welcome the Learned Peter Stanley Dean. He has come a long way to attend to this meeting. All the way from New Zealand and, I think, he is the second New Zealander that we have had in this House. Mr David Hull was the first, also as Attorney-General. I wish Mr Dean a very useful time here in the House and I am sure he will make very good contributions and no doubt, I think, will enjoy the experience.

SUSPENSION OF STANDING ORDERS

FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to lay on the table the following documents.

This was agreed to.

DOCUMENTS LAID

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

Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.12, of 1991/92).

Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.13 of 1991/92).

Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.14 of 1991/92)

Statement of Supplementary Estimates (No.3 of 1991/92)

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE SUPPLEMENTARY APPROPRIATION 1991/92 ORDINANCE, 1992

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 1992 be read a first time.

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

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill deals with two further Appropriations in respect of the Financial Year 1991/92. It has been necessary for many years to bring to the House Supplementary Appropriation proposals after the year has ended and therefore after the expenditure has been incurred. I deprecate this practice and have been applying pressure to all spending departments to reduce such incidences under the ultimate threat of the sanctions available to me under the Public Finance (Control and Audit) Ordinance. In these particular cases, however, the underline reasons are perhaps more technical than substantive. The higher charge to Government in respect of its own rates levy is due in substantial part to the handing over of former MOD property with the consequential switch of the rating charge from what was formerly the Imperial Rate levied on MOD properties to a rate charge on Government itself. The full extent of this switch did not become apparent until the final quarter of the year. A small increase in the cost of the Fire Brigade project for the purchase of the Breathing Apparatus Training System arises from the increase in costs payable under the contractual arrangements. Therefore, Mr Speaker, it is with some regret that such bills should ever be necessary. I however 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 P R CARUANA:

Mr Speaker, normally of course from this side of the House we also deprecate the need of the Honourable Financial and Development Secretary to come before the House with a Supplementary Appropriation Bill, although in this instance we recognise that in relation to the principle item relating to the Consolidated Fund it is not so much excess expenditure in the sense of money that has been spent without authority, but rather the application of a regime which has resulted presumably in money being paid out of one Head to another under internal revenue. In relation to the Improvement and Development Fund, it is true that the principle has been breached, it is in relation to a minor sum and therefore I feel that we can support the Bill without further comment on this occasion.

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Just simply to thank the Honourable Members opposite Sir, for their understanding and support to the Bill.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

MR SPEAKER:

Before we take the Appropriation Bill 1992/1993, I would like to make a ruling and I will read it very slowly so that all Members become fully acquainted with the decision that I have taken.

Honourable Lady and Gentlemen, three motions have been received and accepted. A motion of censure from the Honourable and Learned Leader of the Opposition, Mr Peter Caruana, and two motions from the Honourable and Gallant Lt-Col Ernest Britto. At this juncture I must draw attention to the motion of censure which refers to matters in the Appropriation Bill that the House is about to debate. Notwithstanding that this motion is affected by the rule of anticipation, I have allowed it. Hence for the sake of good order, I must acquaint Honourable Members with the manner of debating to be followed when taking the Appropriation Bill consequent on my acceptance of the admissibility of the motion. I will first read the motion and then give an explanation on its admissibility and on the debating rules to be followed. The motion reads as follows:-

"This House condemns the Government for:

- (1) Failing to lay before the House Estimates of Revenue for the current year in respect of such important sources of revenue as (amongst others) Import Duties, Electricity Charges, Company Tax, Exempt Status Tax, Stamp Duties, Ground and Sundry Rents and Premia on Assignments, amount last year to a sum of about £33m and notes that Section 65(1) of the Constitution provides that:

"The Financial and Development Secretary shall cause to be prepared and laid before the Assembly before or not later than thirty days after the commencement of each financial year estimates of the revenues and expenditure of Gibraltar for that year";

- (2) Diverting in the aforementioned significant revenues away from the Consolidated Fund to Special Funds with a view to enabling the Government to spend those monies without seeking the authority of this House;

- (3) Passing a decree allowing Import Duties to be paid into a Special Fund in breach of the law, namely Section 45 of the Import and Export Duties Ordinance, which requires import duty to be paid into the Consolidated Fund,

and notes with regret and concern that the financial information relating to the estimated revenues and expenditure available to this House is incomplete and reduced to the point where the role of the House in general and the Opposition in particular to act as watchdogs of public monies and expenditure, is severely prejudiced.

Now because this is a motion of censure on the Government and because the date of the next sitting or meeting is unknown and a long time could elapse before the motion could be moved and because it is fundamental to parliamentary democracy that freedom of speech be maximised, I made the exception of allowing the motion to be included in the Agenda. An ordinary motion in normal circumstances would be disallowed for impinging on Standing Order No.47 concerning anticipation. However in accepting in this instance the censure motion it would be improper to constrain the Government in their explanation of and comments on any matter whatsoever in the Bill as this is precisely one of the constraints, that the rule of anticipation is intended to prevent, except that no comments on the motion itself will be admissible. I have therefore struck a balance to allow as much freedom of speech as possible to all Honourable Members in the House and at the same time take account of the exceptional circumstances affecting the situation in this case. This balance I have decided is best achieved by on the one hand permitting the general rules of debate governing the Appropriation Bill to apply and on the other hand by allowing the motion to stand subject to the Opposition agreeing to defer commenting on the points raised in the motion until the motion itself is debated later in the meeting. The Leader of the Opposition was advised that he would be constraining the Opposition in the manner that I have explained. If the Hon the Leader of the Opposition wanted his motion to be accepted, at this stage of the proceedings, it was under these conditions and it was with his agreement that I accepted notice of the motion. If the Leader of the Opposition had wished the Opposition to comment in the debate on the points of the motion relevant to the Bill, at the Second Reading of the Bill, he could have done so by deferring notice of the motion until the Appropriation Bill had been read a third time. However, no date could be set as to when he could move the motion as such date is dependent on the meeting

arrangements that are decided by the Leader of the House. All this was explained to him at the time and the Hon the Leader of the Opposition decided to give notice of the motion. If on reflection the Leader of the Opposition now prefers the Opposition to be free from the constraints that I have mentioned then he can do so by withdrawing the motion now, before the Bill of Appropriation is taken, since the motion has not yet been proposed and therefore its withdrawal does not require approval from the House under Section 22 of the Standing Order. This, of course, does not prevent the Honourable Leader of the Opposition introducing the motion at a later date. So if the Leader of the Opposition would like to decide which way he wishes to proceed.

HON P R CARUANA:

Before Mr Speaker's ruling I had already made my decision.

MR SPEAKER:

Then you do not wish to withdraw the motion?

HON P R CARUANA:

Not at this point in time, Mr Speaker.

MR SPEAKER:

So we will carry on now under the rules which I have established and with the Appropriation Bill.

THE APPROPRIATION 1992/93 ORDINANCE, 1992

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to appropriate sums of money to the service to the year ending with the 31st day of March 1993 be read a first time.

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

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, in keeping with the practice of recent years, I will confine myself to introducing the Estimates and giving some background on their formulation and then make way for the Chief Minister to explain the Government's policy underlying these Estimates. The total Consolidated Fund expenditure to be appropriated by this Bill is £54.3m compared with an appropriation of £71.6m in 1991/92. This deduction is largely due to the impact of the commercialisation of water and sewage operations and certain expenditure

previously charged under the Consolidated Fund now being directly chargeable to Special Funds, including the contribution to the Health Authority and certain expenditure relating to the purchase of electricity. Furthermore, the Consolidated Fund will no longer be required to sustain a contribution to the Social Assistance Fund. Provision for items deleted as a result of these changes in Special Fund arrangements amount to £19.1m in 1991/92. These reductions are partly offset by the increase in provision elsewhere within the Estimates largely as a result of cost inflation. Including Consolidated Fund charges which do not require appropriation. Total expenditure on the Consolidated Fund reduces from an original Estimate for 1991/92 of £97.2m to £77.9m. Consolidated Fund revenue is estimated to be £72.7m compared with a revised Estimate for 1991/92 of £86.7m. As a consequence of these Estimates a deficit in the Consolidated Fund of £5.2m is estimated for 1992/93 which will reduce the Consolidated Fund balance from a closing figure for 1991/92 of £6.6m to £1.4m. In terms of presentation of the expenditure estimates, the most significant change reflects the commercialisation of water and sewage services in the course of 1991 and the deletion of the corresponding items of expenditure from the Estimates. With this change the Public Works Department has effectively ceased to exist and some of the residual functions still remain in the Civil Service such as Garaging and Stores which are now grouped together under a head entitled "Support Services". Moving to Consolidated Fund revenue, changes in the presentation reflect Government policy from regulations authorised by His Excellency the Governor, to reallocated revenue previously credited to the Consolidated Fund to the benefit of a number of new or existing Special Funds. These changes were principally as follows:- Stamp Duties, Tax Exempt Company Fees, Ground Rents and Premia on Land Assignments are brought to the Sinking Fund for the ultimate redemption of commercial borrowing. Electricity charges have gone to the newly created Electricity Fund and Import Duties have been allocated to the Social Assistance Fund. I am, of course, aware of the assertion made in a recent press release by the Opposition Party in this House that the Estimates that have been tabled are unconstitutional and that they do not show the items of revenue to which I have just referred. They believe that I am obliged under Section 65(1) of the Constitution to show this revenue. There is now a motion before the House that sets these concerns in a somewhat broader context. Whilst I do not think that it is appropriate to anticipate the debate on these wider issues, I think, that I should perhaps respond on this specific point of constitutionality. In the first place, it is important to emphasise that the reason why the items of revenue in question are not shown in the Estimates that have been tabled is due to the fact of their reallocation by regulation to Special Funds. Therefore, the assertion

made amounts to a claim that there is an obligation to arrive at the House with Estimates for both the expenditure and revenue of not just the Consolidated Fund but also the many various Special Funds to which revenue is allocated and from which expenditure is incurred. This is clearly a serious point and it is required to be given serious consideration. If it were correct then indeed the Estimates brought before the House have been unconstitutional for a number of years. Since there is a point of constitutional law involved, the House will not be surprised that I sought advice on this issue from the Attorney-General's Chambers. On the basis of the advice that I have received I am satisfied on the form of the Estimates in dealing only with the Consolidated Fund and the Improvement and Development Fund is constitutional and I am not, therefore, inhibited in presenting the Appropriation Bill today. The providing of information that goes beyond the strict constitutional and statutory requirements is a matter for the policy of the Government of the day and I am advised that it is not the Government policy to produce Estimates for the Special Funds other than the Improvement and Development Fund which is subject to statutory requirements. Moving from the Consolidated Fund to the Improvement and Development Fund the total expenditure to the Appropriation is £44.4m compared to £62.9m in 1991/92. This reduction reflects the anticipated completion in the course of 1992/93 of a number of major projects including the Industrial Park and the Gib 5 Housing Estate. As a result of estimated revenue £72.3m included in the funds of 1991/92 principally as a result of Asset Sales, the revised estimate of results for 1991/92 suggests the deficiency on the fund of £10.9m as at the 31st March 1991. This has been reduced to £0.3m by 31st March 1992. Further receipts of £44.2m are estimated in 1992/93 which will be sufficient to cover the capital expenditure referred to earlier and retain a positive working balance by the end of the year at an estimated £0.5m. With those words of explanation as background, Mr Speaker, I now give way to the Chief Minister to set at Government's policy and financial strategy.

CHIEF MINISTER:

Mr Speaker, I think, perhaps for the record, since people of Gibraltar who have the opportunity of listening to the debate in the House may not be fully conversant with the particular responsibilities that each of us has in this House of Assembly, can I just say so that it is known, but of course the decision and the ruling that you make on the motion and what the Members of the Opposition may say or not say in anticipating the motion, has been entirely yours in the exercise of your responsibility and your judgement as Speaker of this House and there has been no communication between the Government and the Speaker on this subject. Just in case you get another motion or something else at a future date, Mr Speaker.

Also that the explanations given by the Honourable Financial and Development Secretary in terms of the way the money has been allocated to Special Funds, again is his reaction as a technician to the statements that have been made assuming them to be of a technical nature. Now I do not have to assume any of those things, Mr Speaker, I am assuming them to be totally politically motivated and therefore I have to say that I will not be able, notwithstanding the fact that you have not chosen to restrict me, Mr Speaker, I will not be able to give, at this stage, some of the reasons for the changes because of course it is one thing to say these changes have taken place and therefore technically one has to question, is it permissible to carry out such changes? The other thing is to say, "Well why should the changes be needed?" That is a matter of policy. We decided we required certain changes and we have thought good reasons for doing them. I would have explained the reasons this year, as I have done on previous occasions in previous budgets when we have given the Opposition an advance copy of the Estimates of Revenue of Expenditure and then when I have stood up at this stage, I have drawn their attention to the way the Estimates have changed because, in fact, we have been changing the presentation of the Estimates of Revenue and Expenditure consistently every year since 1988 and explaining the changes. However, we have had a situation which is very unusual in my twenty years of experience of this House where the Opposition issue a press release about the contents of the Estimates of Revenue and Expenditure in their possession on a restricted basis, before we get to debate it here and present a motion censuring what they think has been done without waiting to find out whether it has been done, and I am afraid now, we will have to wait until they move the motion to find out what degree of accuracy there is or there is not in the things that they have said in their motion. Mr Speaker, I am certainly not going to tell them before they move the motion where they have got it wrong. They will have to wait to be exposed at that particular stage, I am afraid, so they can look forward in anticipation to that moment.

Apart from that limitation I will try and give the House and the people of Gibraltar an expose of how we see, not just the next twelve months, but indeed, the next four years, which is what we did in 1988. In 1988, I think, for the first time in the history of this House, we actually said "We have just had an election, I am not going to be budgetting for four years in one go, which is an impossibility, but I am going to give broad parameters, broad outlines of what we would like to achieve in the four year period," and one element in that type of scenario is that, of course, it provides a framework within which performance can be judged. The other thing is, of course, that it makes more sense when one is talking about economic management and economic performance. To talk about a period of more than twelve months, because a twelve month period is of course totally arbitrary, not just in terms of Government expenditure, but particularly when we are talking about economic growth

as it has been for the last couple of years which is significantly influenced by capital investment projects which are large. If you have a lot of small projects then you are unlikely to have a situation where a big chunk of expenditure can change the performance of one year quite dramatically simply by being twenty-four hours later or earlier. If you have a lot of small projects then it is very unlikely that if any project moves faster or slower than programmed, the effect will significantly alter the results, because in any case, in all these calculations there is always a margin of error. But if you have a project like Queensway which is £80m or projects like Europort which is £110m, then whether you spend £20m in April or you spend £20m in March makes a very big difference to the result of 1991/92 or the result of 1992/93, so I think we need to look at it over a broader period of time.

In the context of that broader period of time we are talking essentially of an economy which in 1988 was producing goods and services worth £150m. Now what exactly does that mean? This is a figure we use when we talk about Gross Domestic Product. It does not mean that that is the only thing we produce, it means that is what we produce in Gibraltar with our efforts and our labour. So in the actual output of the economy you have a very much bigger figure and you need to deduct from that figure the goods that we import from the outside world, from outside our own economy. So you have a situation where, when we take into account all the goods and all the services that we sell, both to ourselves and to outsiders and we deduct the goods and services we buy from outsiders, what we are really responsible for producing in Gibraltar in 1988 was £150m, in one year. By this year we expect that figure to be £300m and that is the figure we were using in the course of the election campaign in January this year. I regret that indeed we are still not able to give reliable figures for 1991. The Leader of the Opposition at Question time asked me to give him the figures for 1991/92 and 1992/93. We are having difficulty in finalising the 1991 figure. Part of the reason is, of course, that the easiest figures to calculate in GDP and the most reliable ones, are the consumption of the output of Gibraltar that is accounted for by the expenditure of the Government of Gibraltar and the expenditure of the Ministry of Defence, because those figures, we produce either ourselves or are provided by the British Government and therefore we have no reason to produce a figure other than the real ones since we do not pay taxes and neither does the UK Government. That is not true of everybody in Gibraltar.

Secondly, the Estimates tend to be fairly close to the final audited figure and, in fact, we have improved ourselves in the accuracy of that figure by putting at the beginning of the year, a sum for supplementary expenditure so that in fact when we look at the Estimates for the next twelve months, in the Estimates before the House now, we have a situation, Mr Speaker, where in

the figure, in the summary on page 16, the £64m we are planning to spend in the next twelve months includes a sum of money which is not yet allocated and which is there for overruns on expenditure to avoid the kind of situation that the Financial and Development Secretary mentioned, where we discover after the end of the year that we have overspent. So there is really no reason anymore why this should happen because at the beginning of the year we put in a figure, we have been doing this now for three years, we put in a figure and they are supposed to stay within that ceiling of £52m come what may. That means that when we are making Estimates of the output of the economy we do not have the problem that we used to have way back in 1987 and 1986, which was that the revisions after the accounts, of course, were so huge in comparison to the size of the original Estimates, that you were still revising the figures three years down the road. But that is only true of the Government's sector and the Government's sector is shrinking. It is shrinking both in absolute terms and it is shrinking even more rapidly in percentage terms out of a total economy.

The same is true of the MOD, so it means that the two elements in the National Income Accounts which are most easy to predict and most reliable, have a decreasing importance in the total and the private sector accounts for more and more of that total, purchase of the goods and services, that we produce collectively as a community in Gibraltar. It means that the Statistics Office has to rely, for things like earnings, on surveys, for things like company profits, on the eventual information in accounts submitted to the Tax Offices where the information is not provided on an individual basis but it is provided collectively, for the Statistics Office. So that it is not possible to identify how much income tax is being paid by one company or how much profit is being made by one particular individual firm. You have to calculate a figure for all the profits that are being made by all the companies that are created in Gibraltar between the 1 April in one year and the 31 March the next. That is one of the components of national income. I am giving this background so that Members will understand that, in fact, in calculating the figures, obviously we would like to have them as quickly as possible because it assists our planning but we are constrained by a situation where although we prove the speed and the accuracy of our own information, that information is less and less important and it is going to become even less important over the next three years because, in fact, we have peaked on Capital Investment in 1991/92 as is seen in these Estimates. If Members look at the summary on page 5 they will see that we are planning to reduce the amount of spending on Capital Works from £61m last year to £43 1/3m in the next twelve months. In the capital sector we are declining and we have been growing for the last four years. In the last four years we went from £4m to £8m to £16m to £20m and we have culminated in £61m

which is, in fact, as far as we are concerned, the maximum that could really be handled. In fact, we budgetted for a higher sum and we are expecting now to be declining in terms of our Improvement and Development Fund expenditure from now on. However, we are reasonably confident that the figures for 1991/92 will be very close to the £300m that we set ourselves as a target initially when they are finally closed and audited and all that could take quite a long time. Members however can take it that the figure we used in January this year, which was £300m, is in fact, reasonably accurate as a figure with which to work.

In that period between 1988 and 1992, when we moved from £150m to £300m, we did not quite double output because, in fact, we grew in employment numbers. We grew from something like 12,900 to something like 14,500 in that period, so in fact, it was not simply a question of better organisation and higher output, it was also a question of more people being employed. The principle increase being in the construction industry. We have set ourselves a target in terms of employment over the next four years of maintaining 14,000 jobs in the economy of Gibraltar and we expect that in order to maintain those 14,000 jobs, the economy of Gibraltar will have to increase its output from £300m to £450m between 1992 and 1996.

Now one might ask why should one need to increase output from £300m to £450m in order to keep 14,000 jobs if we have already 14,000 jobs. Of course, quite simply because one of the fundamental problems of our economy is that we are an economy with probably, on a per capita basis, the highest external trade in the world. The United Kingdom economy was always characterised as an Island economy which needed to export to survive because they could not survive on their internal output like the United States can. The United States tomorrow could stop trading with the rest of the world and it is big enough and diversified enough to be able to produce practically everything it needs within the United States. The United Kingdom economy always needed to have a very large export sector in order to pay for its imports. Well, on a per capita basis we need it even more than they do and, of course, we have always had it except that we have never seen it in that light. We have never really consciously understood, as a people, that we were exporting the product of our labours to the UK. But of course instead of making things and shipping them to the UK, the UK was sending people to Gibraltar, the armed forces, who were buying our labour output from us. So they were our export industry and that is effectively what we have been losing for three years now and we are going to be losing even more dramatically for the next three years. So we have to run very fast to stay in the same place. Since we are so highly dependent on the outside world for everything we consume, our food, our fuel, everything, it means that as the outside world every year charges us more

for what we buy from them, we need to charge more for what we sell to them but we no longer have one customer, we need to pay more every year for what we used to have. We have now many customers who do not have to buy from us and therefore we need to increase output because without increasing output we will not be able to retain our standard of living. We need to produce more to stay as we are because we need to earn more from the outside world to buy the same. What we buy in 1993 will cost us more than what we will pay for it in 1992, for the same things, and if we want to buy the same volume, the same quantity of goods to maintain the standard of living of our people in 1993 as we do in 1992 and we cannot increase our prices in 1993 because we no longer have a captive customer who was willing to pay a price increase, it means we have therefore to produce more so that we can increase our incomes. We have to sell more. Not sell the same at a higher price.

That is the very crux, the very essence of the problem of economic management in Gibraltar. If we can solve that, all the other problems will solve themselves. But it is a very tough problem because it is a kind of problem that normally Governments do not have to face. It is a kind of problem that normally businesses in market economies face and they have greater room for manoeuvre, greater flexibility, greater adaptability to the market, than Governments normally have. So our strategy has to be that having identified what needs to be done to achieve the objectives that we have set ourselves, objectives which I am sure Members opposite will not quarrel with, I cannot imagine the Members opposite wanting us not to have 14,000 jobs and not to have full employment and not to be able to give work, not just to our own people but to all the Moroccans who have been here for so many years. We all want to be able to do that, Mr Speaker, but in order to be able to do that we have to earn our keep and in order to be able to earn our keep we have to be able to produce more. We need to produce £150m more every year in four years time than what we are doing now and we have done it in the last four years, but we have done it in the last four years on the back of a very very large capital investment programme generating very high rates of growth which can no longer be maintained in the future. Not because we do not want to, let me say, because that is one of the areas where we clearly have different philosophies from the Members opposite, as was proved in the General Election in January, when they were saying that we were growing too fast in moving from £150m to £300m over the last four years and I would say to them now I wish I could move as fast in the next four years and instead of going from £300m to £450m, I would go from £300m to £600m, but we cannot afford it. We cannot afford to maintain the level of public investment that we have maintained until now and therefore, if we could we would. We believe in it but having carried out investment programme at the pace which we felt, in our judgement, our economy could afford, we have now reached the stage

where we cannot afford to keep on increasing it at the rate we have been increasing it over the last two years. But it is not a matter of wanting to do it or not wanting to do it, if we could find a way of financing higher levels of investment, we would do so because at the end of the day particularly in the Public Sector who can say ever that you run out of desirable projects in which to invest. We have just invested, Mr Speaker, in a new school which was opened recently which cost £34m. Well, if we had £34m to spend every year we would want to do that every year but we cannot. We can afford to do that once. So this is reflected in the expenditure, as I have said, coming down by £184m between the year that has just ended and the next twelve months, in Public Sector Capital Investment.

The effect of this will be, of course, that the abnormally high levels of employment in the Construction Industry that we are experiencing at the moment and we have experienced in the last twelve months will decline and the industry will go back to the kind of level that it was in 1988/89 and the early part of 1990, which is the long-term sustainable level we consider in the economy of Gibraltar. That will still give plenty of opportunities for people to take up employment in the private sector construction industry from the local workforce. There is still a minute involvement of Gibraltarians in the construction industry. We are talking about something of the order of less than 10% of the industry. So that means that even if you have a much smaller industry, you can still go a long way to increasing the percentage of Gibraltarians working in the construction industry when it is below 10%. So since much of the increase in the construction industry over the last twelve months has been effectively supported by the importation of temporary workers, primarily from Spain and Portugal, fortunately for us it does not mean that when the peak is passed we will be landed with hundreds of people here unemployed because they come in, they do a job, finish a project and they go. That from our point of view means that we are able to take on the commitment of a short heavy construction programme over a short period of time without saying well lock we cannot take the construction industry to a higher level temporarily. Now this is not new, of course, this has been going on for a very very long time. I remember way back in the 1960s when the projects in Europa Point were built by the Military that it was done by a Cypriot firm that brought in workers from the Phillipines and when the project was finished they went back. If it were not for that effectively our ability to respond to changing market conditions in the rest of the world would be very very difficult because it would take so long for us to switch resources, that by the time we switched them we would have missed the boat. But being able to bring people in to do a job and then they go means we can still have secure long-

term jobs in the construction industry for a given volume of work and feed a peak with people from outside.

That is really what is reflected in the \$61.7m that has been spent out of the Improvement and Development Fund over the last twelve months. That will continue to be reflected over the next twelve months as the New Harbours Development comes to completion but if we look further ahead in 1993, the reality is that many of the projects that were started in the last eighteen months will be finished. If we are fortunate enough to be able to attract so many new businesses to Gibraltar and we find that the supply that has been created is being taken up very quickly, then, I think, we can go out to look for new investors to invest in more facilities and more property but we are certainly not going to do that while there is available property on the market. We think it is not a wise thing to do and we do not think that it is a fair thing to do either to the people that have invested already. Therefore the policy of the Government, in managing the economy, a policy that we announced, in fact, again in 1988. So we are not breaking any new ground because we identified the need to have a land bank in 1988 and the need to stabilize property and land prices by acting, if you like, as a kind of OPEC on land, as a buffer stock of land so that if it was a situation where a lot of people wanted to do a lot of developments. We would stop prices going through the roof and we would stop speculation by increasing the supply. If we find that people have empty property on their hands which they have difficulty in finding customers for, then we will say to new people who want to come in, "Lock we are sorry we are not giving you permission to develop because at the end of the day we do not think it is fair that you should come here and add more to a market that is already well supplied. You will have to wait until the market stabilizes." In a market as small as ours it is difficult not to go from feast to famine and vice versa because, of course, you are talking about a market which is so tiny that you move from a situation where there are no offices to a situation where there is a glut of offices to a situation where there are no offices, simply because you cannot build just one office. You have to build an office block and the problem is that the investor that is going to build the office block, will not come in until he can see that there is demand in the market. So there has to be shortage for the investor to come in and then when he comes in and in order to be able to produce what he considers to be a profitable product, he tends to have to build a certain volume of units so that the unit costs make it a worthwhile investment and he over-supplies the market. Then you have to wait for the demand to catch up with the supply. We are entering into that phase over the next eighteen months and we are still, of course, going to try, as we said we would in the election and since, to, and as it is reflected in these Estimates, to put a greater emphasis now on actually selling what we have.

The analysis of the Government was that we were in a catch 22 situation before. That is to say, we did not have the quality of offices or telecommunications or reliable electricity supplies or a modern incineration plant to be able to attract people and you could not go out and say to them look if you come to Gibraltar we will put you in a tent in Eastern Beach and then we will start building offices, incineration plants, etc. You have to take the commercial risk of producing the product and then selling it or at least producing the product and selling it when it is nearly finished, which is at the stage we are at. We now have enough in place and enough in the pipeline to be able to say, well now we have to shift our resources as a Government, our team now has to move from concentrating on upgrading the infrastructure of Gibraltar to concentrating on bringing customers who will use it, pay for it and reimburse to us the money we have invested ourselves and reimburse to the private sector the money the private sector has invested. We are reasonably confident that we can achieve this in the next four years. Notwithstanding a situation in the outside world which is catastrophic. There is no other word to describe it, Mr Speaker. The United Kingdom itself, notwithstanding the re-election of the Conservative Government and their predictions that the recession is ending, the prediction that we have been hearing for a very long time, has just announced that in fact they are predicting zero growth this year and they have just, in fact, recalculated the decline in their economy showing that the total fall in the gross domestic product since the recession began is now nearly 5%, which means that the latest estimates by the UK Treasury is that the United Kingdom since the recession began in the mid-90s, has actually got to a position where it is producing 5% less today than it was two years ago. I think, we can congratulate ourselves on a performance against that background where we are producing today 100% more than we were producing four years ago. Obviously it is a benefit to have a Socialist Government in office, as we have in Gibraltar, Mr Speaker.

The degree of depth of this recession is unprecedented and the unknown elements against which the recession is developing creates a totally new scenario. The collapse of the Soviet Union and the Eastern European economies create a situation today for western economies which has not been experienced since the revolution in 1917. The market out there is tougher than I have ever known it in the last twenty years. The people that I talk to who are experts in the field, to whom I talk professionally, people that I know, certainly are very pessimistic and there are people who are saying the recession is not going to end in 1992 or in 1993 or in 1994. We are therefore, taking a fairly conservative approach in our estimating. This is why we are saying we are going for growth from £300m to £450m and for maintaining 14,000 jobs in our economy. We do not think that this is an over ambitious target and it is a target

that assumes on our part quite a reduction over the next couple of years in the Improvement and Development Fund. It assumes that there will be not many new projects after the completion of the ones that we have in place. It assumes there is going to be a continuing shrinkage in the UK Departments and it assumes that the world recession is not going to be as easy to end and that the upswing will be slower and will come later than the optimists expect. I do not know other than Armageddon what else we can assume in the equation to make sure we are not being too optimistic. I say this because, I think, that it is important that whilst we have to be totally realistic in understanding the difficulties that we face, as a people and as an economy, small and vulnerable as we are, I do not want to produce an impression of unmitigated gloom because, in fact, in our prediction we have tried to take into account all the possible negative factors and have left ourselves with room for positive factors. It is difficult to think of what could go wrong that we have not already assumed will go wrong in the economic model which underlines these Estimates and the projection for the next four years.

As we said in questions to the House, Mr Speaker, the level of borrowing provided for in the Loans Empowering Ordinance in 1989, which gives us a ceiling of £100m, is in our view, sufficient for the current Financial Year to sustain this level of expenditure in the Improvement and Development Fund. We will be using the mechanism that we have explained so many times before which I hope I do not need to explain more, which is that the borrowed funds will eventually show up in the receipt of £44½m but that, in fact, in here those receipts appeared not as borrowing but as land sales. There are as I indicated to the Leader of the Opposition at Question Time unused resources within the property companies from the borrowing that we raised in May last year of £50m and that, plus the unused balance between the £87m and the £100m, we consider should be sufficient to maintain this. It means, of course, that we will have to look at the borrowing capacity of the Government for the following year. That is to say, for 1993/94 in the line of the demands for capital spending that will be ahead of us for the remaining three years of the four year economic strategy. It is too early to be able to establish what those are likely to be and it depends on a number of things including the degree to which we are able to generate new income on attracting new businesses. We are of course making prudential provisions for making sure that the debts can be repaid without any problems.

In looking at the Recurrent Estimates of Expenditure, Mr Speaker, the position as I indicated, I think, it was about nine or ten months ago in answer to questions in the House, is one where the ability to get savings out of the restructuring of departments or the commercialisation of activities is now getting smaller by definition having started with a number of areas which in our view were clearly trading activities which in

our view there was no particular reason why it should be a Government responsibility. The more of those trading activities that have now been hived off to commercial entities the less of them that are left to hive off. We are however still interested in moving in that direction whenever we can find a way of doing so and as the Minister for Trade and Industry mentioned at Question Time in the earlier part of the House, at the moment what we have under review the Shipping Registry and the Companies Registry. Neither of which really will mean a great deal of savings in terms of manpower or in terms of costs to the Government, but we hope that what they will mean is that by having a more commercial orientated management set-up in say, the Registry we will have more aggressive marketing of the Gibraltar Registry as opposed to our competitors which we feel is sometimes difficult if we have the inevitable red tape that goes with Government systems. Therefore if the customer is looking at the advantages, even if the advantages are there in the private sector, in the tax legislation or whatever, if they just take a long time to get a response then businessmen men today have too many options, too many choices and too many people after their money to hang around waiting for us to make up our minds. So they just go. We cannot afford to lose them. We have to go after every penny we can if we are going to keep the ship afloat. Therefore that is the primary reason why in those two areas we have proposals and we are looking at them seriously. But as I said, it does not mean that we are not interested in other areas. It means that at this stage we have not really been able to identify what other areas we could move in the next twelve months. But if we have, as we did get in the past and as we tend to get from time to time, people within the Service who come to us and say we think it could be done in this way and we are interested in moving, then we are open to such proposals and, in fact, we have had the situation where the Honourable Financial and Development Secretary has recently been looking with the Accountant General and the GGCA on how we could produce an accounting service, if you like, which would effectively be contracted to do the accounts of the different departments and which would consist of the people who are now in the Accountant General's Department but who would be able to produce quicker, better results because they are able to operate with a greater latitude and more freedom than the way they do now. We do not know whether this will work or not but we are certainly keen to do it and we are certainly keen to move that way. In terms of a policy decision the proposals were first put to us in May 1990 and we said "yes" immediately and it just shows the speed at which these things move that we are still talking to the parties concerned about the possibility. I am just mentioning this because, of course, it does mean that the Estimates of Revenue and Expenditure, which are being placed before the House are precisely that, Estimates. If during the course of the year we can find ways of removing either revenue or expenditure then, of course, we will be very glad to go down that road, unless the

Honourable Member opposite persuades us to do the opposite with his motion.

Another important area which we hope to be able to move on in the next twelve months and which is breaking new ground is something we set out to do in 1988 and we were not able to do simply because we have provided the necessary legislation, we created the necessary framework, it was intended that it should be done via the Investment Fund but like everything else it was not high enough on the agenda to enable us to get round to doing it. We expanded on that further, Mr Speaker, in January this year in the course of our manifesto, where we talked about a rainy day fund and we talked about the need to have a company, an institution, that would invest outside our own economy as well as inside. Let me explain the rationale of doing that by taking the House back to what I said initially about the fundamental problem of our economic situation and the vulnerability that we face today which we have never faced in the past. A lot of people think that with an open frontier and an economy that is growing today we are, in fact, safer, if you like, better off than we were with a closed frontier. The opposite is true. We were in an economy that was stagnating but it was rock solid. Nothing could go wrong with it. Today we have an economy that is dynamic but can trip. So in looking at that situation what do we have? Essentially we have to look at ourselves as an economy that buys from the outside and sells to the outside and we need to keep those in balance. If we have a currency that was other than sterling based then the balance of trade and the balance of payment would determine what the Gibraltar pound was worth. The Gibraltar pound is pegged to sterling backed by sterling and therefore what happens to the UK economy determines the value of our currency, not what happens to our economy. But if we have an independent currency, like Malta has or Cyprus has, then effectively whether the Gibraltar pound went up or down would depend on how successful we were in selling to outsiders more than we needed to buy from them. That is really what we have to achieve. Having lost our biggest, our most reliable customer, the Ministry of Defence, we will need to really think in terms of what are the things that produce what one would call in terms of National Accounts, Gibraltar credits and what are the things that produce Gibraltar debits. So for example, repairing ships produces a credit to our national accounts. Why? Because the ship owners pay us with money they have earned in the outside world, outside our own economy. Taking holidays abroad is a debit because we are spending money earned in Gibraltar outside our economy. Other people taking holidays here is a credit. So you have a situation where really it does not matter, in economic terms, whether you are talking about tourism or you are talking about anything else, you are talking about whether we are selling goods and services to others in greater value than we are buying from them. Therefore we have to look in our own economy

at import substitution as one element of improving the multiplier effect in our own economy. Anything that we can do which can be produced in Gibraltar is a good thing. But, given that there are limits physically of manpower, of raw materials and of resources here, it must follow that we have to have some of our savings invested abroad. That is the strategy that we hope to be able to develop in the next twelve months which we identified, as I said, in 1988 but which we were not able to do between 1988 and 1992. We hope to be able to do this between 1992 and 1996, Mr Speaker, and in fact we hope to have it in play in this financial year. The vehicle has already been created, it is called the "Gibraltar European Investment Trust" and it is intended that that vehicle, which is currently set up with investment funds from the Gibraltar Investment Fund will also give individual citizens opportunities for investment, so that the savings can be channelled through that company. We have a vehicle which will be a tax efficient vehicle using the legislation we introduced in 1988/89 and which will give us an opportunity to produce a stream of income which will be helping us to balance our external trade, our balance of payments.

In addition, the strategy that the Trust will have and obviously the timing of this is very important for the reasons that I have explained as regards the state of the world outside Gibraltar. In any situation where you have a paralysis of the world economic system to the degree that you have, there are opportunities for making money which will be unrepeatable and for losing it. One needs to be very careful and tread very carefully and we will be looking at what are sound opportunities but primarily we will be looking to the UK. We will call it "The Gibraltar European Investment Trust" because we think really we should be looking at the Community as a whole and not just at the UK. But initially the most likely route will be the United Kingdom. We will look at opportunities for companies that have a quoted share on the Stock Exchange, obviously, since that will mean that we have liquidity and we will be seeking to develop such opportunities in a way that we can generate work within Gibraltar. That is to say we will be looking at situations where, by virtue of our involvement in the ownership of such enterprises, some of the things that those enterprises purchase in terms of services will be purchased from Gibraltar, partly because, of course, if our marketing strategy is to persuade other people that there is much to be gained by having a Gibraltar base, then obviously, we should ourselves develop a way of doing business which is consistent with what we are preaching to others and it means therefore, that the multiplier effect of that investment would be much greater in our case than it would be in any other one. Obviously, the launch of this vehicle, which we hope to take place later this year, has to wait at the moment for certain amendments to the Companies Ordinance because on technical grounds it would appear that the amendments

that were done in 1987 are insufficient to enable us to do what we would like to do and therefore we will be bringing amending legislation. We are looking, in fact, at some of the legislation that has been used in Ireland as a possible model and we hope to bring that to the later session of the House when we take the other Bills. We hope we will have something ready then so that we will be able to launch this at the beginning or sometime during the next twelve months. But certainly we want to have it in place by June/July. That is really the new vehicle that we are planning to bring in, in addition to the things that we already had in place, but as I have said, even that one is not really new in the sense that it is something that we have thought of doing in 1988 but we found that we could not achieve it.

If one looks at the bottom line of our Financial Statement, it is obvious that the predicted Consolidated Fund balance for 1993 is £1.4m and the estimated balance in the Improvement and Development Fund is just over £½m. That gives us some leeway for the following Financial Year, the year 1993/94 in terms of having deficits in one or the other of these funds, but not much. Generally speaking, the feeling of the Financial and Development Secretary is that we should not really be below something like £¼m in the Consolidated Fund. The Improvement and Development Fund will really just sort of keep in balance so whether we are a couple of hundred below or a couple of hundred above, at the end of any financial year does not mean very much because being a Capital Fund to some extent, all you need to do is to get an invoice one week later and that can produce a surplus simply because it does not show in that financial year. To some extent this is in fact what was happening in the year 1991 when, if Members opposite look again at page 5 they will see that we started in April 1991 with almost £11m deficit in the I & D Fund and we produced a surplus of £10.6m during the year and we finished up with a deficit of nearly £300,000. Well there is no particular significance to this. It just means that we have made sure that the payments were there when we thought that the money was needed. In fact, it could well be that when we do the final audit for the year 1992, we may not have a deficit there at all simply because some of the payments we were anticipating having to make before the 31 March, we have made in April and instead of appearing in 1991/92 they will appear in 1992/93. So really there what we are saying is, the amount of receipts predicted for 1992/93 within existing resources and within the agreed borrowing capacity should see us through till next year. Frankly, we are not entirely sure how we are going to finance the I & D Fund twelve months from today. It could well mean that we might have to increase the borrowing capacity beyond the £100m but we are not sure yet. We will have to wait and see. We expect the expenditure to be well down on the £43m because the really big expenditure is coming up to peak this year. For example, the industrial

park which was £30m will be virtually complete by the end of this financial year having spent £15m this year having spent £15m last year and £15m this year and in looking at the Consolidated Fund Estimates the level of expenditure that we have in there gives us a deficit this year but leaves us with a Consolidated Fund which we could run the following year at about half the level it is now, on £1.4m, but that does not give us a lot of leeway. It means something like a £700,000 deficit for 1993/94 if nothing else changed. We will be looking within the next twelve months both at Revenue and Expenditure to see what other areas it might be possible to move out of the Government revenue set-up into the commercial set-up to produce a better result for us twelve months from now. If it is impossible, then I think we will have to think again as to the position of the costs that we have here and how we can tackle them. At this stage to a very large extent we are dependent on the success of the marketing strategy which we have now started to put in place and the Estimates do not contain a prediction of huge success. That is to say, they do not reflect that, so therefore, what I am saying to the House is, it is not that if people do not start arriving in plane loads you can throw this out of the window because this is a rosy picture. This is not a rosy picture. We consider it to be a realistic picture taking into account what we have seen outside Gibraltar in the efforts that we have already made, taking into account the difficulties there are in attracting customers in a very competitive situation and therefore we can say that we are reasonably confident that we have now the necessary infrastructure to provide for Gibraltar's self-sufficiency. We have now the necessary resources for the next twelve months to promote Gibraltar and bring in customers and we only need a modicum of success in that strategy to be able to achieve a growth in our output from £300m to £450m to guarantee the 14,000 jobs that we have set ourselves as a target of maintaining throughout the term of office up to 1996. Thank you, Mr Speaker.

MR SPEAKER:

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

HON P R CARUANA:

Mr Speaker, the Honourable the Chief Minister made one point at the outset of his address which I myself would like to deal with now. That is that in commenting on the fact that the Members on this side had issued a press release, the Honourable the Chief Minister said that he was somewhat surprised that we had used the Estimates that we had in our possession, on a confidential basis,

as the subject matter of a press release. Well, Mr Speaker, it may well be that my very limited experience in this House has caused me to overlook some regulation that is not particularly clear in the Standing Orders but I do not think so, although I stand to be corrected. The fact of the matter is that by the time that we used the Estimates for public purposes they had been laid before the House. They were not Estimates as in previous years that were made available to the Opposition on a confidential basis before being laid before the House. We did not use the Estimates before they were laid and if the Honourable the Chief Minister cares to check the dates he will see that it was after the Estimates had been laid before the House that we issued the press release.

HON CHIEF MINISTER:

Mr Speaker, if the Hon Member looks back to the day when we arrived here in 1988 then he will find that we have followed the same procedure since 1988. The Hon Member must be thinking of the AACR Government before us that acted somewhat differently. The Hon Member said that on this occasion instead of letting the Opposition have the Estimates fifteen days before they were laid on the House, we had laid them on the day that they were delivered to the Opposition and I am saying to him that is what we did on the 29th April 1988. They were laid in the House and given to the Opposition at the same time.

MR SPEAKER:

I will just tell the Leader of the Opposition that it certainly complied with the Standing Orders.

HON P R CARUANA:

Mr Speaker, the point that I am trying to make is that, I think, that the Chief Minister has addressed the wrong point. The fact is that we made no public use of the Estimates until such time as they had been laid before the House and therefore there is no question of use of the confidential document. It ceases to become a confidential document; no matter how much in advance of laying they are delivered as a matter of courtesy to the Opposition; the moment that they are laid before the House. Therefore the relevant date is not the date upon which you gave them to me but the date upon which we used them publicly.

HON CHIEF MINISTER:

I heard the Member opposite correct me when he opened. He said that on this occasion, instead of the Opposition being given the Estimates fifteen days before, on a confidential basis, they had been laid before the House. If he will listen to what I said, I did not say confidential. I said that they were provided to him on a restricted basis in anticipation of the debate.

The debate is taking place now. Therefore, if he looks back to the 29th April, 1988, he will find that since we took office in 1988 we have laid them before the House the same day as they have been given to the Members opposite and it said on the front, the same day that it has been laid in the House, "Confidential" on the basis that they have it but the press do not get a copy of it until today when we debate it. It is not that I object to the Honourable Member having done it. It is just that it seems to me that if somebody is going to come here today to debate something, then, before the debate has taken place, the press release shows that they have already made up their mind what it meant and what it said without having had any arguments.

HON P R CARUANA:

It certainly show that, Mr Speaker. If the Honourable the Chief Minister is not making some dreadful allegation of abuse of confidential documents then I do not see that there is any need to labour the point further. The fact of the matter is that there was no constraint on the Opposition to make the use of the document that it made. I am quite happy that there has been absolutely no improper conduct in relation to restricted documents. The fact is that the Estimates were laid before the House as required within 30 days from the beginning of the financial year and it was after that date that the Opposition knew publicly as they are entitled to do. What effect that has in pre-empting the views of the Opposition is a different matter altogether but it does not constitute improper use of a restricted document. Mr Speaker, there is, as Mr Speaker has himself referred to, a motion standing in my name in relation to certain aspects of the extent of the financial information that the Estimates contain. Therefore, Mr Speaker, in order not to anticipate those issues in breach of Order 47 and indeed not to breach the ruling that Mr Speaker has himself just given, I limit myself to saying that the Estimates now before the House exclude (and in this extent I am doing no more than repeating what Members opposite have already said) substantial items of revenue. I limit myself also to making observations of fact which are obvious and I make them as simple statement of obvious facts without any comment or implied criticism in order to put this debate into context. Firstly, Mr Speaker, according to the 1991 and 1992 Approved Estimates or, where available, 1991/92 forecast outturn, and when neither of those gives the information, answers to questions given in this House, the 1991/92 value of these excluded items of revenue are of the order of £35m. I hasten to add, Mr Speaker, that it is not my case that some of these items are excluded for the first time. Obviously, that is not the case. Some of them have been excluded now for one, two and in some cases even up to three years. That figure, Mr Speaker, constitutes about 35% of total Government revenues, of which this House has no estimates for the current year. Therefore, Mr

Speaker, I say only this and no more on the subject. It should be clearly understood by this House and by the public at large that in discussing and voting upon the Appropriation Bill, this House is considering no more than about, and I accept that it is no more than estimate taken from historical and futuristic data, no more than about 65% of Government's expenditure of recurrent revenue. That is to say, it is an appropriation only of that part of Government expenditure which is spent through the Consolidated Fund. For example, as the Honourable the Financial and Development Secretary has himself said, we get no estimates whatsoever of what the Honourable Members opposite propose to spend on health, nor if indeed they propose to make any.

MR SPEAKER:

I remind the Honourable Member that he is opening himself to the Chief Minister replying to what he says when he winds up. So the more he speaks about that the more he is likely to have the Chief Minister reply later and I cannot stop him.

HON P R CARUANA:

Yes, Mr Speaker, I am very grateful for Mr Speaker looking after my health. I am sure the Chief Minister.....

MR SPEAKER:

It is not a question of looking after you but it is so that you do not object later. The Chief Minister can dispute what you say.

HON P R CARUANA:

So far I am not aware that I have said anything. Most of what I have said has already been said.

MR SPEAKER:

In case you go beyond the point.

HON P R CARUANA:

As far as I am concerned, Mr Speaker, the Chief Minister is free to say what he pleases. Nor, as the Honourable the Financial and Development Secretary has himself also said, do we know how much has been injected into the Social Assistance Fund. Nor indeed how much it is intended to be spent on the purchase of electricity and other items. Fine! That is the extent of the comments that I feel I had to make, Mr Speaker, in order that it should be clearly understood what we are doing in debating this Appropriation Bill. For the remainder, my observations will have to await, in accordance with Mr Speaker's ruling, the motion which stands in my name and which will be moved at some future date. Mr Speaker,

since neither the Consolidated Fund nor these estimates reflect the financial position of the Government of Gibraltar, who can say, except of course, the Honourable the Chief Minister, whether the Government can afford to lower the taxes of the long suffering Gibraltarian taxpayer. Whereas in the past I was always open to the criticism that I was simply advocating tax cuts; because that was an easy thing for opposition leaders to do; in the knowledge that the Government could not afford it, I am now in a happy position of being able to say that I do not know if the Government can afford it because I no longer have in front of me the full picture of revenues and expenditure. What I can say, Mr Speaker, is that the Gibraltarian remains one of the most highly taxed citizen of the western world and that even if the Members opposite; in accordance with the underline philosophy of their economic strategy over the last four years which I understand; have felt that tax decreases were either uncalled for or could not be afforded or inconsistent with the thrust of their economic strategy. That, I accept, is a matter of political judgement for them. It has to be understood, as I am sure they do and accept, that it is not a question of not having lowered taxes. It is a question of having increased taxes as they have failed over the last four years to raise (and of course I am talking about the general body of taxpayer, because I understand that they have been carefully targetted tax concessions, but of course, carefully targetted and therefore not available to the general body of taxpayers) the thresholds and allowances to keep up with inflation and pay rises as they have raised social insurance contributions and rates because of increases in net annual values. They have over the last four years increased the share of people's pay packets that they keep and therefore decreased the share of pay packets that people can spend for themselves. Mr Speaker, on this subject, I have read the Chief Minister in Hansard, as I have read him extensively in Hansard over the last three months over the many years that he has been contributing Budget debate to this House and in relation to his message at the time that he addressed the House in 1989, I think, his message was quite simple and boiled down to something like this - "he will correct me later or even now if he wishes, if he thinks I am doing him an injustice. As I understood his message it was no tax cuts" because you might spend this in the Contiente or in some other fashion that does not in my judgement benefit the economy of Gibraltar." Well, Mr Speaker, that, of course, is not a political philosophy that is new. The effect that it has, Mr Speaker, is that it denies to the people their right to spend the greatest possible share of their earnings and income as they choose and as they think fit and therefore reduces their personal freedoms and choice to that extent. It represents, as a political ideology,

the predominant of central state control over personal choice and freedom. Now, Mr Speaker, I do not obviously reduce this point to so simplistic a level at which I do not accept and understand that we must collectively contribute to our collective costs as a community. I will even go further. We must collectively contribute to whatever economic strategy the Government of the day, any day, in any democracy, chooses to guide the economic prosperity of the community. However, given what the Government has already achieved, in the terms of the goals that it set itself, in terms of squeezing the expenditure and maximising the revenue, I would now say, Mr Speaker, that it is time, it seems to us, to loosen the vice on the general body of taxpayers, not all of whom, as I have said, Mr Speaker, have so far benefitted from the Government's very carefully targetted tax concessions. I commend, Mr Speaker, to the Honourable Members opposite, that if they do not feel that the time is right for positive reductions of taxation, that they at least ensure that people's tax allowances and thresholds are adjusted annually so that at least taxation does not increase. A calculation that has been done of the value of the failure to increase thresholds and allowances indicates that they could be worth in the current year about £200 or £230 per taxpayer. Mr Speaker, as I think the Honourable the Chief Minister has admitted, the Government's inability to lower taxation is really an indicator, if not an admission, of the fact that the real underlying business activity has not been bouyant to the point where alternative sources of taxation revenue have enabled the Government to reduce the taxes of others. Mr Speaker, in answer to Question No.3 of 1992, the Honourable the Financial and Development Secretary said that it is currently envisaged that Government borrowing will have reached £100m by the end of this year. I think he also said that it was not presently envisaged that that would have to be exceeded or increased. Mr Speaker, the Chief Minister said in his address, by way almost of jive, that we had accused them of allowing the economy to grow too fast as if we did not want hospitals and housing and all the things that they have built with the steps that they have taken to boost the economy through their own spending. He went on to put his finger on the reason that really did motivate our concern about the level of borrowings. It was that they cannot afford to carry it on. There is a limit to the extent to which the Government can continue to stimulate the economy through infrastructural development using borrowed money for obvious reason and the obvious reason is that there has got to be some relationship between the amount of money borrowed and the Government's ability to service the debt through pay. And therefore at worst, all that we are and were discussing is an element of judgement as to where that level is. I happen to believe that at the current levels it is already in the realms of danger in the sense that we rely on the success of the

Government's marketing strategy and economic plans in order to be comfortably able to carry it off in the future without the servicing cost, both in interest and the capital repayments, impinging on Government's other budgetary overheads. Of course Government will always have enough money to pay the national debt. The question is how much money they have got left after servicing the national debt to do the other things that the taxpayer will expect them to do. Mr Speaker, as at the 31st March, 1992, Government borrowing was, according to an answer given to me in the House, £84.4m of which about £65m had been spent suggesting that Government had about £19.4m left unspent. But, Mr Speaker, I have got to be careful with this subject because there is an element of supposition in my figures because what is not clear, at least not to me, from the Chief Minister's answer to Question No.123 of 1992, as to whether the borrowed money is used by Government to subscribe for shares in companies and then in effect given back by the company to the Government in the form of the purchase price for the purchase by that company of real estate from the Government. Have I now understood it? Whether what he meant was that £65m had gone up that route and come back and had been spent by Government or gone up that route come back in the form of proceeds of sale and still held by Government. I have assumed, Mr Speaker, that the information that the Chief Minister meant to convey to me, was that of the £84.4m that had been drawn down, so to speak, £65m had in effect been dispersed by Government after it had received it back from the appropriate company as purchase price. Therefore, Mr Speaker, having spent (in what I call, alienated way - giving the money away to some complete third party for the purchase of some service) £65m of the £84.4m that was originally drawn down they may have £19.4m left unspent in the real sense. I stand to be corrected on that analysis, Mr Speaker, because of the possible differences in what the Honourable Chief Minister meant by 'spent' when he gave me his answer to that question.

HON CHIEF MINISTER:

Can I correct him now?

HON P R CARUANA:

The Honourable the Chief Minister knows that I am always willing to give way to him.

HON CHIEF MINISTER:

Mr Speaker, I had some difficulty in dealing with Question 123 because the Honourable Member was asking how much of the total national debt had been spent. Of course the total national debt includes the debt of the Varyl Begg Estate and the debt of Hawker Siddley, a debt that

was there thirty years ago. So the answer is that the figure that I gave him was an attempt on my part to give him an intelligible answer. An answer that made some sort of sense to a question that frankly had made no sense at all because at any point in time the total outstanding debt includes all the debt of the Government of Gibraltar since 1704 minus what has been repaid. Now, how can you say how much of that outstanding debt has been spent. Well, the answer is we have some £20m in cash. That is basically the only answer that I can give him to the question. In the amount of unredeemed debt, there is not just debt borrowed by the GSLP administration since 1988, there is also - if the Member looks at the Consolidated Fund charges in the Estimates in front of him - for example, supplier finance for Hawker Siddley for Waterport. Well, that is part of the debt but it has nothing to do with us and that was spent fifteen years ago. So, I tried to give him an answer which showed him how much cash was available because I thought that was the information that he needed.

HON P R CARUANA:

I am grateful to the Chief Minister. I am also happy to note that in fact I made the correct use of his helpful answer because I had calculated it £19.4m in cash that they might have and he says some £20m. The difference is not important for the purposes of the point that I wish to make with it. Mr Speaker, given that according to the Estimates before us and answers given in the House, the Government needs to fund capital expenditure of about £43m through the Improvement and Development Fund, of which about £40m must come from Government's resources, allowing for the various other sources of revenue of the Improvement and Development Fund, grants and aid and reimbursements and things of that kind which amount to about £3m. They need to find, Mr Speaker, about £40m and it is for such things comprising mainly Gib 5, housing refurbishment and painting, land reclamation, New Harbours. Those are the major items; although there are, as Members opposite well know; others. Mr Speaker, this will presumably (and I think I can probably say it more strongly now because I think the Honourable the Chief Minister has himself confirmed it) be financed from Government borrowing or be it through the, now clearly understood, property capitalisation mechanism, which is a concept incidentally that I can understand but do not approve. In addition, Mr Speaker, I notice that there is no mention in the Estimates of the cost to Government of funding the Westside... Well not Westside as it extends to other projects as well; 50/50 Scheme and the Government, told one of my colleagues, in answer to a question, that the total cost of that; on the assumption that everyone entitled to participate in it opted for the full 50/50 participation; would be up to £28m. Therefore, Mr Speaker, on that assumption and given that the projects that the 50/50 Scheme is aimed at are calculated to complete within the course of the current financial year, it would not, I think, be unduly presumptuous of me to presume that Government needs really to fund £68m of capital or capital related

expenditure. That is to say, the £40m provided for through the Improvement and Development Fund plus the Westside 50/50. Of those £68m, Mr Speaker, it has £19.4m; or some £20m in the words of the Honourable the Chief Minister, borrowed but unspent, so to speak, in cash-in layman's terms. On that basis there is therefore an indicated additional borrowing requirement of up to (subject through the rather back-of-the-envelope sort of accounting that all this represents) about £48.6m of additional borrowing requirement, on the assumption that all the items that I had referred to are to be funded during the course of the current financial year and drawn out of borrowing. Government, Mr Speaker, has only £15.6m left unused of its borrowing powers of £100m and we have been told as recently as a couple of weeks ago that the Government does not presently envisage having to exceed those. So, if my back-of-the-envelope mathematics is correct and they have an additional borrowing requirement of about £48m and only £15.4m to go to £100m, it follows that the balance of about £25m will have to come from somewhere else. Mr Speaker, as far as I can see, there are only two possibilities. The first is that some of the revenue not disclosed in the Estimates of Revenue and Expenditure before this House are themselves going to be used to fund Capital Expenditure. That seems unlikely, although, of course, Government could be using that revenue through the Gibraltar Investment Fund to purchase shares in the company that ultimately buys the real estate of the Government so that the only source of capitalisation is not borrowed money but could also be revenue injected through the Investment Fund into the purchase of those shares in Gibraltar Residential Property or GRP or whichever company the Government is now using. The alternative, Mr Speaker, of course, is that the Government plans to borrow money through one or more of its maze of companies and it was in an attempt to establish this that I asked the questions that I asked and got singularly and uninformative answers to in the last question session in the House. In his answer to Questions No.119 and No.120 of 1992, Mr Speaker, the Government indicated that they might well cause Government owned companies of which ministers are directors to borrow money commercially. At least, the answers which could have been 'no' were not 'no'. Therefore, until the Honourable the Chief Minister or one or other of his colleagues tells me that that is not a serious possibility, I must assume that it is a serious possibility. The Hon the Chief Minister also said in answer to Question No.119, that the debts of any such company is a matter for that company to determine pursuing its commercial interests. Mr Speaker, that attempt on the part of the Honourable Member opposite to distinguish; hypothetical as it is in the sense that what I am saying is based on my conclusions from the figures before me and from the answers that the Chief Minister has given to me in this House; between Government borrowing and

borrowing by wholly-owned Government companies is, in my opinion, untenable and simplistic for the following two reasons. Firstly, it seems to me, at least, inconceivable that any Gibraltar Government should allow a company owned by Government and of which ministers and civil servants are directors to default on its debt. Such debt, of course, is not technically the public debt of Gibraltar. But the moral obligation of a government to ensure that a company owned and controlled by it does not default, in my submission, extends beyond the realms of legal legality, technicality and liability and therefore my point does not depend on whether the Government is guaranteeing this borrowing or has not guaranteed this borrowing. I say "guarantee this borrowing", Mr Speaker, because I notice that in answer to one of my questions the Chief Minister gratuitously added that point, in answer to a question that really did not call for it. He added "but none of this borrowing is guaranteed by the Government". Fine! In my opinion, it does not distinguish between whether that guarantee exists or not. The criteria is whether it is a Government owned and controlled company. Mr Speaker, of course, if the borrowing were to take place through some company or other into which the Government may be transferring publicly owned housing stock, then presumably even less could Government afford to allow such a company to default without ultimately endangering the public housing stock. For these reasons, Mr Speaker, any attempt to distinguish between Government borrowing in the sense of public debt of Gibraltar and borrowing by politically owned and controlled companies will be, in practice, an untenable distinction. For all real, practical purposes the borrowing of any company that Government owns and controls especially if it controls them through ministers of the Government especially civil servants who sit on the Board. I do not say that the Government cannot invest in some trading venture and then say "well I am not responsible for the losses of that trading venture". That is a different matter. But trading ventures of that kind will not presumably be controlled directly by ministers and civil servants. Mr Speaker, for those reasons, it would, if it happens, in my judgement and opinion, be practically impossible to distinguish between the public debt of Gibraltar and the debt of those companies. It will be also, in my opinion, scandalous if Government were to refuse to give the House details of such companies' debts on the grounds that because they were companies, the Government was not accountable to this House for their finances and debts. That was implicit in one of the answers that the Chief Minister gave me in the series of questions that I asked. It will, therefore, render it impossible to obtain details of the real public debt of Gibraltar for, I repeat, any prudent person would regard such debt as the public debt of Gibraltar, especially if owed or guaranteed by a company into which Government had injected public housing stock. This, Mr Speaker, would not be anything new in accounting terms. It is no more and no less than the well known but frowned upon practice of off-balance sheet

borrowing. Much of the above is speculative and drawn, as I have said, from the logical consequences of what the Government is doing, from the figures before the House and from answers given to questions. It is speculative but I suspect it is not a million miles from the reality and given Government's failure to put financial information clearly in the public domain, such speculation, Mr Speaker, is the best that I at least can do. During the last year or so, as the Chief Minister has mentioned on several occasions, we have raised the question of the extent of the public debt and indeed the Honourable the Chief Minister has raised it in his own address. The Government justifies a given level of public debt by stating it as a percentage of GDP and comparing the Gibraltar ratio to that of other European countries to show that our debt is not excessive by comparison. Well, certainly, Mr Speaker, I probably subscribe to the same OECD publications as the Honourable the Chief Minister and that is clearly a legitimate measure of the prudence of the level of the public debt. The Chief Minister has really pre-empted one area of high address with his, again unsolicited explanation as to the computation of GDP, because it is important that if GDP is going to be used as the criteria to measure the prudence of the level of public debt that those of us who have a public duty; whether or not the Government likes it or whether or not we like it; to keep tabs on the Government on such things as the level of public debt, we have to have some insight into the mechanics for the calculation of the Gross Domestic Product. Otherwise, we risk criticising the level of public debt in comparison to or as a percentage of GDP when, if we cannot evaluate the accuracy of the GDP calculation, really we are almost spitting into the wind, literally because very often those answering back have much more information and the spittle often reaches back straight on to the face. So, Mr Speaker, I would welcome a statement from the Chief Minister as to how the GDP figures are compiled. We know from his frequent repetition of the point. I think it was in the 1989 or possibly in the 1990 Budget that he gave a lengthy explanation as to the change from GNP to GDP and then the change from computing GDP by addition of expenditures into additional revenues. That much, but not much more, I know as to the mechanics for the computing of GDP in Gibraltar. So we know that it is an aggregation of incomes but who compiles it, Mr Speaker? What is the exact formula used and what are the sources of information used in respect of each constituent element of the formula? I would urge the Honourable the Chief Minister to reach, as quickly as possible, the point where GDP is a statistic that was regularly published. Obviously by the nature of the calculation it is not going to be much more than quarterly or perhaps even half-yearly. But when we know what the sources of statistics are exactly, we shall be able to gauge how reasonable it is to ask for the statistics to be produced more frequently than it presently is. Mr Speaker, one of the aspects that concerns us in relation to GDP is that, of course, there is a substantial contribution - difficult obviously from one year to another to calculate as a

percentage - but somewhere between 25% and 40% that Gross Domestic Capital formation plays in relation, not only to the basic GDP, but more particularly, I think, to recent growth in GDP. Mr Speaker, determining the prudence of the borrowing level in relation to GDP could be dangerous given that there is no direct and immediate connection between the Gross Domestic Capital formation and increases of Government revenue which is presumably why another measure of the level of public debt used by the OECD is interest servicing cost as a percentage of total Government expenditure which is measured by total current revenue. The reason is obvious, Mr Speaker. Ultimately Government's ability to service the debt is not determined by how many floors of Europort have been built or how many blocks of Westside have been built or how many kilometres of new drains have been laid along Queensway, but on whether Government enjoys the revenue, through taxation, to pay the debt and in the meantime to service the interest. Using this measure, in other words, interest servicing cost as a percentage of total expenditure measured by total current revenue; the public debt of Gibraltar would seem to be higher than in most European countries. The smaller country average for 1992, according to the OECD economic review for December, is about 7%, whereas on the basis of these Estimates and last year's forecast outturns (and I understand that using historical data in relation to future borrowing service cost is not an exact science but using the information available to us on this side of the House) the local ratio is about 10%, slightly less if you choose to include in Government's total recurrent revenues social insurance receipts. I think, the figure then comes down to about 9.2 or 9.3. Mr Speaker, at paragraph 255 of his report to the Government of Gibraltar accounts for 1989/90, the Principal Auditor cites figures for the debt service cost in relation to the three principal sources of revenue, namely taxes on income, import duties and internal revenue. This he calls the debt service key revenue ratio and as at March 1990, this ratio, in relation to the public debt then outstanding, was 6.41%. Using current year estimated debt servicing costs and last year's forecast out-turn of the same items of key revenue including company tax; which I cannot glean from the Estimates but I can glean from the answer that the Financial Secretary gave me in the House a few weeks ago; the current figure would appear to be about 14%. I made the same qualification that I am comparing estimated revenue figures with more certain revenue servicing costs and if the revenue figures are understated in the Estimates - as well they might be - then of course the percentage will move down from 14% to something which was lower but the extent is not something that I can comment at the moment. The fact of the matter is that on the figures presently, publicly available, the debt service key revenue ratio has moved from 6.41% of key revenue in March 1990 to about 14% for the current year. Mr Speaker, furthermore, and as the Honourable the Chief Minister has himself anticipated in his address, as

construction projects come to an end, and if not replaced by new projects on an equal scale, Government's revenue from income tax will also decline, further squeezing the Government's revenue from which to service the increasing debt. Ultimately, therefore, I suppose, that Government is relying on attracting new businesses and customers to Gibraltar to occupy the new space and to swell Government's revenues with additional taxation receipts. There was a point in the Chief Minister's address where I began to wonder whether somebody had not provided him with an advanced copy of the text of my speech. Mr Speaker, when I have in the past described the envisaged levels of borrowings as a gamble, this is what I meant ie that whereas the debt servicing costs and ultimately the liability to repay the debt were a certainty, the anticipated increased Government revenues were not. The success of initiatives taken to attract new businesses to Gibraltar, Mr Speaker, is yet to be seen. We - and I say this with complete sincerity - wish the Members opposite every success in this crucial task and I do more; I offer them our assistance to whatever extent they may consider that we are in a position to help. Perhaps, Mr Speaker, it is the delicacy of our economic situation that makes us more, or perhaps even unduly, anxious about carrying high levels of public debt in these uncertain times. Mr Speaker, the Honourable the Chief Minister said - let me quote him accurately - that I was not to worry. He told me this also at the ceremony for the opening of the St Joseph's School about the question of public debt because they were making prudential provision to repay this. Well, Mr Speaker, that may well be true. I cannot any longer check the sufficiency of the provision being made, of course, because presumably it is now being done from sources of revenue in respect of which we no longer have estimates. If I can then now move on to the question of employment-upon which my colleague Hubert Corby will also comment later - Mr Speaker, as we see it, the prospects in this area look uncertain if not bleak. The number of expected job losses from some already well posted sources, as the Ministry of Defence and the PSA cutbacks and reorganisations, could very easily, be swelled by job losses in the private sector, in tourism, in retail trade and in the finance centre. In the sort of things that the Members opposite no longer like us to call pillars of the economy because the pillars of the economy are now land and people and not such things as tourism, the finance centre and trade which come and go from one year to the other. Mr Speaker, we on this side of the House, are genuinely concerned that unless the Government succeeds in attracting new industries to Gibraltar, it is the traditional sectors - let us not call them pillars, let us call them the traditional sectors - of economic activity in Gibraltar to which Gibraltarians will have to increasingly look to provide durable jobs. These sectors, Mr Speaker, in which non-Gibraltarian labour is often under-represented as a percentage of the whole. It will be necessary, to train

larger numbers of Gibraltarians in a way more directly than the Honourable the Minister for Education, Culture and Youth Affairs who has responsibility for these things, is so far doing through the Vocational Cadets Scheme; to put more Gibraltarian youth directly into the finance centre; to put more Gibraltarian youth directly into the construction industry, as the Honourable the Chief Minister has himself highlighted; to put more Gibraltarians even into the tourism sector if and when that gets going. Mr Speaker, there are many, many posts presently occupied in the area that I understand best of all those that I have mentioned - the finance centre - which are screaming to be filled by Gibraltarians which I regret to have to say are not yet leaving school in the right frame of mind to grasp the opportunities. Because, it follows that if a finance centre operator in Gibraltar needs to employ a legal assistant, a legal secretary, a companies clerk, a trust officer, any number of the services of the school requirements that the finance centre requires, that it is going to be much cheaper for overseas players in the finance centre to employ Gibraltarians than to move employees to Gibraltar as many are now doing in far too large numbers for my liking. They could employ the people that we have available in Gibraltar. We could employ our school leavers. That - and I say this to the Honourable Minister with responsibility for this area, with as much degree of construction rather than destruction that I can from these benches - is a matter which I would commend for him to give much more attention and much more direct input. That is the whole question of retraining for targetted areas of business activity in Gibraltar. Mr Speaker, our information and indeed the experience of those of us that are involved in the various areas of local business, is that volumes of business are down in Gibraltar this year in practically all sectors of the economy excluding, of course, construction. They may also be down as projects wind-down but that is not something that I have statistical information on. In the retail and tourist trade sectors, our information is that volumes are substantially down on last year except perhaps in certain sectors of the food and tobacco retailing trade where volumes are kept up by brisk and regular shoppers from the immediate hinterland. Such visitors are also, it appears, substantially boosting the sale of petrol with petrol stations reporting good levels of trade. However, Mr Speaker, the quality shopper - dare I say to the Honourable Member the Monaco style shopper - is not coming to Gibraltar in sufficient numbers and accordingly the quality goods sector of both the retail and the wholesale trades in Gibraltar is feeling the pinch very badly and eventually all these things will tell on Government revenues. Additionally, the reduced purchasing power and disposal incomes of large numbers of Gibraltarians, who have now taken on mortgage commitments for the first time after the purchase of a home, is also having a very negative impact on the retail and wholesale trades. My information, is that redundancies are now threatened in this sector. Indeed only last Friday, I was in, what one would call a leading

retailer in Gibraltar, when I was informed that on that very day they had made redundant two Gibraltarian members of staff. My colleague, Mr Vasquez, will comment at greater length on the pitiful state of the tourist sector. Hotel occupancy figures speak for themselves and are very poor. Expo-visitors are not or at least have not yet - the season is too young so to speak - visited Gibraltar in great numbers. Businesses in these sectors are under severe pressure. Government, will no doubt continue to blame the ever-distant Gulf War and the recession. More objective commentators, Mr Speaker, will attribute the lion's share of the blame to Government's lack of a coherent policy in relation to the important tourist sectors. The prospects of redundancies in this sector are even greater. Mr Speaker, moving briefly to the finance centre; the levels of business there are also in a depressed state. Some sections such as the level of bank deposits, may show an adequately reducing rate of increase but these are not the job hogging sectors within the finance centre industry. The bread and butter of the sector is company and trust formation and administration, fund management, insurance vehicles, shipping business and the like. They are the activities that create employment. Banks do not employ additional people in the droves because their head office books £500m of deposits through the Gibraltar operation as opposed to through the Panama or Luxembourg operation. Mr Speaker, the company sector has suffered very badly, partly from the global recession which, of course, reduces the demand for products of the finance centre type, but mainly from Spain's new taxes on foreign companies owning properties in Spain. We still do not have clearance, at least my latest information is that-if the Chief Minister can presently surprise me I will be delighted to give way to him again - we still do not have clearance from the DTI on UCITS or for the benefit of those who do not relate the initials to the activity basically of fund management. Accordingly, Mr Speaker, business which had been targetted for growth and development in recent years has simply failed to get off the ground and we are gradually enjoying the reputation of a finance centre that promises things in advance and then for one reason or another invariably for reasons outside our control, we simply do not deliver. Mr Speaker, to the extent that our economic fortunes in the future may be linked to the success of the finance centre, then that is a task to which I would commend the Honourable Members opposite as much time as they possibly can spare to. Mr Speaker, last year I had occasion to address the House at length, and therefore I will not do it again, on the subject of the shipping registry which is a matter in which I felt I had a degree of expertise which the Members opposite may have found useful. I highlighted the reasons why in our operational experience the shipping registry was going through a period of rapid decline. I have to say, Mr Speaker, that the demise of the shipping registry has been a veritable tragedy. Victim, in our view it has to be said, of both lack of Government attention and excessive DTI interest. I had occasion, as I have said, to mention

this last year. It is with great regret that I note that the position has deteriorated further. Gibraltar now has only about thirty ships; down from about one hundred in recent years. The Ship Registry, Mr Speaker, provides attractive levels of business to the finance centre. Not just because of the registration work in relation to the ship itself but because each ship registered invariably requires a company and bank finance documentation and the shipping company work has traditionally been one of the higher value sections of the finance centre and knowing now as we do, having heard the Honourable the Chief Minister, that we must find things to sell with the highest possible value added that this is one sector of the finance centre that I commend to the Honourable Members opposite not to disregard. I hear little rumours through the grapevine, Mr Speaker, that there may be plans imminently to bring in some distant organisation from across the pond and I understand to run this. Well, frankly I will have to reserve my comment on whether I think the step is good or bad when I hear the details. But, certainly any initiative that will revive the shipping registry will be very welcomed from this side of the House. But, I caution the Members opposite, not to fall into the trap of assuming that the decline in the shipping registry and shipping related business has been due only to-or at all, even I would go so far as to say - lack of professional presentation, to lack of effort on the part of the professional operators involved or even to the performance of the staff at the shipping registry. The fact of the matter is that the reasons for the decline in the Shipping Registry are the ones which Honourable Members will be able to read in Hansard from my maiden speech to the House last year. They have not changed and until they are tackled, you can bring as many American managers for the Ship Registry as you please, they will not impact on the registry business.

MR SPEAKER:

If the Honourable Member has to go on for much longer, I think we should have the recess now.

HON P R CARUANA:

He has got a bit longer to go.

MR SPEAKER:

Then I think we better recess now.

The House recessed at 5.00 pm.

The House resumed at 5.25 pm.

MR SPEAKER:

The Honourable and Learned Mr P R Caruana can continue now with his contribution.

HON P R CARUANA:

I am obliged, Mr Speaker. Just before the recess for tea I was commenting that levels of business in the shipping registry had all but pitted out and with it the ancillary shipping related business that goes with it. The two new products that have been promoted for the finance centre, namely the Gibraltar 1992 Company and the High Net Worth Qualifying Individual Certificate have yet to prove their worth. So far they have not generated significant levels of business. But of course, Mr Speaker, it is very much early days and we shall have to wait and see. My personal opinion is that it has been a mistake to call these fortunate people, high net worth individuals and to issue them with high net worth certificates. This is a red rag to a bull to any tax authority abroad and therefore difficult for Gibraltar's clients to produce wherever it may be that they have to produce them. Some other form of special certificate of residency or some fiscally neutral title would have been better. Of course, I do not doubt that if this should be Government's feedback from other sources that they can change the label quite easily so that such negative impact as the unnecessary title that they now enjoy has, can be rapidly corrected. With respect to the Gibraltar 1992 Company and the European Community Parent/Subsidiary Directive, it looks unfortunately as if Member States are legislating so called anti-directive shopping devices that may render Gibraltar unattractive for the intended purpose. We shall have to wait and see whether the establishment requirement that the local regulations require are sufficient to overcome these anti-avoidance regimes. I understood that certainly two; France and Spain and possibly four countries have so far introduced these. There is also difficulty, Mr Speaker, in persuading potential clients that the Parent/Subsidiary Directive applies to Gibraltar. Whilst we know that it is a matter of law, it does. The Directive's failure to specifically refer to Gibraltar and the Commission's failure to date to provide the requested confirmation, is producing marketing difficulties. I am, however, happy to report that at least one European Community country other than the United Kingdom, has so far, to my knowledge, accepted that the Directive does apply to Gibraltar. Therefore, Mr Speaker, having concluded that brief review of what I call the traditional economic activities in Gibraltar, I have to say, that the indicators of that economic activity and prosperity point to a sluggish level of basic economic activity. I use the word 'basic' to distinguish it from buoyant sectors such as construction. The traditional indicators, Mr Speaker, such as the level of employment,

which is for reasons that we know, historically high-although the Honourable the Minister for Labour and Social Security reported a small decrease in the House last month - and whilst this is welcomed and we hope it will continue, if the fears that we on this Side have, materialised, I suspect that we have not seen an employment peak in the private sector in Gibraltar. Tax levels, as I have said, remain high. Government's take from personal taxation is not estimated even to keep up with inflation. Government borrowing is high and rising. Levels of business activity in practically all sectors of the economy is static or down. To the man in the street who sees the street economy and not the economy that is thrown up by statistics that an economist would have before him, this is not the stuff of which buoyant economies are made. Yet paradoxically the Government reports impressive growth in GDP over the last four years and continues to project growth albeit at reduced levels. This continuing growth, Mr Speaker, must be substantially attributable and the Chief Minister, has to a degree, confirmed it; to the very high level of both private and publicly funded construction in infrastructural development rather than to any buoyancy in the underlying economy. Government spending on such projects as Gib 5, New Harbours, St Joseph's School, Reclamation and all the other items that I mentioned before, would have boosted the economy but I would venture to suggest that whilst they have boosted the economy, the stimulant effect of that degree of infrastructural investment in Gibraltar; be it public or privately funded, is not as large, even proportionately in the economy of Gibraltar as it is in the economy of larger countries. I suspect, Mr Speaker, that that is so because in Gibraltar there was of course a predominance of immigrant, expatriate and frontier workers in the construction trade and obviously of important building materials, since we produce none of those ourselves, except within the Gib Components but even then the raw materials are imported. Much therefore of the economy-boosting equalities of this infrastructural development is being exported from Gibraltar in the form of material costs and labour and that the economy boosting aspect characteristic is really limited to the employment, the Government's take from the PAYE paid by the immigrant labour and by such other employment that the construction industry is having as a spin-off effect whilst the employment continues. But I think, it must be right, that £100m of infrastructural development in an economy like Gibraltar boosts the economy generally much less than the proportionate equivalent in the United Kingdom of what £100m is to our economy because much less of that boosting quality is exported from the United Kingdom, because they produce their own raw materials, the labour collects the money in England, spends it in England, it circulates in England and does not get sent-off to Spain, Morocco or Denmark. Mr Speaker, turning to the question of pensions, it seems to me, that the problems of the Spanish pensions loom once again in 1993. The Chief Minister has not announced any further or extended temporary arrangement with the British Government nor any permanent solution and therefore presumably, Mr

Speaker, non exists. I presume also that the position of the Government remains that it will not pay certain of the Spanish pensions. Whilst I do not underestimate the significance in size of this problem, nor the difficulties that Gibraltar faces from it, it is also unsatisfactory that our own pension arrangements should remain in doubt or unpublished as it is unsatisfactory and undesirable that the regime of supplementary benefits and social assistance should remain substantially extra-statutory and apparently, at least in part, arbitrary as at present. Mr Speaker, I believe that the people of Gibraltar wish to know what the situation is going to be in relation to pensions come 1993 and I would, therefore, urge the Chief Minister to restore this issue to the public domain without further undue delay. The Government must know, that the present position is not a great secret to anybody and, therefore, it is difficult to know what legitimate and useful purpose is continued to be served by the veil of secrecy shadowing this entire area. It is not, I repeat, Mr Speaker, as if all those that we preferred did not know, do not know. Moving on to the question of GBC, that I have raised before, I note that the Bill that we are debating includes a vote for GBC of £570,000. My information, Mr Speaker, from a completely reliable source is that this level of subvention is completely inadequate. Of course, one of the many effects of the incomplete picture of revenue and expenditure that we have before us today, is that we do not know the extent to which that subvention may be supplemented from Special Funds and if it does not or if there is not a supplementary appropriation during the year, GBC cannot survive on the level of subvention represented by the vote included in the Bill. May I remind the House of what the Honourable the Chief Minister said to this House on the occasion of its Ceremonial Opening in 1984? If the Honourable Member will permit and Mr Speaker will allow me to quote from Hansard of those proceedings, the Honourable the Chief Minister said "The Gibraltar Socialist Labour Party is fully committed to GBC Television. We think it is essential in keeping and maintaining the identity of the people of Gibraltar that that service should be maintained. We expect GBC to provide value for money, like we expect everything else to provide value for money, but we are in no doubt about the professionalism and the ability of the staff that GBC employs and the fact is that if we compare television per unit cost in Gibraltar with anywhere else, we find that the service is expensive because we are small. It is not expensive in absolute terms". Mr Speaker, I agree wholeheartedly with those sentiments. They are entirely applicable today, if not more so, given the increased challenge to the survival of our community and our identity within the project that is the new European political order. The only difference that I can perceive and this is a genuine perception, between the position then and now is that then the Honourable the Chief Minister was in Opposition and now he is in Government. Well, Mr Speaker, the present Opposition is as keen now that GBC should survive as he was in 1984 when he was standing where I am standing now. Therefore I commend to the Members opposite

when they are contemplating their proposals for GBC, the strength of feeling with which the Honourable the Chief Minister felt in 1984 that that institution; television had to be preserved and its importance to our identity and the very astute distinction that he drew between being expensive in absolute terms and being expensive in cost terms. Mr Speaker, moving on now to public utilities, as Government has successfully injected public utilities into joint venture companies, one of the items that is understandably disappeared from the Estimates of Revenue and Expenditure is these utilities, since neither the income from nor the costs attributable to them, accrue to the Government. Let me hasten to add that I fully support the Government's policy to inject capital and technology-intensive utilities into joint ventures with leading private sector operators. I regard it, in principle, as one of the notable successes of their first term in office. However, Mr Speaker, I also believe that this House and the public at large is entitled to know the terms of the contracts by which public assets and public utilities are at least semi-privatised or fully privatised, given that the whole of them are injected into a private company and that not even the Government's share of that company is accountable for in the House. So "fully privatised", in the sense that it all moves from the Government domain into the domain of a private company. Mr Speaker, as this House knows the Government refuses to disclose those contracts. In answer to Question No.51 of 1992, the Honourable the Minister for Government Services said and I quote him, Mr Speaker, from Hansard, "When entering into contract with Government, reputable international companies, such as Nynex and Lyonnaise include normal clauses of confidentiality which both parties are bound to respect". Mr Speaker, may even recall the, now traditional, jives emanating from that side of the House at we lawyers as to how we are the people that write all these completely unnecessary clauses into these equally unnecessary long contracts. I do not believe that this is or should be so. The terms upon which Governments do business with the private sector are determined by Governments and not the private sector companies. I am gratified, Mr Speaker, to read that in 1988 - and if he is not impressed with anything else that I have said so far, the Members opposite must at least be impressed to the amount of reading of the past Hansards that I have done in the preparing of this speech - the Honourable the Chief Minister felt exactly the same way. This is what he had to say in the House during the 1988 Budget debate about the AACR's inclusion of a confidentiality clause in the GibTel Contract with British Telecom and I quote him from Hansard. Mr Speaker, you will recall, that this was a contract that the previous administration had signed before the election and they were basically

Interruption

....and when the AACR took the somewhat imprudent, in my view, line of trying to complain that there was a confidentiality clause, the Chief Minister handed the ammunition on a plate. Of course he did not fail to remind them that he was simply stuck with something that the AACR had signed. But this is what he said in commenting to that and I quote him as of now "However, I have to say that the agreement between the Gibraltar Government and British Telecom contains a clause which says "we cannot make it public", which we regret very much because we would dearly love to make it public and satisfy not just Members on the other side but the whole population of Gibraltar. But I am afraid that we did not sign that Agreement. That was signed on the 27th December by the AACR administration. We certainly would never have accepted a clause in an agreement that prohibits the Government from making the agreement public but that is what it says. If we can get the other side to agree to free us from that restriction we shall be delighted to make the agreement public but because there are certainly many questions we would like to ask those who signed the agreement". Well, Mr Speaker, that is my position today. There are many questions that I would like to ask those who signed these agreements. The only difference is that now the Honourable Member cannot tell me that he is stuck with an agreement that somebody else signed. Worse, he is stuck with coming to this House and allowing one of his Ministers to tell us how these things are inevitable; how he is stuck with these clauses which he said in 1988 would have been entirely and was entirely, unacceptable to him. Mr Speaker, if contracts entered into by the GSLP Government since 1988 for the privatisation of public utilities, contrary to the Chief Minister's view expressed in this House in 1988, include a confidentiality clause, then I say that it is incredible given what the Chief Minister himself said in this House at that time. Therefore I call once again upon Government to make available to the Opposition copies of the various utility agreements related to water, electricity, telephones and refuse incineration and if a confidentiality clause exists in any of these contracts, then to renegotiate it or to negotiate waivers from them. It is as unacceptable to me now as it was to him in 1988 that such contracts should have such clauses, therefore depriving me of the opportunity to ask those who have signed them pertinent questions about them. I now wish to deal with several matters close to the interests of this House and all those who work in it. Mr Speaker, your staff comprises three persons, the Clerk, the Usher and the typist. We on this side of the House, except my colleague the Honourable and Gallant Gentleman sitting beside me, are all new comers to this House and we are tremendously grateful to them for the assistance given to us and despite their great pressure of work the spirit of friendship and cooperation with which that help has

been given. However, Mr Speaker, I have to say that in my opinion there is a grave shortage of staff in this House. This is most evident in the inordinate length of time taken to produce Hansard which often makes the conduct of parliamentary business more difficult for the Opposition, at least. It is simply not reasonable to expect Hansard to be produced within a faster more acceptable timescale if the Clerk and one typist have got to audio type, check and compile Hansard. It is essential if the work of this House is to proceed in a proper manner that the necessary resources are provided so that Hansard can be produced more expeditiously. In this respect, Mr Speaker, it is with great regret that I note that far from increasing the staff levels, the Government proposes to reduce expenditure on staff personal emoluments from a forecast out-turn in 1991/92 of £74,100 which may in part have as an explanation the general election campaign to an estimated £58,100 in 1992/93. I would be grateful to the Honourable the Chief Minister for an explanation as to how this saving is to be achieved and how it can be justified given the already insufficient staff level at present. Mr Speaker, another source of irritation to Members on this side of the House and an obstacle to the legislative work of this House is the outdated and therefore unreliable and unusable state of the laws of Gibraltar provided in the House for use of Members. Mr Speaker, it seems to me essential that legislators should have access to usable, up-to-date, existing laws so that they know what it is that they are being asked to amend. It really is very difficult, I would say impossible, for a Member of this House that is not a lawyer - and even for those that are, I can assure, that it is no means a simple task - to find out what the written statutory laws of this land are. Therefore, Mr Speaker, I would urge Government not to wait, at least insofar as the laws available to legislators are concerned, until they do some study as to how this problem can be solved on a permanent basis for the whole of Gibraltar, but they must make available to this House, as a matter of urgency the necessary resources for those books behind me to be brought up to date and kept up to date, at least on a cut and paste basis which I am sure is what happens in the offices of the Honourable Members opposite and in other private offices in Gibraltar. It really is not acceptable, Mr Speaker, and I am sure that in the depth of his views, the Honourable the Chief Minister knows, having spent seventeen years on this side of the House, just how prejudicial it is to the work of Members of this side of the House if they simply cannot find out what the existing law is. When the Honourable Members produce a Bill amending this section or that, it is very difficult to form a view on it when you cannot even check easily what the 'this' or the 'that' that they are trying to amend is. Finally, Mr Speaker, in relation to matters of interest to this House, I note that there is no vote for a register of electors. Honourable Members opposite, may be aware that large numbers of voters estimated at a figure in excess of one thousand were unable to vote

at the last general election due in no small measure to the great rush and I would urge no-one in this House especially nobody from the professional civil service to interpret this as a criticism of their effort which it is not and it is not intended to be. But the fact of the matter remains, that the register of electors of Gibraltar as it presently stands disenfranchises a significant number of people in this community. Therefore, I think, it is incumbent on the Government to produce a supplementary register forthwith, after all, one never knows when we might have to have a referendum or a bi-election or even, dare one hope, a general election. Mr Speaker, when in my speech in the ceremonial opening of this House a few weeks ago I said that it would give me great pleasure to see the Government's economic policies prosper, I was not uttering empty words. I reaffirm them now as I have done earlier in my address. In our position, however, I think, we are both duty and politically bound to distinguish between hope and even anxious expectation on the one hand and the realities as they are unfolding at present on the other. Present realities, as we see them, is one of increasing pressures on practically all fronts of national and personal economies. Stagnant business activity in practically all sectors. Failure on Government's part to implement a real policy to stimulate tourism. Historically high level of unemployment and serious threat of further redundancies. Historically high levels of Government borrowing and more promised and expected. Historically high levels of personal borrowings by Gibraltarians coinciding with a diminution in the historical job security enjoyed by people in Gibraltar. Empty offices and more coming on stream. Empty hotel rooms and more coming on stream. Empty shops and more coming on stream. Empty residential development units and more coming on stream. What we have, Mr Speaker, is economic growth being stimulated by supply-lead gross domestic capital formation in the hope that we will now be able to stimulate the demand that will convert that into increased economic activity and to increased revenue. The Government, Mr Speaker, has, over the last four years, very successfully distinguished between the period of infrastructural preparation on the one hand and the period of marketing and business-getting on the other. I think, the Chief Minister, has himself recognised in his address that the former is now all but finished and the latter is upon us, the time to deliver has come. The people of Gibraltar, foreign investors and this Opposition alike are looking..... I can quite understand the sudden attack of nervousness from the Gentleman opposite. The time has come to deliver on people's raised expectations. It comes as no great surprise to me that the Chief Minister in his own address has put a perspective on the outlook which will certainly give those that may have had high expectations to dampen them and keep them within the bounds of what is going to turn out to be achievable in the next four years. But, as I say, the people, foreign investors and this Opposition alike are looking on to see the extent to which Government is able now to implement policies that will deliver sustainable

economic self-sufficiency at an acceptable level of standards of living. The Honourable the Chief Minister said in his address that we face problems that Government normally do not face, in relation to the generation of business activity. Well, I do not think, Mr Speaker, that that is true. I think, that that is the position of every service, even foreign trade orientated economy; Holland, for example. Certainly I do not subscribe to the view that the position faced by the Government of Gibraltar today is one that is exception amongst Governments. I think it is very common amongst Governments of small territories. It is even common amongst Governments of larger countries and, therefore, it is by their ability to create in Gibraltar, an environment in which business can be done successfully that the electorate is bound to judge them in the next four years. That is unless they cannot produce just before the election some red herring with which to divert public attention. As far, Mr Speaker, as the rainy day fund is concerned; to which the Honourable the Chief Minister referred; in other words a fund in which we would invest outside of our economy; I understand that, in fact I can accept and agree, that if you have a problem of insufficient production because your own ability to produce, be it through shortage of raw materials, through shortage of customers or through shortage of labour force, is restricted and restrained, that one way that you can generate income profit from that is in effect to hire the labour forces in other countries to earn income for you. This can be achieved obviously by investing in other peoples' labour forces, in other peoples' factories and in other peoples' raw materials. So far I have no difficulty whatsoever, I have to say though, Mr Speaker, that I was surprised, not to say a little bit disquietened, by the (and we do not wish to be unfair to him. He may leap to his feet now or later if he feels that I am being) suggestion that this fund would invest in the Stock Exchange. Now I can understand that investments in the Stock Exchange have the advantage that you can more rapidly convert them into money if money is what you need from the rainy day fund. If what the Chief Minister has explained is some form of speculative investment with public funds on stock exchanges, then, I do not recommend that practice to him or to anybody else. If, on the other hand, what he means is that he is going to invest in factories and in economic activities as a direct investor but that where possible he is going to try and choose businesses whose shares, albeit that they may be small businesses, are quoted on some market, so that when the time comes he can sell them, then that is a different proposition. But, I would certainly welcome the Chief Minister's confirmation that the rainy day fund is not going to be a fund for the buying and selling on a speculative basis of shares in ICI and BAT and Hanson Trust and any other companies of that kind.

HON CHIEF MINISTER:

We are talking about the same investments, Mr Speaker.

HON P R CARUANA:

I am relieved to hear it. I am grateful to the Chief Minister for that clarification. In relation to the Gibraltar European Investment Trust, I think, reading between the lines, what the Chief Minister is suggesting is that this is going to be some fund in which, members of the public can invest, which is presumably why the Companies Ordinance presently does not permit it. He presumably wants some form of open-ended investment company. I think, that ultimately, Mr Speaker, that is to be welcomed as a means of giving the people of Gibraltar and others a vehicle in which they can invest for the ultimate benefit of the community as a whole. Of course, it goes without saying that such a vehicle would have to have complete transparency in relation to its finances, and accounts and no doubt all that will be provided for in the legislative proposals because at the stage it will not simply be a question of excessively curious Leaders of the Opposition. It will be more a question of excessively curious investors who want to invest unless all these accounts are up to date and perfectly visible for all to see. The last item that I wish to address relates to section 4 of the Appropriation Bill itself. Mr Speaker, you will be aware that section 4 is a device (which again is not new. It was in last year's Appropriation Bill) which in effect allows the Financial and Development Secretary to reallocate appropriations from Head 19 Reallocations and Subventions, Subheads 6 - Minor Works and Repairs, Subhead 7 - Pay Settlements and Subhead 8 - Supplementary Funding to any other Head of Expenditure specified in Part I of the Schedule. Put another way, that any sums of money mentioned in Subheads 6, 7 and 8 of Head 19 can really be spent on anything else. Anything! Not even limited to the equivalent, in other words, not limited to minor works under any Heads or not limited to pay settlements which any other Heads, to supplementary funding - obviously that is general and by definition has got to be spreadable to other Heads - otherwise it does not serve the purpose. Mr Speaker, I have to admit that last year when I was a complete freshman in this House, I recall voting in favour of the Appropriation Bill with a similar device in it. I now wish to exercise my right to change my mind and I have to say that I think that this is an unhealthy, unsalutary practice. Because, Mr Speaker, given all the other difficulties that I have with Government's presentation of financial statistics - which are now well known and which we are going to debate at length and at heat later on - it really gives the Members opposite a device which if they wish to - and I do not attribute to them any mala fides - further circumvents the element of control that this House has on Government expenditure through the Appropriation Bill. It does not of course affect the total quantum of

appropriations but if I vote now Elm for wage settlements there is nothing that I can do to stop the Honourable the Minister for Trade and Industry spending it on another kilometre of drains for Queensway. Therefore, it is not that I have no control over the total Government's spending, it is that I lose control over what the Government spends it on and abused, this device will enable the Government next year to put £10m under the supplementary funding and then transfer them to whatever pleases them during the course of the financial year. It is, therefore, a device, Mr Speaker, which further diminishes the impact and control that this House exercises over what the Members opposite spend the money that you vote for them on exactly. Mr Speaker, that concludes my address.

HON J C PEREZ:

Yes, Mr Speaker, empty arguments and, regrettably, more coming into stream following the dire straits of the Honourable Member when he was referring to everything that he states is empty. You see, the problem with the Honourable Member is that he has not fulfilled his role at all as an alternative Government in that he has said that he hopes that the economic policies of this Government will actually come into effect, but has not offered any alternative policies if he were on this side of the House. Let me say that the Government is certainly on course and that the picture that the Honourable Member has painted of a dire economic scenario is not wholly untrue. The Chief Minister himself has referred to the economic problems that Gibraltar is going through and to the economic problems that we are encountering as a result of the world recession. But to conclude by saying that the only thing that the Opposition offers is hope; that everything will come good to the Government although they think it will not, frankly, proves that they are themselves bankrupt of ideas and alternatives. The only things that the Honourable Member has come up with are academic points as to the presentation of the estimates, criticism of Government policy based even on rumours, without putting forward any alternative policies himself, in the hope that the Government's policy will come true. Well, they will. Look at the record of the GSP Government since 1988, at what has happened and at what we have said we were going to do, at what we have said was going to happen. Look at our record in 1988, 1989, 1990 and 1991. No-one can say that what we predicted did not come true in terms of the Chief Minister's own economic forecast. No-one can say that what we stood for in the general election of 1988 we did not fulfil. No-one will be able to say, not in 1996, but at the end of the next Financial Year that we have not kept to our target. We are not saying we are going to protect the unemployed. We are saying we are going to keep to a figure of 14,000 people in employment. That is a commitment. That is a figure. We are committing ourselves to it and we are committing ourselves to it because we are sure of our success even though

the Honourable Member has so many grave doubts. Of course, he is, as usual, inconsistent. He would want the Government to spend more money here, to spend more money there, but he is against the policy of Government borrowing so much. What would he have done if he were in Government? Would he have cancelled the 50/50 project in Westside because he would not borrow? Would he have said to the people of Gibraltar today that because the British Government has said that I have not got any money for a new hospital, we have better do with the old one because I am not building a new hospital. Those are the ridiculous policies on which the whole of the Opposition stood for election and they were rejected only a few months ago, Mr Speaker. So, he says that we should be cutting taxes and at the same time he says that he is against borrowing. At the same time he is saying that taxation is what you have to pay for the borrowing. Well, I cannot understand exactly what he would do in that position. Our position has been clear on taxation all along. For the last four years we have defended and we have been brave enough to face political parties standing against us saying "We are going to cut taxes" and we are going to the people saying "We are going to provide a better quality of life for all Gibraltarians instead". The way that we would see tax changes is the way that we have done it before. We have said all along that the way that we would see changes in taxation is by giving incentives to Gibraltarians in parallel with what Government policy is to induce people to go that particular way in the economic sense. That is why we brought up the tax incentive for home-ownership which together with the 50/50, let me remind the Honourable Member opposite has not impinged on the purchasing power of first time home-owners as he is saying because with the 50/50 option and with the tax incentives that we have offered, it leaves a lot of people who are first time home-owners with a substantial amount of money in their pockets. Some even paying less for a mortgage than what they were paying in the private sector for a flat. Of course, Mr Speaker, as the Honourable the Chief Minister has said, he would not like to see incentives being then wasted in the Continent. These incentives were for first time home-owners in Gibraltar not in Sotogrande or Puerto de la Duquesa. Let me say, Mr Speaker, that the Honourable Member has gone into issues which I am sure that he will raise in his motion again and to which the Honourable the Chief Minister will reply as the academic in financial affairs and the technician as well the politician that he is. I have no reason to stand up to defend that policy because he is more than capable of doing it himself. But, to suggest, in 1992, that he has not got enough information about the Health Authority when that was scrapped in 1987. You know, Mr Speaker, that is to go back five years. The subvention is here every year but the details of the Health Authority are not published since 1987.

Then he comes up with the question of public utilities. Well, I thank the Honourable Member for suggesting that that has been a success and that he actually endorses government policy in this direction, except that, of course, he is critical of us not making public the contract. In contrast with what the Chief Minister used to say when he was on the other side....

HON CHIEF MINISTER:

In 1988 I was here.

HON J C PEREZ:

Let me tell the Honourable Member the difference between the GibTel contract and all the other contracts on public utilities that have been signed. The GibTel contract was signed without a statement having been made in the House allowing any Member of the House to raise questions on the matter in contrast to the one of Lyonnaise Des Eaux, to the one of Mynex and to the one of OESCO. At the time of signing all of them a public statement was made and later a statement was made in the House. Honourable Members were allowed to put questions in the House on the statements that were made in relation to the contracts that had been signed. The difference with the GibTel one is that it had a clause that you cannot disclose any information at all about the contract until twentyeight years after the contract has expired, which is ridiculous! We will all be in North Front Cemetery three foot under by that time.

HON P R CARUANA:

I am grateful to the Hon Minister for giving way. Frankly, it exemplifies the view of the Members opposite to the need to have information in the public domain that he equates. Having the contract in front of me for perusal on the one hand will get him the opportunity to make comments in this House on such part of the contract as he has chosen to make the subject of a public statement. Frankly, it typifies the whole approach to the basis of putting information to the public domain. I choose what information I put in the public domain. I choose how I present it and that is what there is; comment on it and that is public consultation.

HON J C PEREZ:

No, Mr Speaker, the Honourable Member is again, as usual, wrong. On the question of signing contracts, he has said, in his contribution, that the Government should put the terms and conditions on which the contracts are signed. No private company anywhere in the world does it. I, for one, Mr Speaker, find it unreasonable that I should ask a reputable international partner to do

the same for the sake of the Honourable Member being satisfied with the small letter of the contract which he as a lawyer might want to see but on which everybody else might not be as interested as he is. I am sorry, Mr Speaker, if we are going to get public utilities on a commercial footing and we are going to have a commercial orientation and people in those jobs are going to look at the aspect of providing the service in a commercial framework, then we have to apply the same commercial considerations as would be applied to any other company anywhere else. It would suffice, Mr Speaker, that at the time of the signing of the contract, the basic ingredients and the basic information of how the contract is formulated is set out and Members of the House allowed to ask questions on it. I have even allowed Members of the House later on in question time to ask questions as to whether telephone booths are going to be put in Apes Den or in Camp Bay and things like that. I go to the company and I bring the information back. What the Government is not prepared to do is to allow the Opposition to try and put obstructions in the way of private companies; who are providing a better service than what those public utilities were providing before; for the sake of the Honourable the Leader of the Opposition scoring a point by saying "Look I have seen the final details of this and I do not agree with 'and' until we change it to 'the'". With his legal mind that is what he would probably do with the contract. But I am not prepared to subject those partners to that type of scrutiny because they would not be subjected to that scrutiny anywhere in the world. If we want them here in Gibraltar then they have as much right at the time of the signing of the contract to place their conditions as the Government has. It is not a one sided agreement. Public utilities is, Mr Speaker, the thing I was going to start with because as the Honourable the Financial Secretary has said, the major changes in the estimates this year are the transfer of the water and sewage to Lyonnaise Des Eaux. The operations started smoothly in July. There have been some problems with the billing which was taken over in January. The fact that it coincided with the Christmas period and with problems in the Post Office was a consideration which was later put right. All the reports that I have up to date is that the operation is functioning quite well and smoothly and that the company has attended to a lot of the issues that were being raised directly with them by the general public. The other major issue that came into stream and which took a load of the shoulders of the Government was the new incinerator which did away with the necessity of the contract with Los Barrios and has made it possible for us to start dismantling the old incinerator. We are now self-sufficient in refuse disposal inasmuch as the problems encountered with the operation at Los Barrios. It was only a temporary one but proved the point that we could not even look at or suggest that our refuse disposal should be anything other than self-

sufficient, because there were, at every level, political issues being raised. I am glad to say that under constraints in finance we were able to get a subsidiary of Baltica to come up with a project which was acceptable to the Government and which also produces water and electricity. Both the functions of the incinerator and the water and sewage were major functions that were traditionally under Public Works and which have now come out of it completely. Therefore, what is left of the old Public Works is the electricians, the garage, the Cleansing Department and alas the cemetery, which now come under the title of Support Services Division. Let me say that even in the cemetery there have been, during the year, vast improvements in the repair and cleanliness of the site, much appreciated by many visitors to the cemetery even if the Honourable Members opposite want to laugh at it.

HON LT-COL E M BRITTO:

If the Honourable Member will give way a moment to clarify? We are not laughing, Mr Speaker.

HON J C PEREZ:

No, I am not giving way, Mr Speaker. Mr Speaker, OESCO was late in bringing in the new engine which made up the capacity that was missing to enable us to close the King's Bastion Power Station on the 31st December last year. Some of the people were retired because they were of retiring age, others moved to other jobs and some were retired early. Members will see in the Estimates that, on the non-industrial side, there are about an extra eight jobs included which will come out in next year's Estimates because they are only in employment until July/August when their retirement age comes up and they finish employment. That would relate as part of the closure of King's Bastion as well. The electricity emanating from the Baltica project and the electricity emanating from OESCO will certainly cover the capacity in King's Bastion plus the projected growth. You will see that there are substantial projects in the Improvement and Development Fund as far as expenditure on electricity is concerned. That is because taking the electricity from the Baltica Plant and the release of some areas of the MOD, makes it necessary for us to invest in ducts (a) to be able to get that electricity and bring it to the central grid and (b) in order to be able to service some of the areas that the Ministry of Defence are relinquishing. Mr Speaker, the Post Office continues to produce the desired service not without problems. There have been industrial problems and there continues to be industrial problems with the postmen and this is being resolved by the Personnel Manager. The TV and Radio licences are to be moved to GBC in September/October. Philately has continued this year to produce the same level of income as last year and we hope we shall be able to maintain it although, as I said last year, that that level was related to certain

conditions, such as the fact that some of the issues were taken up by the Wild Life Fund and some, like the issue of the 40th Anniversary of Her Majesty the Queen's Accession to the Throne, had a particular market which might not be true in following years. But we hope with new incentives to keep the revenue from philately at least to the level that we have kept it for the last two years. Before that we had a low of something like £14,000 only. I come then to the issue made by the Honourable Member on the question of GBC and the commitment that the Chief Minister has given to GBC. That commitment continues on this side of the House, continues from the Chief Minister and from the whole of the GSLP but, as the Chief Minister said then as he was quoted by the Honourable the Leader of the Opposition, related to value for money. The restructure that has taken place, and which the Honourable Member knows about already, has done a lot to get that value for money which the Honourable the Chief Minister was talking about. That restructuring brought down the recurrent cost of GBC from something like £1.6m to £900,000 (I cannot remember exactly the figure, I think the cost of the whole restructure is something like £1.4m or £1.5m). The result is that instead of facing a wages bill of something like £1.6m we are today facing a wages bill of £800,000 to £900,000 when you consider the subvention of £570,000 and the expected income from advertising - which at a conservative figure is in the region of £250,00 to £300,000 - that should be able to cover the ongoing cost of GBC this year although it might not be able to absorb the deficit that it is carrying at the moment and at the end of the financial year it will have to carry forward the deficit again. I am not saying that that is a sound financial position but it is a much healthier one than the one that they were facing. The possible hiring out of assets by GBC itself to third parties is what is expected to help to continue to finance television. But let me say, Mr Speaker, that when the Chief Minister said it in 1984, the international face of television was completely different in that the unfair competition of satellite was not here, private television in Europe as a whole had not materialised to the extent that it has today and that the competition that public television, particularly GBC with such a small base in Gibraltar, is facing today was not the position that GBC was facing in 1984. However much we want to support that the Gibraltar television service should continue, it cannot, at any stage, continue without the scrutiny of saying "How much do we need to spend on it. Is it worth spending to keep that service going?" The situation must be reviewed in that line continuously and if at one stage or another we think that the cost of providing television is such that it outweighs the advantages of having television, then we would have to come to this House and say that that is the opinion of the Government and the Honourable Member will have a say in it at the time when he has got the facts in front of him. That is not the situation today and what has been done is to try and help save television as well as radio so that the

view which I think, the whole House has that it should survive and that it should have an economic framework in which it can survive, is made possible. I will now give way to the Honourable Member.

HON P R CARUANA:

I thank the Honourable Member for giving way. It is at what price, Mr Speaker, something that is essential to the survival of our community and of our identity? That is the question. The Honourable Member says there are circumstances in which we might have to close the whole place down. Well, of course, when we cannot afford it we shall have to close it down, but, whilst it remains a matter of judgement as to whether it is too much or too little what price something which in 1984, in the opinion of the Honourable the Chief Minister, was essential to the identity of this community. The reason why I made the point at all was that in his public pronouncements...

HON J C PEREZ:

I was honest enough to say the truth.

HON P R CARUANA:

.....about GBC, the Honourable Minister has always been much more bullish about the prospects for radio than for television. I think, in fairness to him, he is being so today here as well. I think, then that we can all rest safe in the knowledge that having done such a good job in reducing the subvention level of GBC down to £570,000, which he is confident is sufficient, that that is the sum of money which I am sure all the people of Gibraltar will wish to pay for something that is essential to our identity.

HON J C PEREZ:

Mr Speaker, I have not reduced the subvention to £570,000. I have maintained the subvention at £570,000. That is not the only subvention that GBC is receiving. If the Honourable Member would have looked in more detail at the Estimates, he would find that there is an extra grant being made to GBC in the Improvement and Development Fund for equipment which must have escaped the details of the Honourable Member. Let me say, again, Mr Speaker, that the scenario that the Honourable Member was describing is not where we are today with GBC. If we come to it he will have an opportunity to rant about it then but that is not the situation today. I am sure that if he were being asked to borrow £5 million or £6 million a year to sustain GBC, he would either be against borrowing or in favour of GBC, but certainly he could not be in favour of both. Given his inconsistency he might even be in favour of both of those. Mr Speaker, as I said, GBC also has the option of hiring out some of the assets. There have been certain proposals made which are being discussed and studied now. The Government, for its part has appointed, through His Excellency the Governor, the Financial Secretary to the Board of GBC so that the feeling that has been expressed by me in this House before, that

we were giving public money to an organisation where we had no scrutiny whatsoever as to what at the end of the day was being done with that money is corrected. Therefore the Financial Secretary as a Member of the Board, can certainly know at least what is happening to the money and how certain projects have been financed and will be reporting back to the Government if he feels that some of that money is not being used wisely from a financial point of view. But the idea was to appease the conscious of the Honourable Member that there should be no political interference. It would be an official, although a Member of the House, who would be sitting and not a minister as the Honourable Member seemed to be suggesting before the recess of the last House when the issue was raised. Mr Speaker, I can confirm that within this financial year, I shall be moving a Bill in this House for a new Broadcasting and Telecommunications Ordinance which will do away with the monopoly as far as GBC is concerned and will bring in a lot of new EEC legislation which would apply to broadcasting and telecommunications. The idea is, although the trend in the EEC is to liberalise, that within that liberalisation there should be a regulatory order so that certain financial conditions will need to be met before anybody is granted a licence to either go into broadcasting or telecommunications. This I am told is acceptable within EEC law. You can put the same condition on every operator and that restricts any cowboys coming up who have not the financial capability to be able to be licensed in that manner. Also, on EEC legislation, there will be a legislation coming up in terms of transport and traffic, some of which I personally do not agree with, but the EEC is moving in a direction and we have to move with it whether we like it or not. It involves small areas but a very large number of areas. This will be coming to the House with due notice to Members and instead of coming in one by one, what I have told the Law Draftsman is that we would like to encompass all the small traffic ones into one and to have a look at the Traffic Ordinance itself to see whether we can clean it up a bit. Perhaps helping the Honourable Members to keep those books, he was saying, in a better order. Mr Speaker, during the year there has been continuous scrutiny on the alteration to the traffic flows and now that a lot of the developments are complete, the traffic section is looking and negotiating with bus owners, new bus routes. We intend that these should commence northbound through Queensway and should cover the area of the Queensway project and the area of Westside as well. We are putting certain conditions on some of those routes. Certainly there is, at the moment, one operator which is not happy with the proposals. Two others are. We are trying to get agreement with all the operators. It is a very difficult task. I am sure the Honourable Mr Francis knows about it. He has got some experience of it. We are trying to get as many people convinced of the ideas of the Government on the matter. If we do not then the Traffic Commission will, at one stage or another, have to take a decision on it. The Government has attracted and will continue

to attract proposals from private prospectors for the creation of car parking, both in heavily residential areas and in the centre of town. Mr Speaker, there is a need for car parking in heavy residential areas particularly the Moorish Castle area. We were, in fact, seeing whether the trend of movement from these areas to the Westside area would have an impact on parking to look at the kind of project, that would be needed in those areas, to create parking facilities. One of the things that is also envisaged in the Moorish Castle area is a one way road which will be created with access through where the Moorish Castle clock is situated and coming out by the Artillery Arms. That would give a one way system to Moorish Castle which is in much need. Possibly some car parking will go with it but these proposals will need to be looked at. We have already entertained proposals for car parking in one of the Naval Ground pitches and this will go ahead because it is car parking in the centre of town both for people coming in for their shopping and for tourists alike. It is something which we feel we need and we hope that that will be ready, if not in early summer then in late summer. Some of the activities that would normally take place in such open areas as the Naval Ground might have to suffer this year as a result but enough open space is being left in that development to be able to accommodate circuses if they come to town or any other activity of that nature. We still think that there is a need to keep open areas and we have this in mind in looking at such activities. On telecommunications, Mr Speaker, let me say that the massive investment in the cables and in areas related to telephony continued by Gibraltar Nynex and that the operation has proved a success not only in the improvement of services given to the public but also in the improvement of services that resulted in the joint venture with GibTel. Also the partnership is creating new business opportunities for Gibraltar which we would otherwise not have if we had not gone into this partnership. I am referring to the possibility, and at this stage only a possibility, of landing a transatlantic cable on Gibraltar which would need some investment from us initially but which could prove a source of income if the viability of the project is seen to take off. It has a twenty-five year life and is a 1.2 billion dollar project. What we have certainly achieved at this stage is that the international carrier, GibTel, will be able to connect into the cable if it so desires to offer its own telecommunications via cable instead of by satellite. The other thing we are looking at, of course, is becoming a landing site if we can. But there are other considerations, such as Telefonica's position, to take into account and these things are being looked at by the whole of the consortium that is considering the project. Other possibilities that are being looked at is the formation of a database in Gibraltar whereby businessmen could access into the Gibraltar software day or night, by a number of lines allocated to a company. The company would make themselves responsible for the usage of at least 33% of the lines allocated to them. People could access into that database and that would make a lot of use of telecommunications.

Again it is a business which is being pursued. It is not here yet. It might not materialise but in the telecommunications field, as a result of those partnerships these business opportunities are coming to the forefront. It would otherwise not come to the forefront (a) because our infrastructure was not in the right shape to take it and (b) because the contacts have not been there. Mr Speaker, industrial relations, as the Honourable the Chief Minister has already mentioned, continue on the same policy of the Government which is to try and deviate from making public statements that would otherwise prejudice any negotiations with any group. Nonetheless when we feel we have to stand firm on certain principles, and this is proving to be the case, we continue although there has been specific mention of areas where a restructure is possible. The restructuring exercises are looked at on an ongoing basis everytime there might be a suggestion from the Staff Side that any particular work could be done in a better fashion outside the auspices of the civil service. I would like to mention, in passing, the retirement of the Personnel Manager, Mr Olivero. We are very thankful for his long service and for the way that, as Personnel Manager, he conducted his affairs on behalf of the Government of Gibraltar. Mr Tony Lima takes over as Personnel Manager from Mr Olivero. I have but praise for the way that the Fire Brigade has attended to calls; the way that the service is turning more into an emergency service rather than solely a fire brigade and the way the management keeps to its financial targets every year, Mr Speaker. Last, but not least, I reiterate the position of the Government that it is not intended, at this stage, because of financial constraints more than anything else, to move the Prison from its present location and therefore, as a result, certain major repairs are going to be made which would otherwise not have been done if the Prison were to be moved. I take this opportunity, at the end of the financial year, to thank members of the staff for their continued support and in particular all those people who sit on committees with us without remuneration. That is the Traffic Commission, the Lottery Committee, the Parole Board, the Prison Board, the GBC Board, the Stamp Advisory Board and any other Board or Committee where people give of their time voluntarily to advise the Government. They spend lots of hours in doing what they feel is a public duty which is of great use to the Government, Mr Speaker. I think that that covers all of the departments that I represent. There is no doubt that Members opposite might raise issues that I have not covered and I take the opportunity of answering any questions they might have at the Committee Stage if they give me notice beforehand. Finally, let me say, Mr Speaker, that a lot has been said by the Honourable the Leader of the Opposition about the lack of detail and the lack of parliamentary control of matters raised in the House. I would only like to say, that the fact that he is able to come here today and to go through the Appropriation Bill and then present the motion that he is about to present is proof enough that the parliamentary process is at work and continues at work no matter how many questions he is putting on it in his role as Leader

of the Opposition and finding his feet as such. Thank you, Mr Speaker.

HON MISS M I MONTEGRIFFO:

Mr Speaker, this year the Honourable Minister for Government Services has kicked off for the Government after the Chief Minister. I am not too sure, Mr Speaker, whether it is because he has been considered to be healthier and sportier than the Minister for Health and Sport but in any case, I would like to take this opportunity to congratulate my colleague for having given up smoking. I think that he should be commended for that. Perhaps next year, Mr Speaker, I will be commending him for having gone on a strict diet. More seriously, in my contribution I will be dealing with the progress that has been achieved within the departments that I am responsible for. It is customary, that in every budget session we look back at what has been achieved within the departments that we are responsible for. I think that having reached our fourth year in office, I should also give a very brief account of the significant improvements that have taken place within the Medical and Health Services, Sport and the Environmental Health Departments. I will kick off, Mr Speaker, with Sport. The first major event was the realisation of the artificial surfaces for the Victoria Stadium. Apart from the fact that the quality is already visibly improving the user standards, we are seeing much more outside competition and where hockey is concerned, the International Federation, since last year, is nominating Gibraltar to host European Finals. I would like, Mr Speaker, to pay tribute to the local Associations for their efforts in organising such events. With football, we have also seen a marked increase in the number of international professional visiting teams. Last year, Mr Speaker, we saw Colegians Hockey Club hosting the finals of the European Cup Winners Cup and this year in June, Grammarians are hosts to the European Cup Group Finals. I would like, to take this opportunity to congratulate the Eagles Hockey Club because in Swansea, Mr Speaker, just a couple of months ago, in the European Finals they came in second position. As a nation, we were talking about Gibraltar being such a small community within the European framework of big nations, I think, that they deserve a congratulations. Grammarians too, Mr Speaker, have a very good record in Europe and I would like to wish them every luck in next week's European Finals which are incidentally being held here in Gibraltar. Another major improvement has been, the recently installed new sprung floor for the inside sports hall at the Victoria Stadium. We have gone for the best system in Europe. The new floor is also attracting outside international competitions. The Gibraltar Basketball Association was successful in their bid in Europe to host the finals of the European Promotion Cup for Women last December. I am pleased to say, Mr Speaker, that only a few weeks ago the Gibraltar

Volleyball Association staged the Second European Small Countries Volleyball Championships for Women. Both competitions were a great success. It is extremely gratifying to see how Gibraltar is fully accepted in Europe as a small nation even though the Spanish Government continue with their policy of not recognising the Gibraltarian identity in the area of sport as in so many other ones. But I am confident, Mr Speaker, that we are winning the game. Ultimately, those Associations that have strived for international recognition have been successful. Already we have twelve and my Government recognises the many benefits for Gibraltar the sport is providing and we will continue to give our fullest support to all the Associations. Looking now to our sporting facilities, they have all been upgraded and especially the Victoria Stadium has had all its facilities both indoor and outdoor completely refurbished. We have also upgraded Hargrave's Court and moreover, funds have been made available for the purchase of new equipment within all our playing areas. The introduction of community use at the schools has meant a large increase in the number of sporting allocations. When we came into Government, Mr Speaker, we had something in the order of about ninety playing hours a week for sporting allocations and we have moved now to a record of six hundred sporting allocations that are being given to the community and sporting associations in a week. In answer, Mr Speaker, to recent questions in the House I can confirm that the MOD will shortly be releasing areas such as the three tennis courts and sports courts at the South Barracks. Again we will be making arrangements for the schools and the community to be able to use these facilities. When we look at this year's budget, we continue with our commitment to provide financial assistance for specific sporting events. We are proud of the fact that our sports people are doing so well in their contribution to our national prestige. When we took up office the amount of money that was being allocated was in the region of £15,000. Today that money stands at £45,000. We are also actively pursuing our commitment in our election manifesto to provide suitable accommodation for sporting associations. This problem has been an outstanding one for a great number of years and we believe, Mr speaker, that we can solve it. The next major sporting event for us will be the Island Games in 1995. This event will attract in the order of over three thousand people. I have already met with the local committee on various occasions and we are committed to ensuring that all the required sporting facilities are in place. With the Medical Services, Mr Speaker, we embarked on a programme to reshape them and the results are extremely positive. We have effected a lot of repairs to the old buildings of both hospitals and we are continuing with the refurbishment works with the aim of having new hospitals within old buildings. In 1988 when we took up office we had conditions within the hospitals that we could well compare to third world standards. Today, that is no longer the case. We have upgraded our wards to the highest standards with modern sophisticated consoles, furniture and computerised medical equipment.

In St Bernard's Hospital, we have modernised the Surgical Wards, Godley and Napier, the Medical Wards, Victoria Ward and John Ward, Private Ward, ITU and Lady Begg and a Geriatric Ward is in the process of being refurbished. To give you an example, Mr Speaker, only the refurbishment works at Lady Begg has cost the Health Authority £84,000 and both the works and equipment of the ITU has cost the Health Authority in the region of £100,000. At KGV, wards have also been refurbished and areas such as the Occupational Therapy Department, the kitchen and the bathrooms have been refurbished. The bathrooms alone, Mr Speaker, have cost in the order of £50,000. The refurbishment works have not been aimed exclusively at the wards. A great number of departments and public areas have also been tackled. As you can imagine, Mr Speaker, we have had a major task when we are talking about old dilapidated buildings and I am pleased to say that only two wards are left to refurbish in both hospitals and that is Lewis Stagnetto and Maternity. The list of replacement and new equipment is endless and this year I will not indulge in giving a comprehensive list of the equipment because whenever I have done so I have been told by my colleagues that people loose the gist and that I invariably bore the Members of the House and perhaps the public. All I will say, Mr Speaker, is that the equipment that we have purchased range from £30,000 to the £80,000 mark and that we are invariably being complimented by people who visit us with the facilities that we provide within the hospitals. As I have already stated publicly on various occasions, we are committed to building a new health centre in the north area of Gibraltar and we are already considering several options. I have already stated the Government's position in this area at the last House of Assembly Question Time. On the nursing side, Mr Speaker, we have started sending our staff to UK for specialist training in a wide number of areas that never existed before. The nursing management has established a very useful link with the Sheffield North Trend College of Nursing and Midwifery. The college is amongst the largest of its kind in the UK and has courses validated by the English National Board. Since the last House of Assembly meeting, Mr Speaker, more progress has been made in relation to our nursing qualifications. The principal of the college, Mr David Jones, together with four members of staff visited our School of Nursing. Mr Jones commented that since his last visit in December, the School of Nursing has made substantial progress in relation to both the teaching of student nurses and more significantly in ensuring that continuing professional development opportunities have been made available to registered nurses. They have judged both the standards of care given to the patients and the standard of education and training against their knowledge of current provision in the UK and they have found, Mr Speaker, that Gibraltar currently meets the required standard. He complimented the managers, the teachers and ward staff on their increased commitment to nurse education. Naturally, Mr Speaker, this matter is not divorced from

Gibraltar being recognised within the EEC. It is part of the same ongoing battle that we have in other areas, because the framework of the Community is that the twelve member States mutually recognise each other's qualifications. In this case, we have eleven member States recognising twelve. De facto we are the thirteenth State but de jure we are not an independent State, so there is always a problem of definition. One route is that we are treated as UK nurses or alternatively, is that we are treated as the thirteenth state that issues its qualifications. Finally, Mr Speaker, to the last of my responsibilities—the Environmental Health Department. This department is a small one but it has many varied functions. This department has started on a campaign mainly aimed at the community and at the schools. A lot of emphasis, therefore, has been given by the department to health education as a means of preventive medicine by providing information to both the community and school children on health matters relating to the dangers, for example, of smoking, alcohol, drugs and also, Mr Speaker, on transmittable diseases. Although the programme involves persons of all ages, our greatest efforts have, as I have said before, been geared to our children who will in effect be the future generation of Gibraltar. Lectures have been given at schools on health matters including the environment and class exercises and projects have also been carried out by the children. So I am very satisfied that on the preventative medicine side, the Environmental Health Department has done a very good job. Finally, Mr Speaker, I cannot end my contribution without recording my appreciation for the invaluable work and the assistance that I have received from those members of the staff who work in all my departments. Thank you, Mr Speaker.

MR SPEAKER:

The House will probably like me to congratulate the Honourable Lady for being so punctual with her delivery. She has just finished at the time we are supposed to recess until tomorrow morning.

The House recessed at 7.00 pm.

WEDNESDAY 27TH MAY 1992

The House resumed at 10.40 am.

HON P CUMMING:

Mr Speaker, the information available to us in the Draft Estimates regarding the Health Authority is literally two zeros. Last year there was at least a figure shown. We have of course the accounts for the Health Authority for the year ending 31st March 1990 and a small report, presented in September of last year. These are well out of date and hardly of topical interest. Payments are listed under thirty-four headings without any explanation or reference to previous year's expenditure. The report is written on two pages, very well spaced under seven headings including introduction and conclusion. This report is superficial and inadequate. It contains nine

spelling and grammatical mistakes; not all that important in itself, except when, as in this case, it reflects an amazing casualness in the preparation of the document to be laid before this House. The paragraph headed 'Finance' simply states that the appended accounts are self-explanatory, which they are not. One heading, for example, states 'Patient Appliances' and another heading says 'Surgical and Medical Appliances' which with a great knowledge that is impossible to decipher what their meaning could be. Prior to 1988, the Annual Reports of the Medical Department consisted of a thick booklet in which the head of each sub-department reported fully on their year's work, on their staff, on their expenditure, on their problems, on their plans and hopes for the following year. The Annual Report for GBC for 1989/90 consist of a booklet of twenty-two pages, together with five pages of detailed accounts. It contains an index of contents and overall gives a real insight into the workings of GBC for that year. The budget of GBC is much smaller than that of the Health Authority, but much more information has been presented in their report. Last year's budget speech by the Honourable Minister for Health took up two columns in Hansard, taken up exclusively with the details of the refurbishment and a paragraph on health education. This year's speech followed very much the same pattern. All the important issues have been avoided. This is all part of the Government's obsession with secrecy. I have read in Hansard the Chief Minister's view that the Government's job is to be efficient, not to make life easy for the Opposition. This seems to me synonymous with the view that democracy is to function in Gibraltar once every four years on election day because surely in a democratic society the role of the opposition is to scrutinise critically ongoing Government action or lack of action. This may not be pleasant for the Government but democratic governments are expected to respect the role of opposition and not obstruct its work by unnecessarily withholding information. Everywhere Members of the Government go, they are wined and dined, applauded and feted except here because it is the only place where their work is criticised face to face. But this is a regular medicine prescribed by a democratic constitution for a free people. This work of the opposition is a service to the public that we have been elected to perform. We will soon be in a position where in order to gain an insight into the workings of the various departments, we will have to ask the whole network of questions at every single opportunity in order to build up some picture of what is going on. But complete estimates and full and up to date reports will be far more appropriate. The whole idea of forming a Health Authority to take the place of the previous Medical Department was to separate it from the Civil Service and give it a purpose built Civil Service of its own to make it more financially independent and above all to bring the professionals into the decision making processes at the highest level. This has not happened.

Whereas the Ordinance of 1987 saw the Minister only as the chairman of the Authority, in fact, the only authority is the Minister together with the other elements of the GSLP. This lack of input by the professionals is an ongoing sore point amongst the consultants and there can be no good reason for not presenting detailed Draft Estimates and a full up to date report to this House. The recent vacancy for a gynaecologist which went unfilled for so many months apparently with the idea of having many locums from whom one could be selected whose bedside manner had been observed to be good was a source of anxiety for many patients and as an experiment in recruitment it was a signal failure. We hope it will not be repeated when future vacancies occur in the ranks of the consultants. We were happy to be assured by the Minister in the last meeting of the House of Assembly, that recent local vacancies for the post of consultants have attracted many applications from doctors who have years of experience as consultants in the UK and not just from those who are junior registrars and hoping to jump the usual four year stint as senior registrars and that the requirement that they undertake to forego private practice has not deterred any applicants. But in general though the waiting time to see a consultant remains unacceptably long. Thus, the Minister will consider a system of central billing for private patients seen at the hospital which will help to ensure that consultants keep within the quota of private patients that their contracts allow in order to prevent the injustice of private patients being attended to so much more quickly than general patients. I was glad to know at the last meeting of the House that the Minister agreed with me that the overcrowding at the Health Centre was unpleasant for patients and staff and that conditions were bordering on the unhygienic and that urgent interim measures would be taken to relieve the overcrowding until a new health centre was ready. I look forward to hearing soon what these interim measures will be. Industrial relations between the Government and the nursing staff have been particularly poor in this past year. The attempt to impose internal rotation of shifts by forcing long standing night staff on to day duty was, to say the least, authoritarian and there were many complaints by staff of intimidation and pressure to leave the Union. It seems that personal issues greatly complicated what would otherwise have been a straightforward issue. On the last occasion I spoke privately with the Chief Minister one month before his election to Government, he told me his Government would do away with all authoritarian management. Four years later, not only is management far more authoritarian than it has ever been before, but the Minister states that it is not GSLP policy to intervene in issues which are related to the professionals who run the Health Service. She has forgotten, I think, the occasion when the Chief Minister directly ordered the reversal of a decision by the previous matron. That story made it to the newspapers. I quote from a statement from ACTSS of November 1991 during the last dispute. The statement to the effect that Government would be completely irresponsible to overrule the hospital management is absurd

given the Government's track record. ACTSS is prepared to remind the Government of the many occasions when Government has overruled the management. End of quote. This has been a new device whereby the Minister can pass the buck to the management. I remember the times when ACTSS would criticise the AACR Government for its industrial relations and Sir Joshua Hassan would answer with pride and a certain truth that the Government was a model employer and I ask myself whether this Government could say the same thing with the same sincerity. The Health Authority is a very large employer and I would call upon the Minister to ensure that she has a firm policy of good industrial relations and ensures that management implements that policy and that the individual needs of employees of the Health Authority are catered for as far as is reasonably possible and that management should exercise a caring role to staff and not just a disciplinary one and that grace and favour be equally available to all not just those who are well in with that group of GSLP militants who exercise so much influence in the Health Authority. The physiotherapy Department has been in the news recently and it is quite clear that the complement of Physiotherapists needs to be increased. Physiotherapists make an immense contribution to the well being of patients, are highly qualified professionals and are cronicly underpaid. Why should they continuously have to work under intense pressure, knowing that however hard they work they cannot get round through everything that they should do? In the election campaign the GSLP said it was considering employing a geriatrician as had been recommended in 1987. I hope that this consideration will shortly reach a favourable conclusion and that a geriatrician will soon be recruited to look after our elderly people and oversee and coordinate the work of Mount Alvernia, the hospital geriatric wards and care in the community. The union has been complaining just recently about the large number of vacancies in the government service for cleaners and how these vacancies are covered by supply cleaners over long periods. It seems that the Government may be considering privatising the cleaning services. May I ask the Minister to consider that it would be one thing to contract out cleaning services of schools and offices which are vacated in the evenings and quite another to privatise the cleaning of wards. The ward cleaners are a very important part of the ward team and their work is arranged around the needs of patients. They also help out in various small and voluntary ways which would never be possible for a contract cleaner who would be under pressure of time. In the UK, in those areas in which ward cleaners have been privatised, the ward sisters are continually complaining about falling standards of cleanliness but especially about falling standards of nursing care, because often sisters have to choose between getting an area cleaned according to the cleaner's schedule - whether or not this is inconvenient to patients - or not getting it cleaned at all. Nursing journals have been full of articles on this

topic. So we ask the Minister to keep the ward cleaners as permanent and pensionable Government employees so that their loyalty to their wards can continue to serve patients well. Corridors, offices and departments, closed at night, could be cleaned under a different system though this too would bring problems in its train but at least good nursing care would not be interfered with. I understand that there has been no nursing courses in recent years leading to the intermediate nursing qualification of enrolment. I would appeal to the Minister not to let this most useful grade die out. Enrolled nurses carry out all the simple and junior tasks of nursing but are also able to carry out senior tasks when necessary and even be left in charge of wards for short periods and enrolled nurses bring even to the junior tasks a skilled and expertise and theoretical knowledge which is very much in the patient's interests. The Government has undertaken an extensive programme of refurbishment at the hospital and this may extend its life adequately for a few years, but the fact remains that the medical review team of 1987 did not find our present hospital buildings at all adequate. If our population continues to increase as the GSLP apparently wants for economic reasons, more hospital facilities will be needed. Government has invested heavily in infrastructure so that we have excess capacity in some areas such as electricity and refuse disposal, so there must also be an increase in our hospital capacity and a new hospital will be necessary for this. I appeal to the Government to include a new hospital at least in plans for our mid term future. Thank you, Mr Speaker.

HON J L MOSS:

Mr Speaker, this is the time of the year when if my colleagues will allow me to speak.

MR SPEAKER:

Order.

HON J L MOSS:

I can accept the Opposition interrupting me but not my colleagues. This is the time of the year when the Government gets up in the House of Assembly, gives an explanation for its conduct, for the work it has done over the previous twelve months and an indication as well of what our programme will be for the forthcoming year. This year, of course, is a peculiar situation in that we have had an election recently so the Government is giving an indication not just of what would be happening over the next year, but indeed over its next term of office. As far as my responsibilities are concerned, the first thing that I have to express is satisfaction at the fact that the programme of Government, which we had over the last four years has enabled us to make enormous advances on all fronts. This is not playing

with words in terms of the improvements that we have achieved, for example, in the schools. I do not have to tell this House what it is that has been done. All we need to do is to take a tour through the schools, have a look at them and the work that has been done then will speak for itself. Last year was a particularly good year from the point of view of investing in our educational buildings, in that we saw the refurbishment programme that we started in 1988 really take off with major works being done at a number of our schools and this tied up as well with the building of the two new schools at South Barracks. If there is one thing that we have done in education which proves the way that we have actually been turning the whole of the economy around from an economy which was still largely dependent on the Ministry of Defence and on the British Government to an economy which is increasingly self-sufficient, then I think that South Barracks has a symbolic value which no-one can deny. That is an old, dilapidated, military building being put to good use for the community and for the education of our young people. I do not think there can be any change more positive than that one. We have also been implementing certain changes throughout our last four years which have been gathering pace if anything through the Gibraltar College of Further Education. As I have said in this House before, the main point has been to try and get this to operate in a more business-like manner and by this I mean not just in the way the College operates, but also in the courses which it offers. We have tried to make them relevant to the needs of the business community. We have invested again in changing the building from its old location to just beside Westside School now where it will have room for expansion in the future. We have invested very heavily in computers which means that the courses in information technology that are now offered by the College of Further Education are, in fact, second to none in Gibraltar. They are attracting a lot of customers and they are attracting a lot of interest from outside Gibraltar as well. There will be more developments here in the future as we try and get courses of a higher nature to operate from the College of Further Education to begin to see whether there are any possibilities for actually having some type of limited higher education within Gibraltar. But I have to stress that this is very much at an exploratory stage at the moment. A report has been commissioned by myself which will be delivered to me shortly and we will be able to determine whether there is any mileage in running courses of the higher nature at the College. The scholarship system continues to work as well as it has since 1988. The number of students continues to grow and by this September we will have in place the promised access fund to students which will assist them with the financial loss they suffered as a result of the British Government scrapping housing benefit. I know that this has been the subject of questions in the House of Assembly. We did give assurances at the time and I can now tell the

House that from this September that fund will be available. If there is one very important thing that we must not lose sight of in education, it is the question of having value for money.

MR SPEAKER:

Could I just interrupt the speaker for a moment. Those of you who wish to take their jackets off may do so.

HON J L MOSS:

Mr Speaker, I was commenting about value for money in education and it is particularly important because Honourable Members on both sides of the House will not have missed the fact that education this year has now become the biggest spending Government department. I do not say this with concern because it is a well known fact that this Government believes very strongly in investing in education but I say this because we should not lose perspective. We have been increasing the sums of money available to fund books and equipment in schools. We have increased the amount of money that we spend in upgrading and refurbishing schools and we have to ensure, at all points, that we are obtaining value for money for this. Not with the view to cutting the education budget but with a view to maximising the effect of the funds that we have available for this. Mr Speaker, if I may now move on to the responsibilities which I have for youth, I have to again give the House a favourable report about the different activities which the Youth Office has undertaken over the past year. The Youth Centre continues to grow. We have now got over six hundred members and as a result of the demand there was for its usage we have been opening on Sundays recently. This was with a view to removing the many young people that were on the streets with nothing to do. It was highly effective in solving this particular problem and obviously this will now tail up as a result of the weather getting hotter and people going to the beaches but it has certainly been an experiment which will become hopefully custom and practice in future years. I suppose that the area of youth is in fact one of the very few areas where I am able to report that our contacts with Spain have actually been quite cordial. This enabled us to sign an agreement on the provision of information between Gibraltar and the Campo Area and it has also enabled us to have a regular programme of youth exchanges with young people from Gibraltar and the Campo both attending. The most recent one being last weekend when we had a couple of groups going over to the Expo in Seville. There are, of course, other youth exchanges and this year we will be hosting groups from Czechoslovakia and from Greece and we will have a group of our young people going to Greece. So we have not, at any point, forgotten the policy that we have of sending young people out to major exchanges outside Gibraltar. It was also through the Youth Office that we were able to get a sponsor to fund a mini adventure playground at the Moorish Castle Estate and I am told that this has proved to be highly successful and it is in constant use

by a lot of children and their mothers. We do have future projects which I would like to see realised during this term of office for our youth facilities and that is building an extension to the Youth Centre. This has already been discussed with the management committee and we have plans drawn up as to how it is going to be done. We have to take into account the fact that there is such usage of the Youth Centre that we hope to encourage its growth by improving its facilities furthermore. We do also have plans to have a new club house at the adventure playground where we feel that the voluntary workers who assist the Youth Office over there have been doing a fantastic job. If we are to continue expanding the role of the playground in the estates then we should be looking seriously at the building of a new club house and that is a project that I have in mind to do within this term of office. If I may speak briefly on cultural events over the last year, again, we have had an increase in the number and possibly even in the quality of events that have gone on over the past year. One development above all others which augurs very well for our cultural future is the fact that the Gibraltar Song Festival continues to grow. This year, in fact, I am happy to report that we have had about double the number of entries that we had last year from something like fifteen countries. So it is rapidly becoming the kind of international event that the organisers hoped it would be. The same on a lesser scale is also true of the Gibraltar International Open Art Exhibition which has received a record number of entries. As a final note on culture I would also point out that the hope and optimism portfolio, details of which I gave in this House last year, will be coming to Gibraltar in July for exhibition. We will take the opportunity to actually be exhibiting it in two new exhibition rooms that have been repaired during the course of last year at John Mackintosh Hall. Mr Speaker, I have also been very deeply involved with training over the past year and I have to take this opportunity to remind the House that notwithstanding the difficulties in the economy at the moment, notwithstanding the fact that there is a general impression that there is a tightening up as a result of the worldwide recession and not whatever the Honourable Leader of the Opposition may think as a result of this Government's policies; despite that we have made substantial progress in training and the figures speak for themselves. We are now approaching nine hundred young people that have been employed through the Training Scheme since its inception. We always have an average of one hundred and fifty young people on the training schemes and the training schemes are increasingly becoming more streamlined and are offering meaningful qualifications. Nothing is perfect in this life, but I have still to hear one criticism of the scheme which I consider valid. There are mistakes, undoubtedly. There will always be mistakes, but I have yet to hear a suggestion as to how this scheme could be improved, which could be implemented. We were heavily committed this year as well with the registration

of businesses and the preparation of contracts for each individual worker in Gibraltar. This task is very largely completed now. It will give us more information on this matters than has been available before and which will be a very valuable weapon, in fact, in combating unemployment in the future. As we know more and more about the skills and the experience which individuals have, we can try and match these with either substantive vacancies or with trading places which will lead to jobs, eventually. We are also developing what we call the pre vocational cadets scheme at the comprehensive schools. We feel this is very important because it is an extension and a vast improvement on the old system which existed of sending kids of to a business for a week; letting them look around the place and that was all their experience of the job market until they actually left school. Some of them at fifteen left without any qualifications and were expected to get a job. I do not think this was helpful to them in getting a job; at least not very helpful; and neither do I think it was giving them a real choice. By real choice I do not mean trying to offer young people opportunities in training where there will not be any jobs at the end. We are completely against this. What I mean is that there are a lot of areas in Gibraltar which young people could be looking at for their future employment which perhaps they have never even thought about and we would like to see them being given more of an opportunity of this. We think the place to do it is in the last year or last two years, in some cases even whilst they are still at school. Mr Speaker, I would also like to mention to this House my personal delight in having been able to obtain the general assembly meeting of the International Skills Olympics for Gibraltar for 1994. I think this will be a tremendous boost to our training efforts in Gibraltar and will be an important selling exercise of what we have to offer in Gibraltar and I am not thinking just of training. I am thinking that if we all go out of our way to show people from outside exactly what Gibraltar can provide, then occasions such as international conferences are an ideal backdrop in which to be able to mount major selling exercises. That in essence is the sum of my contribution on the matters for which I have responsibility but I would be less than honest, Mr Speaker, if I were to sit down now without commenting on some of the speeches that have been made from the opposition benches because I think that there is a very basic misunderstanding of the concept of democracy on the opposition benches which I would like to clarify for their benefit. According to my interpretation of democracy, half the opposition should not be there. In my opinion they should be grateful of a system which has allowed them to enter into the House of Assembly with 20% of the vote and not pretend that they are the watchdog of public interest and public finance and public this and public that and the other because the public rejected them. The public rejected them four months ago. The role of an opposition, and here I differ very strongly with the Opposition, is not to set themselves

up as arbitrary watchdogs. It is to try and provide an alternative to Government, a serious alternative. And a serious alternative is composed of serious policies, not merely of criticising the Government without offering any alternatives whatsoever which so far is all that I have seen in this House. I have yet to hear the Honourable Leader of the Opposition or any of his colleagues tell this House and tell the people of Gibraltar how they would do things differently in terms of the economy which is undoubtedly the most important single factor in local politics at the moment.

HON P R CARUANA:

If the Honourable Member will give way, he will hear me now.

HON J L MOSS:

Provided the Honourable Member is not going to be as long as he was yesterday, I am prepared to give way.

HON P R CARUANA:

Mr Speaker, what worries me is not that the Honourable Member should express those extraordinary views about democracy in Gibraltar where after all that circulation is limited to local consumption. What worries me is that he goes to Commonwealth Parliamentary Association meetings and expresses the same or similar views where they are consumed by people that are horrified to hear them. Now, in relation to the lack of policies of the party on this side of this House, we have a manifesto. Now, it strikes me as the height of ultimate political dishonesty and deceit and hypocrisy that a Government that told the electorate just before the 1988 Election "I am not prepared to tell you what my economic policies are because I am not prepared to give the other side any hints. You vote for me and I will tell you when I am in Government what my policies are". That such a Government should stand up in this House and accuse the Opposition three months after a general election of not advocating alternative economic policies is the act of arrogance, dishonesty and deceit.

HON J L MOSS:

Mr Speaker, words fail me. But I will continue with what I was saying. I know that the GSD had a manifesto and that is precisely what I meant by the lack of policies. I can see that the Honourable Leader of the Opposition has been informed about some of the happenings at the CPA Conference, I hope he has been informed about everything that his colleague said as well because there may be a nasty surprise or two for him in the future. Mr Speaker, basically we have a situation where the Opposition is trying to pretend that they have policies. It is trying to pretend that some of these policies have got popular support. I do not know what basis they are

using to do this but, in my opinion, they are not providing a credible alternative to Government at all. That is what an opposition should be prepared to do at all times. To provide an alternative to the Government. Not to sit in the cosy role of being an opposition which makes decisions as it goes along, latches on to whichever pressure group they think is at the moment criticising Government and not formulating a strategy of their own. It is a shame because I think that this is a point in Gibraltar's history when we should be particularly united because of the challenges that face Gibraltar. It is said perhaps to exhaustion that what we are trying to do now is to ensure the survival of Gibraltar as a separate entity and I do not think this a hyperbole. I think that that is a situation in which Gibraltar finds itself today. The more disunity there is within Gibraltar, the more vulnerable we are to threats from abroad.

HON P R CARUANA:

If the Honourable Minister will give way.

HON J L MOSS:

I have already given way once, I am not criticising the Opposition at the moment so I do not see a need to give way. We are, as I was saying in a difficult situation which we believe we can pull through and we can pull through with the people of Gibraltar behind us which is why it was so important to go to an election early this year and receive the kind of backing we received. It gives us great encouragement and great strength in our dealings on the international scene. So, Mr speaker, I conclude by once again expressing satisfaction at the progress which has been achieved in my departments; by thanking all the people who have made this progress possible and by warning those siren voices who are predicting gloom and doom for Gibraltar that in doing so they might actually be the agents who work towards this. I am sure that this is not the kind of advise, for example, that the Honourable Leader of the Opposition gives to clients when they go to visit him in his private practice. Thank you, Mr Speaker.

HON H L FRANCIS:

Mr Speaker, after that rather heated and protracted spate of rhetoric, I will bring it back now to a more sensible level. Hopefully a more sensible level. We shall see. In spite of everything as we have said, I was very glad to be at the opening of both St Joseph's schools last week. There the Honourable the Chief Minister and Honourable Mr Moss in their own statements paid tribute and put importance on the fundamental nature that education has to Gibraltar's future and its success economically in the years ahead. Certainly we support such comments. The quality of education being received today will determine the success of those individuals in their chosen careers and professions in the future and therefore in

turn will also determine the success of Gibraltar as a whole. Because an educated workforce - and I think the Honourable Members on the other side will agree - is an asset to our community in attracting business and attracting investors and attracting new companies to relocate here, it is only fair and realistic to take education as a very important part of the equation in any future or present economic plan of the Government. We take note obviously of the Government's big investment in education in terms of the buildings at South Barracks and the refurbishment programme that has been undertaken in the other schools and of course naturally support it. However, physical infrastructure and buildings are not everything. I was very surprised to hear the Minister just say a few moments ago that expenditure on books and equipment has been increased. Books and equipment are the tools of the professionals. The tools of teachers. It is what they use in education to teach the children and therefore in their own way are as important as the buildings themselves. I was surprised to hear the Minister's comments because from the Estimates I understand that expenditure in 1991 on books and equipment was £259,000, the forecast outturn for 1991/92 is £244,000 and the estimate for 1992/93 is £260,000. So with these year's Estimates all we are doing is bringing expenditure back up to the level of 1991.

HON J L MOSS:

If the Honourable Member will give way, I will give an explanation. The explanation is simple. Up to 1990/91 the schools still had to buy their own computers from within the books and equipment vote and that was subsequently removed and bought for them. This was in fact a very major expenditure that the schools had.

HON L H FRANCIS:

I thank the Minister for that information. Nevertheless our information is that this capitation fee has not been increased significantly. That is the information that we have been given. I take the Minister's comments to heart. It is important to keep up the level of expenditure in books and equipment and not just dedicate resources to the buildings because if budgets fall in real terms books need updating, books need replacing, numbers of children go up as well down, national curriculum involves extra expenses to schools and they must be able to maintain their standards. I am pleased to hear the explanation, therefore, of the Minister. Another area of concern arising from the Estimates, is in terms of the College of Further Education where again expenditure appears to be falling at the moment. Again I will welcome...

HON J L MOSS:

If the Honourable Member will give way. Basically as a result of many of the courses that the College of Further Education is undertaking now for the Employment and Training Board, the Employment and Training Board is

providing substantial assistance to the College of Further Education in terms of computer hardware and other materials. Some of them for these courses but, in effect, they are used for other courses as well within the College.

HON L H FRANCIS:

Nevertheless the College of Further Education has an essential part to play in the training and retraining of the workforce, especially now at the time the economy is shifting from a defence base operation to a private commercial sector operation. The workforce does require training and re-training and this is the most crucial time for it since they need to be equipped if they have to find new jobs that may be arising as the result of the Government's economic plan. We obviously hope they will. There is another area which has not merited much attention from Government. We are well aware of their policies in terms of nurseries. I know the Minister will not want to go back on this hobby horse which we discussed at Question Time. We know that the Government's policies is not to provide more Government nurseries. We know that they are relying on the private nurseries available in Gibraltar at the moment to fulfill the needs. However, there is a need to help parents who work, especially mothers who want to take up jobs now. Part-time jobs, perhaps, to help their mortgages and to help raise the standard of living of their families. Taking on board that the Government policy is not to increase the number of Government places at nurseries, it would perhaps be prudent to look at the possible provision of tax relief on nursery fees perhaps means-tested to an extent, for some of these families. Mothers trying to get a part-time job may find that the level of expense of placing one or two children in a nursery may not justify them taking up the job in the first place. That keeps them out of the market and prevents them from helping their family forward and Government should seriously look at this question. Another area for which we see no provision in the Estimates is in terms of the demographic changes that have been taking place in Gibraltar. With the increasing population of the South District, the Government responded by providing schools at the new South Barracks and increasing the capacity there. There is now obviously a shift of population to the Westside area, where a large amount of young families especially will be moving and are in the process of moving now. We have no indication that if there is a planned response to this in the future, will there be an expansion at St Paul's? Will children be expected to attend the same schools they are attending at the moment? An indication of what the policy will be will be most welcome and perhaps the Minister may comment at the later stages of this debate. We also come to the current and contentious issue of the closure of Governor's Meadow School. I am sure I will be accused of jumping on the band wagon here as I already have, but maybe not when he hears what I have to say. He has to hear what I have to say before he makes his opinions known

as he inevitably does quite vociferously. The intended closure of Governor's Meadow is to an extent understandable in pure economic terms. Now, there have been many social and educational reasons given why this is not the case for keeping it open. Now I do know that there has been some consultation with the teaching profession on the issue. I do not think, as yet, there has been any consultation with the parents which I will urge the Government to do. In the light of the very strong reaction from the parents and teachers perhaps a revision of the decision; perhaps space it in an easier way for the children and the parents concerned, might be in order. With the changing patterns of the population in Gibraltar and the recent moves of Government to do away with Governor's Meadow School, the question does arise whether Government is actually thinking of moving away from the idea of community schools as a whole and perhaps thinking of moving to larger more centralised, fewer schools catering for more children. Undoubtedly, this has its economic attractions but not necessarily any social or educational ones. If Government is thinking of moving in this direction perhaps it should at this stage consult teachers and parents and get a consensus view on what the best way ahead is for children and education in Gibraltar. I am pleased to hear about the possible introduction of higher education at the College of Further Education. That is of course to be welcomed. It will remain to be seen what exactly the Minister is planning but of course he has our support in that field and also it is very gratifying to hear that the access funds will be in place for our students in UK by September. I am sure that it will let a lot of minds to rest on this issue. So that concludes my part on education. I now move to sports. Having looked through the Estimates and after the Honourable Minister for Sports' contribution yesterday, we note that in real terms the recurrent expenditure is falling in terms of equipment and maybe grants to sporting societies. However, we recognise that a vast amount of money has been spent in recent years on these measures and the fact that support to sporting societies was increased substantially when Government came into office and therefore we cannot expect the same increases year after year. Over the next few years, perhaps, the greatest challenge to sports lies in two areas. The first of which is the release by MOD of sporting facilities which should be happening as they withdraw in the near future. We have Europa Point, the RAF North Front playing fields and Naval Ground. These obviously have not been released yet. It is important that when they are released they should be kept as sporting leisure facilities of some sort and not used for other sort of development. Not only will this relieve pressure on the Victoria Stadium, it will also allow for greater participation by people who take part in sport on a more casual basis than by joining clubs and associations. People do not wish to take advantage of this, and may at times find it difficult to get an allocation to play one sport or another. It

will also allow the staging of bigger and better international events because different venues will be able to be used at the same time for these events. The second area of challenge, which is perhaps the biggest one, and which also involves participation in international events is of course to do with Spain. Now we are participating in a greater number of international events every year with great success and obviously greater success brings greater attention and the greater attention brings greater attention from our friends across the border. Also, we will be staging international events here which attract a similar sort of attention. We have seen them use intimidation of some sort for the associations. We have seen them trying to block our sportsmen and women from participating at international events and it is very important that we should block these attempts to prevent our sportsmen and women taking part by all means at our disposal using whatever resources are available. I know the Minister has at times intervened personally to try and ensure that this is the case. I would like to offer her our support in any such venture and if I can be of any help at any time in this context, of course, she has my able and willing support in whatever capacity she may think fit. I have one other area of responsibility which is not covered in the Estimates in any fashion and that is the environment. Although the Honourable Minister for Education says we have no policies and no alternatives, at least there is one policy which is to have a Minister for the Environment, which presumably is my portfolio.....

Interruption

Sorry. Is it? Well you may think so. I do not happen to think so on this side of the House nor do many people outside. It is again no surprise that there is no allocated expenditure for the environment as opposed to environmental health, which is a different topic. The Environmental Health Department does carry out limited functions not related purely to environmental matters but related closely to the health considerations of the population. Now we have new laws coming out, not only from Gibraltar but from Europe, to do with nature protection, some of which are coming up in the House in the near future. However, we lack the mechanism by which to efficiently enforce such measures. At the moment presumably we are relying on the Police to enforce these laws. However the Police may have its hands full doing other things and carrying out its other roles. Although funds are short and it may not be immediately possible to do this, but, perhaps, attracting funds from European institutions or UK organisations could help us set up an environmental protection unit within the Environmental Health Department with a small staff of one or two people who would engage the support of all the local environmental groups, the GONHS, Friends of the Earth etc, which would undertake to enforce the laws much as the Environmental Health Department enforces the environmental health laws which are being passed by the House at the moment. It would undertake work in the protection and preservation

of our natural environment. So there is at least one policy where the Minister cannot accuse us of not having one. And with that plea or suggestion to Government to look at in the near future when funds do become available, I end my contribution. Thank you, Mr Speaker.

HON R MOR:

Mr Speaker, yesterday when the Honourable the Leader of the Opposition got carried away all afternoon he was referring to how much tax the Gibraltarians were paying, it was presumptuous, I think, of him to presume that social insurance contributions had also been increased. I can assure the Honourable Member that social insurance contributions have not been increased since 1988. He also expressed concern about the MOD and PSA redundancies. Well, Mr Speaker, during the run-up to the last election, we said we recognised that one of the highest priorities we would set ourselves in Government was to try and keep under control the unemployment situation in Gibraltar. As a Socialist Party, we believe in the dignity of work. We believe that every single person who wishes to earn a living through selling his services should be provided with the opportunity to be able to do so. This, is obviously a most desirable social and economic objective, but which, unfortunately, as we all know, most countries in Western Europe find it extremely difficult to achieve. In fact, it is well known that in the European Community, according to recent trends, unemployment levels have reached an all time high. An added difficulty which we in Gibraltar are facing is that as members of the European Community all EEC nationals are free to come to Gibraltar and compete against our own people for jobs. Of particular significance in this context is that since the 1st January 1992, Spanish and Portuguese nationals have been free to compete for jobs in Gibraltar without restrictions as their transitional period for the freedom of movement of labour has ended on the 31st December 1991. As the House is aware, originally Spain and Portugal had to undergo a seven year transitional period as from 1st January 1986, restricting their freedom of movement of the labour but this was cut short to six years and is therefore now over. This obviously presents an added burden, an added problem, an added strain, on our own job market given that, geographically, we are surrounded by an area which has a very high level of unemployment and which is of course, also part of the European Community. Indeed, Mr Speaker, our most immediate neighbour, the town of La Linea is known to have recorded a level of unemployment reaching 47%. That is to say, Mr Speaker, almost one person out of every two persons available for work, being out of work. As a comparison, let me say, that in Gibraltar, unemployment has, under normal circumstances, been around 3%, which obviously is three persons out of every hundred workers. However, Mr Speaker, during the latter part of 1991, a significant increase in unemployment was experienced following the

ceasing of operations of the ship repair yard and also at the time there were MOD and private sector redundancies. The effect that this had in numerical terms, can be expressed as an increase from 299 Gibraltarians unemployed in April 1991 to 562 Gibraltarians unemployed in October 1991. That is, an increase of 263 Gibraltarians over the normal levels which in percentage terms, on the figures that I have just given, represents an increase from 3.1 to 5.9%. Perhaps it is interesting to note, that some experts believe that the ideal unemployment level for any country should be between 3 to 5%. These levels are thought to be ideal because on the one hand there is not, if the levels are between 3 and 5%, sufficient unemployment for employers to take advantage of the situation which indeed could be the case where, for example, if the level of unemployment was higher, some unemployed could be induced to accept conditions which are inferior as regards their pay and conditions of service. This is obviously the situation that could result if there is a high degree of difficulty and frustration when a person is looking for employment. On the other hand an over demand for labour can also overstrengthen the negotiating power of the worker and this can also cause an in-balance which might affect the otherwise orderly and harmonious relationship between employers and employees. So, as I say, Mr Speaker, there are some experts who believe that 3 to 5% unemployment, at any time, is ideal and levels under or over this could strengthen the hands of employers or workers creating an in-balance which thereby might cause awkward situations. From the last figures that I have provided to the House, Mr Speaker, the situation we have in Gibraltar is that we are just above the 5% level so that we are only slightly in the red and obviously as we will go on to explain, we intend to take measures and we will try and reduce this level. Mr Speaker, as happens with the different issues when applied to Gibraltar, our uniqueness requires that we examine carefully our peculiar situation. That is to say, Mr Speaker, we have a situation where we have around 14,000 jobs in the job market and about 9,500 of these jobs taken up by Gibraltarians. So, in a sense it could be argued that if anything a situation of over employment exists in Gibraltar. However, in order to generate the standard of living in our economy, we need to keep at least 14,000 jobs in the job market. But as we all know, Mr Speaker, the MOD is pulling out of Gibraltar and this unfortunately means that the job market will be losing many jobs which have, traditionally, been filled by Gibraltarians. There is no easy way to replace these jobs. The only way this can be done is by attracting other outside activity to Gibraltar which can provide jobs to replace those which are being lost through the MOD pullout. It is obvious that however many jobs we create through economic growth, Mr Speaker, it is not going to help unless we can ensure that our own citizens benefit from this switch. It is precisely for these reasons that we have established considerable training resources and why we established the Employment and Training Unit. It is an essential

aim of policy to equip our people with the skills required to meet the needs of the job market. As it is known, Mr Speaker, our training schemes commenced in late 1988 and at the time only catered for school leavers. However by March 1989, the different schemes were extended to cater for persons under 25. After being successful in obtaining aid from the European Social Fund for our schemes, it was possible for our training schemes to cater for all age groups. That is to say, for all those under 25 and all those over 25. At present there is sufficient flexibility in the manner in which different training projects are operated to ensure that the ability exists to adapt to whatever needs arise in the job market. The Honourable the Leader of the Opposition yesterday referred to training for finance sector activities. Let me say, Mr Speaker, that that is precisely one of the funded projects based on providing training for that kind of need. The position is that the policy of the Government for this year is to reduce the current level of unemployment to the level which existed in June last year which is to about 3% and to retain a level of 14,000 jobs in our economy. This is a situation which is expected to be achieved by the end of the year. Mr Speaker, it is the Government's policy to ensure that there is peace of mind for our senior citizens. In 1988, we promised to introduce a social wage for those retired males over 60 but under pensionable age. This has resulted in the creation of Gibraltar Community Care Limited which has in turn produced community officers. These officers run Community Care Limited themselves and provide about 80 hours of community work per month. This organisation ensures that the quality of life of all our other senior citizens is enhanced and this work will continue and be further developed as necessary. Mr Speaker, the message that we have for our senior citizens is that they need have no fear that the GSLP is here. As has been previously pointed out in this House, it is not this Government's policy to make statements on pensions or social services which run the risk of being misquoted or misinterpreted and which could place at risk the entire structure of our social services. It is however the case, Mr Speaker, that the Government is prepared to brief the Members opposite on anything they may wish to know about our social services on a strictly confidential basis. In conclusion, Mr Speaker, as has been the practice in the past during budget sessions, I would like to record my thanks and appreciation to the Director and staff as well as to all the persons working in the different departments in the DLSS. Thank you.

HON H CORBY:

Mr Speaker, as a newly elected Member, I must state that although we on this side of the House will be dealing with various aspects of the Gibraltar Estimates which have been laid before us, my contribution will be based, not on the cold facts or figures, but on the human side of the coin which affects the day to day livelihood of the Gibraltarians, their worries and aspirations. It

has been clear for some time that this Government all too often falls into the trap of concentrating on figures and statistics and it is inclined to forget the more human aspects of every day life and to forget that they also have a duty to protect and maintain the quality of life which has been enjoyed by all Gibraltarians for decades. A dark cloud has now reached our shores and if uncontrolled could make serious inroads in our society. I am talking about the unprecedented high levels of unemployment which the Minister for Social Services has commented now. If nothing is done about these high levels of unemployment then Gibraltar will find itself with about 2000 people unemployed by the end 1993. Of course, this situation has arisen because of the closure of GSL and Gunwharf and also because further cuts are now being envisaged by the closure of MOD and PSA. In order to cushion this effect we have to implement, as a matter of great urgency, a proper construction training scheme, to enable our workforce to be in a position to undertake skilled jobs which are now being undertaken by other nationals. This is of paramount importance. The Chief Minister in his speech, said that the way forward, insofar as the workforce is concerned, is in the selling of the workforce outside. In order to do that, Mr Speaker, we must have a workforce which is skilled and able to do the jobs which are now undertaken by other nationals. Gibraltar must have its own skilled workforce capable of undertaking any challenge that is put in its path and not be reliant on EEC labour with all the aspects and problems that this entails to the job creation prospects of Gibraltarians. Let me now move to the question of drug addiction in Gibraltar. This is a problem that has escalated dramatically within the last ten years as we can see from the Government's Estimates of 1990. There has been an increase of 420% in drug offences in Gibraltar during the period 1981 to 1991. However, no effective practical steps to help those with drug problems has ever been made either by this Government or by any other previous administration. I am, however, pleased to hear that the Minister for Labour and Social Security, in answer to one of my questions, stated that he was looking at the issue of drug rehabilitation and counselling under medical supervision in Gibraltar and that the question of premises was being considered. I hope that this initiative is given the priority it merits. In addition to the above, we must also embark on an educational campaign in our schools to teach the children the dangers involved in the misuse of drugs and here I am giving, Mr Speaker, alternatives to whatever can be done to improve the system. Insofar as that is concerned we are accused by the Minister of Education of not doing this but here I am giving what I think is an explanation which can better the service. It is only by educating our youth that the problem can be tackled by them in awareness of the full facts and dangers that drug taking entails. Another factor, of course, is confidentiality. This is of paramount importance in the rehabilitation of drug patients. These patients must be allowed to undertake the treatment in absolute secrecy and I stress secrecy and if possible no record should be kept in the name of those patients

passing through the centre in order to afford the patient full protection against any discrimination in job opportunities. We must also continue to give full support to our Custom Officers and Police in the fight against the importation and exportation of drugs in Gibraltar. Again, Mr Speaker, the importance to Gibraltar of proper and adequate consumer protection which has been recently highlighted, not here in the House only, but as a topic of great concern by the Housewives Association. At the moment, there is no proper consumer protection office in Gibraltar and this has been seen by the small number of complaints; seven in 1990 and five in 1991. That means that in two years, Mr Speaker, a figure of twelve complaints - which conclusively proves the point. Before the Consumer Protection Department was abolished by the GSLP in 1988, the figure was something in the region of 100. It is a faceless department with no signposting and not even a telephone number in the directory to enable the consumer to pursue a complaint. There is no mention whatsoever under the Collector of Customs of any reference to the Consumer Protection Unit. It would be of great value not only to the people of Gibraltar but also to tourists and visitors alike that instead of this facility being housed anonymously at Waterport, under the wing of the Collector of Customs, this office should be prominently rehoused in the town centre and in so doing make it more accessible to the public. The Consumer Protection Unit must have trading standards officers to monitor and enforce legal requirements as to weights and measures and other things. The implementation of a small claims court is a step in the right direction and we are glad to see that Government is favourably considering establishing it since it was, Mr Speaker, originally suggested from this side of the House. It is almost incredible that in a modern Europe, which is paying increasing attention to citizens rights and extending facilities for consumer protection in all countries of the Community, that here in Gibraltar we have gone the opposite way. In practical terms, abolished the little that we had. The system we had no doubt had its problems and was not perfect but at least it was better than nothing. We urge the Government once again to give these matters serious consideration and change its policies and establish a proper organised, efficient and effective system of consumer protection for the people of Gibraltar. In conclusion, Mr Speaker, I would be grateful if the Ministers dealing with the subjects mentioned in my contribution could state when we can expect the implementation of these commitments. Thank you very much.

HON J L BALDACHINO:

Mr Speaker, before I begin my contribution on the Ministry I am responsible for, I would like to take up some of the points which were raised yesterday by the Honourable the Leader of the Opposition. In saying why the GSLP

Government had not given tax cuts and tax allowances in the last four years, he attributed a quotation to the Honourable the Chief Minister out of context. What the Honourable the Chief Minister said at the time was that he was not prepared to give tax cuts so that people could have more money in their pockets and then go and spend it in the Contiente in Spain. But however what he failed to say was that the Honourable Member had said in the same statement that the Government was prepared to help and to give tax cuts in the area of the economy which needed help at the time. Therefore, the £10,000 was introduced. Not only for the first time home-buyers but to everybody else who was purchasing a flat has the £10,000 allowance. That in itself is giving money back to the people in that area because that area of the economy at the time needed help. The 50/50 option, Mr Speaker, has given an opportunity to a wider cross-section of our community to own their own homes. Had we not offered this option, individuals would have been forced to look for 100% mortgage which would have had to be taken out and which would have affected trade, as individual purchasing powers could have been dramatically reduced. This could have been a reality, Mr Speaker, if the GSD had implemented its own policies. It would have meant very few people owning homes, trade in a far worst situation today and higher unemployment. This was confirmed by the Honourable Member yesterday. It was confirmed, Mr Speaker, by the nodding of his head when my colleague the Minister for Government Services challenged his party's position as to whether they would have cancelled the borrowing for the 50/50 scheme. His nod was clearly in the affirmative. This is the position that the Honourable Member should clarify to the House...

HON P R CARUANA:

Mr Speaker, if the Honourable Member will give way on a point of clarification. What the Honourable the Minister for Government Services asked me was whether we would have considered not doing the 50/50 scheme and that is why I nodded my head. Of course we would have considered not doing the 50/50 scheme. It would have depended on the mathematics in front of us at the time that the proposal was made. Would we have considered not doing it? Of course, we would have considered not doing it. It just means that we would not have done it or that we would have done it. To say that I said that we would not have had a 50/50 scheme is simply not the case.

HON J L BALDACHINO:

Mr Speaker, considering that the Honourable Member at the time was criticising the Government's borrowing and he was clearly against Government borrowing, what mathematics would he have needed to decide if he would borrow for the 50/50 or not?

HON P R CARUANA:

If the Honourable Member will give way, Mr Speaker. For example, borrowing is a question of extent and priorities. I might have borrowed for the 50/50 scheme and not for the New Harbours project. It is a question of priorities.

HON J L BALDACHINO:

For the new hospital or anything else.

HON P R CARUANA:

I said the New Harbours project. Never mind the hospital.

HON J L BALDACHINO:

It is clear, Mr Speaker, for the records then that the Honourable Member is not clear on his Party's policy whether they could have borrowed for the 50/50 and it is therefore not clear if, had they been in Government, the 50/50 option would have gone ahead and the scheme would have gone ahead. That is clear now, Mr Speaker. So they have not got a policy on that. He said he does not know whether he would or would not borrow. I think it is very clear now to the people of Gibraltar. Mr Speaker, we have been consistent with our policies on housing since the time that we were in the Opposition. What we preached then we have put into motion and the initial effects indicate that we will be able to eradicate Gibraltar's biggest social problem. We have not just provided a £10,000 tax allowance to home buyers only. This incentive we have extended to parents wishing to invest in property for their children. Something which I think that the Honourable Lt-Col Britto was urging the Government in one of his motions when he was a member of the AACR, that it should do. Apart from everything else my answer to that was the Government rather not take stamp duties was looking at something better which would help people even further. So I suppose that what he was saying in the AACR now most probably will be the policy of the GSD. I should not assume anything because what the Honourable Member was saying in one party may not really be the policy of the other. This, of course, will ensure that younger generations have the same opportunities today and do not miss out in later years. When we came into office in 1988 the housing waiting list stood at 2,106. Today that figure has already been reduced to less than 900. This figure will be reduced even further during the coming months once families release Government rented accommodation either because they have bought in Westside, Brympton or were successful in obtaining a self-repairing lease at Elliotts Battery. We estimate that there will be in the order of approximately 150 flats handed back to Government. In addition to that we are also investing our own money in the Gib 5 project, which will provide a further 584 units, 125 of which will be going towards making our elderly citizens more suitably

accommodated. Let me say that these flats will be completely refurbished. For example boilers will be included which is not a normal thing in Government rented accommodation. Also, Mr Speaker, twelve flats will be constructed for handicapped persons and this is being done in close consultation with the Handicapped Society. As I said during question time we have been able to rehouse 14 families living in North Gorge at Elliotts Battery. Those remaining and to whom we gave a commitment in 1988 will now be offered the housing units being released. We have further committed ourselves to offer alternative accommodation to those who were in the waiting list prior to this last general election. Commitments, Mr Speaker, that we seriously intend to fulfil as with all the others that we have made up to now in housing. But investing money in our home ownership scheme is not the only thing that we have done in relation to housing. We started a new major maintenance programme in government estates which were in rundown conditions when we came into office in 1988 and which we intend to continue as can be seen by the funds provided in this year's Estimates of Expenditure. I cannot, however, claim that we have been able to meet all of our objectives in one term of office. It would be an impossibility considering that maintenance had been nonexistent for the 16 years prior to 1988. But we have been able to tackle estates like Humphreys, Laguna, Moorish Castle, Glacis, Rosia and Vineyard House, Stanley Buildings, Shramrock and Davino's Dwellings and Penney House. The programme will continue for the remaining blocks in all of these estates. Moreover, Mr Speaker, we have started refurbishing and painting Varyl Begg Estate, now that the adjacent projects in the Westside area are nearing completion. To have done it before would have been a waste of money. Genova House in Catalan Bay and Shomberg in South Barrack Road plus other small projects in the town area will start this financial year. The maintenance section of the Housing Department is also constructing 30 extra units at Laguna Estate, 15 are estimated to be completed in August and the remaining 15 in September of this year. Mr Speaker, the Advisory Committee set up to look at the controversial Landlord and Tenants Ordinance is now meeting regularly with a view to proposing to Government an Ordinance which would be fairer both to landlords and tenants. I can, therefore, say that I am satisfied that during the next financial year we will see a major improvement in housing conditions of a greater number of Gibraltarians. Finally, Mr Speaker, I would like to thank the members of my staff and I would also like to end my contribution by thanking publicly Mr Russo who has been the Chairman of the Rent Tribunal for many years but has recently retired. He has carried out his duties with great dedication. Thank you, Sir.

HON M RAMAGGE:

Mr Speaker, my contribution to this debate will be based on two issues, housing and the production and distribution of our postage stamps and commemorative coins. Firstly,

although there can be no doubt that there has been great strides in solving the housing problem for many Gibraltarians or at least will have been done by the time the Westside and Gib 5 project are finished, there still remains the undisputed fact that a large number of our fellow citizens cannot afford either a mortgage or the high rents associated with the tenancy of a newly erected building. This sector of our community needs to be housed. In most cases, even more urgently than those who can afford mortgages, high rents or the recently introduced self-repairing leases. Although I have no doubts about Government's good intentions of rehousing these citizens in the cheaper premises left vacant by those moving to the new housing estates, I feel these are plans for the future. A future which may not seem too distant to us, but to those people who have endured sub-standard living conditions and its associated stresses for many years, a future which seems too distant and never ending. This Government have presently at their disposal the means of alleviating the plight of some of these citizens but in my opinion they are not tackling the problem with the normal sense of urgency. I refer, Mr Speaker, to the long delays encountered in the allocation of ex-MOD properties. Although the Honourable the Minister for Housing has taken the time to personally explain to me the reasons for the delays, I do not think they are totally justifiable. I think that with a little thought, extra planning and ingenuity, the delays can be substantially cut, if not altogether avoided. A point of further interest to Government, Mr Speaker, could be the amount of monies they would be saving by not having to repair vandalised properties. Whilst on the subject of housing, Mr Speaker, I fail to understand why a Housing Department which has behaved openly and therefore unquestionably beyond reproach for the past few years should now decide to dispense with the services of an independent and unbiased Housing Allocation Committee when allocating the eight units in Transport Lane. Surely they must have realised that this action would leave them open to unnecessary criticism and could well damage the recently acquired reputation for fairness.

HON J C BALDACHINO:

Mr Speaker, I think that there is a misunderstanding of the role of the Housing Allocation Committee. The Housing Allocation Committee, set up under the Housing Special Powers Ordinance, is a committee that allocates government rented accommodation. What we did in Elliott's Battery has been unprecedented, not having been done before by any other administration. Self-repairing leases were never given by the Housing Allocation Committee. We made public; the Honourable Chief Minister did and so did I, that we were giving the responsibility of allocation to the Housing Allocation Committee with a view that they could look at the flats and the people who had applied for these flats to see what they were releasing so in turn they could be given to those people who were less

fortunate than the Honourable Member says and were in the waiting list for rented accommodation. To criticise the self-repairing leases as being beyond those people in the housing waiting list is something that I cannot accept, Mr Speaker, for one very simple reason. If one understands housing and what happens after you give a tenancy, it is easy to comprehend that the self-repairing leases are not a more expensive way of allocating. Self-repairing leases have less rent per square foot than normal rented accommodation. If we are now talking about a person having to repair the inside of his flat that is a normal thing when you give an allocation on rental. The person that you have allocated that flat to carries out exactly the same repairs that they would do in the self-repairing lease; exactly the same. If you go to any Gibraltarian house I can tell you that you will not find anywhere in the world a better kept flat from the door inwards, than the ones that we have here. As a matter of fact, they are even better than some of the flats that people own outside Gibraltar. We are like that. It is simple. So you cannot criticise the self-repairing lease as being beyond most of the people in the waiting list. I would agree with the Honourable Member that there are some people in the waiting list who require to be allocated a government tenancy because they could not afford, not only a self-repairing lease, but they could not afford to pay a rent. The Government and its policies are geared precisely towards those people because if we introduced the 50/50; if we introduced the self-repairing lease it was because our present scheme does not debar anybody because of his income. Therefore, somebody who has a £50,000 salary is competing with somebody who earns £180 per week. It depends on how high he is in the waiting list, and that is how the Housing Allocation Committee allocates. By eliminating that area of the housing waiting list we are in effect helping those people that the Honourable Member is saying that we should help.

HON M RAMAGGE:

Thank you for your explanations which I think or I hope can be taken as good in some quarters. I did not need it because I have experience of what it means and I know that repairing any house can be a costly affair and we are not talking about the inside of the house, we are talking about the outside of the house which is the expensive part. So, therefore, I do not agree with the Honourable Member that self-repairing leases are affordable simply because the rent is lower. Very large bills can be encountered from year to year just to repair the outside.

HON J L BALDACHINO:

Just one point, Mr Speaker, which I forgot to mention. I would like to congratulate him on his maiden speech even though I do not agree with it.

HON M RAMAGGE:

Although you mentioned many things in your explanation, you have, I think, kept away from the fact that the Housing Allocation Committee did not allocate the Transport Lane units. Not to satisfy myself because I do not need to be satisfied, but if anything to satisfy those people who are listening in on the radio or will tomorrow read the papers. Perhaps you would be kind enough to inform them as to who it was that allocated the Transport Lane units. If nothing else to make them realise that fairness still persists. Turning to the production and distribution of our postage stamps, Mr Speaker, perhaps I should explain that these have since 1886 been handled by companies and institutions outside these shores. Everything worked well until 1974. From then to 1988 things went terribly wrong resulting in a loss of revenue to the Post Office which estimated conservatively was in excess of £5m. Prompt action taken by the Honourable Minister for Postal Services shortly after coming into office in 1988, led to a police investigation which resulted in the closure of a security printer in UK and a court action, which I believe is still ongoing. At the time I personally advised the pertinent authority, that is the Postmaster, that we should consider the possibility of printing our own stamps in Gibraltar and handle the worldwide distribution ourselves. By ourselves, of course, I meant the Gibraltar Post Office. At the time this was considered too drastic a step to take because of the cost elements. As late as last Friday, Mr Speaker, I was informed that excessive stocks of some 1991 issues have started appearing on the market and it could well be that we are facing a repetition of what happened between 1974 and 1988. At today's postal rates, this could mean that, this time round, the loss of revenue to the Post Office could well be in excess of £15m. I now put it to Government, Mr Speaker, that perhaps now is the right time to reconsider my suggestion as no matter how high the cost it could be insignificant when compared to the otherwise expected losses of revenue. I say nothing of the bad reputation we shall be getting as an irresponsible stamp issuing country. All this, of course, Mr Speaker, to be contemplated after my information has been verified and my fears confirmed.

HON J C PEREZ:

Mr Speaker, I did tell the Honourable Member yesterday that certain printing works in Gibraltar had been contacted to see whether it was possible to print the stamps in Gibraltar. We do not produce sufficient material ourselves to justify the expenditure in printers of that nature that would need to be acquired. That is the commercial thing apart from the security part of the printing side which is difficult to monitor in every country including

the United Kingdom; never mind in Gibraltar. Secondly, I would like to inform the Honourable Member again of what I informed him yesterday. If he has got new evidence that there is fraud in Gibraltar in relation to Gibraltar stamps, he should not stand up here and say so, he should inform the Police and start a new investigation. If what he is saying is that the same thing to what happened between 1974 and 1988, not only in Gibraltar but in other Commonwealth territories related to a case and a prosecution that is pending in the United Kingdom even today, is happening then that is a serious accusation, which would not be levelled at the Government or in this House. If he has got information, as a philatelist that he is, that this is happening, he should go to the Police and open a new investigation.

HON M RAMMAGE:

Mr Speaker, it is because I was told yesterday to contact the Police and it is because I was fobbed off with this being too expensive to print in Gibraltar, that I have decided to bring it to the attention of this House because at the moment there is no security printer. At least, I cannot see a security printer that can guarantee us the sort of security which not only us, but the world needs.....

Interruption

HON M RAMAGGE:

I allowed you to speak, now please allow me. I do not know who can print the stamps but certainly nobody can print the stamps better than Gibraltar for Gibraltar and nobody can take care of our security better than us. I, therefore, put it to the Government that the expense that we will face, if we do not bring the printing of the Gibraltar stamps and the control of the Gibraltar stamps to Gibraltar, then whatever the cost is, it will be dwarfed or be insignificant when compared to the losses which we shall definitely face. I said before that this should be entertained only after my information has been verified and my fears confirmed. I am bringing it to this House because I am 99% certain and now all I need is the names.

Interruption

HON M RAMAGGE:

No. No. It is true. Listen when I went to you

MR SPEAKER:

Order. Order. If you want him to give way ask him otherwise please do not interrupt.

HON J C PEREZ:

Mr Speaker, will the Honourable Member give way?

MR SPEAKER:

Do you want to give way?

HON M RAMAGGE:

Yes. Go on.

HON J C PEREZ:

Mr Speaker, I would like to repeat what I said before. If the Honourable Member has evidence that the fraud that was taking place between 1974 and 1988 continues to happen or he has got fresh evidence that it is recurring then he should inform the Police and a new investigation will be opened. But I have no evidence of that. The Post Office has no evidence of that and if he has the evidence he should inform the Police or if he would like me to do so I shall get the Police and send them to him so that he can give the evidence. It is no good phrasing in this House. The last time that the issue was raised, it was not only evidence in Gibraltar, it was evidence in other Commonwealth countries. It started an investigation by the CID in the United Kingdom. Another one in the United States by the FBI which has culminated in prosecutions of very high officials of a firm called CAPHCO which previously was the Crown Agents and these prosecutions are pending in the United Kingdom now. I am saying to the Honourable Member that if such evidence is in his possession as a citizen, never mind as a Member of this House, he has got an obligation to report it to the Police.

HON M RAMAGGE:

Mr Speaker, let me remind the Honourable Minister that it was as a citizen that I went to him in 1988 and explained the position after seven years of frustrated effort with the previous administration and it was only when he decided to go forward (which was immediately, let me say) that the investigation was started by the local Police. If I go to the Police today with the story again I will be fobbed off just like I was between 1981 and 1988. I therefore, yesterday solicited his help and it was refused. I was told to go to the Police. I think the Police will listen to the Minister rather than listen to me. Besides, I give them work only. The fact that I am bringing this matter today to the House is not because of what is happening to our stamps at present. After all that can be stopped again just like it was in 1988, but because it will happen and carry on happening throughout history unless we put a stop to it. The only way we can put a stop to it is by printing our stamps

locally. I have, let me declare, no interest in any printing works here in Gibraltar. So I have no interest in that manner. So, my interest is only in that we print the stamps here and keep the safety here. We have to have a safety net because this can cost a lot of money as has been proved. Mr Speaker, on the question of the production and distribution of our commemorative coins, the best I can say; and then only if my information is correct, is that the contract with the mint company has recently been, is being or will shortly be renegotiated. I say this because my information dates back about six months ago. Since then, for ethical reasons, all my personal contacts with Post Office personnel and more specifically with the Postmaster has been severed. If we are still in time and the aforementioned contract has not yet been signed, then perhaps the following information which the Honourable the Minister for Trade and Industry may or may not have to hand, can be of assistance to him when deciding the finer prints. I will start by stating that any country in the world carries a stock of all, and I repeat, all the coins they issue, be they commemorative or not. According to our previous, which may still be actioned for all I know, contact with the mint company, these rules do not apply to Gibraltar or do not appear to apply to Gibraltar. There is no stock in Gibraltar of all the coins that we have minted. Indeed, many of the coins that had been minted have not even been offered here. In some cases when a collector wants to update his collection or even to buy new issues he has to order them from the Post Office and then sit around for a period of between two weeks and two months for their delivery. Imagine the luck of a visiting collector when arriving in Gibraltar to trying to update his collection. He can never do it. He can never buy Gibraltar coins in Gibraltar. He can buy them in England, in Cyprus, in Malta and in America but not in Gibraltar. More to the point, the Gibraltar Post Office does not even give out information on the new issues or on many of the new issues that will shortly be appearing on coins. To do that local collectors have to go to Spain and buy a Spanish magazine and get the information from the Spanish magazine which is called 'Cronica'. There we get more information than we should really be getting because from them we find out that coins which are not supposed to exist and which the Post Office persistently tell us do not exist really do exist. Coins that are catalogued in "Scots" which is the American catalogue for coins and therefore sold in America, are unknown in Europe. Other coins which, as late as this morning acting on what Mr Feetham told me yesterday afternoon, I have send somebody to the Post Office, simply because I do not want personal contact, to buy two specific coins and I have been told, "We cannot sell them to you, you have to request them from Filado". Filado is a Spanish numismatic and philatelic firm. In other words Gibraltar, as I said to Mr Feetham yesterday, cannot buy them. They have to be bought from Spain. The Gibraltar Post Office cannot stock them because the contract that the Government at present has with Pobjoy, the mint company, apparently gives them the right, or Pobjoy thinks they have the right, to mint coins in the

name of Gibraltar and supply them to whoever they like and not to Gibraltar. Apparently this is the information that I have which is verified by what the Post Office is telling me. Only this firm of Filado can sell those coins. Those coins, to be more specific, are two extra coins minted in silver and commemorating the Olympic Games - which are these. This, like I said, comes printed in the 'Cronica' and 'Numismatic', which have already informed us of the fact that a fl silver coin was minted in, if I remember correctly, 1988 or 1989 and is only sold and available in the United States. I do not think that this is a state of affairs which the Minister would like to see remaining and if this has been of any help to him, like I said, when deciding the finer prints then I am satisfied that I have done the right thing and if, as Mr Moss said before, he thinks we are making no contribution, at least I have tried to. Thank you.

HON J E PILCHER:

Mr Speaker, I think the Opposition have made my job difficult this year because what I normally do, other than conceive from Hansard and I am not sure whether the Honourable the Leader of the Opposition only read Hansard as far as what the Chief Minister said. But if he had he would have found that since 1984 in this House, I have tackled the areas of my responsibility and also listened attentively to all the speeches made on the other side. I was sitting there between 1984 and 1988 and analysed and jotted down points of interest, points of different philosophy, points of conflict and then in my contribution I have mentioned them. Unfortunately, Mr Speaker, this year it is very difficult. The points which have been made, in the majority, are of no consequence. Obviously there are various other speakers to go and my Honourable colleague, Mr Feetham and the Chief Minister will answer. But, I have been disappointed honestly with the fact that what has been over the last four years - and obviously the Opposition are quite at their liberty to change - a state of the nation debate which was used by the Opposition as the platform - which now the Honourable Members opposite say they do not have because the House does not meet enough according to them - which they needed to air the differences with the Government and to air the difficult situation which they believe or do not believe. Mr Speaker, I will deal with the contribution of the Leader of the Opposition separately. The other contributions with the exception perhaps of Mr Louis Francis (which I would like to congratulate for his maiden speech) have been the airing of particular hobby horses. Obviously, making points in those particular fields. I do not want to be, as I said, desultory but we all know the background of different Members of the Opposition and really they have been using their role in this House, not as a mechanism for the defence of the Gibraltarians - the citizens which the Honourable the Leader of the Opposition called them - but for their own hobby horses. We cannot allow on this side, Mr Speaker, the Honourable Mr Cumming to say the GSLP militant in the Public Health Authority. That is the kind of thing that he was saying during the election and he was judged during the election.

My Honourable colleague Joe Moss is right, because under any other democratic parliamentary system there would not be seven of them there, there might be two. Maybe even three but certainly not seven and he now abuses the right of our democratic system by getting up and repeating and substantiated totally accepting in his mind what he was saying during the election campaign about the GSLP militants in the Hospital. There are no GSLP militants in the Hospital or anywhere else. There are GSLP members, many of them who share our belief but the utilisation of the word militant in the mouth of Mr Cumming is desultory because what he means, Mr Speaker, which we all know, is that he feels that the Government - obviously the Minister, because she is the one responsible - is utilising a separate system of militants to control the Health Authority. Mr Speaker, we do not require that. The Honourable Minister is the Minister responsible for Medical Services and in conjunction with the professionals as she said, she runs the services and does not require militants to help her. In fact, we get criticised on this side for being too authoritarian at times, so we do not require militants. Now I hope that it is the last time that we have to hear things like that which they were saying during the election campaign and which they were judged on and at the end of the day, Mr Speaker, the citizens of Gibraltar spoke and I think that should be the end of that.

HON P R CARUANA:

Will the Honourable Member give way?

HON J E PILCHER:

I always give way. Yes.

HON P R CARUANA:

This is the second speaker, Mr Speaker, from that side of the House that has raised the curious point; almost as if the Party on this side of the House had written the Constitution, that because of the size of our vote, we should somehow not mention subjects that were mentioned before or during the election campaign on the rather specious ground - if he does not mind my saying so - that because the electorate has spoken, they have spoken on each and every subject that we addressed during the election. That point of view, Mr Speaker, apart from being completely bankrupt of all intelligence is simply absurd. It is infantile. Does the Honourable Member really believe that we are disqualified from occupying the seats on this House, from doing our job and from fielding political points simply because we have raised them before the date of the last general election? Will he please say clearly whether that is what he thinks?

HON J E PILCHER:

No, Mr Speaker.

HON P R CARUANA:

I am delighted to hear it.

HON J E PILCHER:

What I object to is unsubstantiated comments which were raised during the election which were never substantiated, which was part of the campaign which started during the election campaign and which I think, Mr Speaker, continues to a point - and I will get back to the contribution of the Leader of the Opposition himself - which is out of place in this House of Assembly. These gutter tactics are out of place here. I have been in this House since 1984. We have had tremendous rows in this House of Assembly. I have sat in the gallery prior to 1984 when even yourself, Mr Speaker - because I have always been interested in politics - and with very few exceptions, which I shall not name, these type of gutter tactics have never been used in this House. We say what we have to say.....

HON P R CARUANA:

I realise that the last debate was about the gutter across the runway. But what do you mean by gutter tactics?

HON J E PILCHER:

Unsubstantiated comments like, for example, the ones just made by the Honourable Mr Ramagge when he said that we will be labelled an irresponsible stamp issuing country. In this House of Assembly, Mr Speaker, I think, this is contrary to the desires of what Gibraltar needs. Nothing else, Mr Speaker. I have made my point and I think that the only thing that I will say to Mr Cumming - in the same vein, because he spoke about the Union as well - he was made redundant in the Union some time back, he was made redundant in the Health Authority and I hope he is made redundant in this House if he does not change his present attitude, Mr Speaker.

HON M RAMAGGE:

I do not know what the Hon Member means about unsubstantiated comments. I have made no unsubstantiated comments. All my comments are substantiated. I do not know what you say.

HON J E PILCHER:

My Honourable colleague will check this, but if you are going to the Police with substantiated information, the Police will take it up. If they do not take it up I am sure it is not because the Police do not do their job, it is because they do not feel that it is substantiated.

HON M RAMAGGE:

I agree with the Hon Member, but then bear with me when I tell you that the Police did not listen to my story for seven years until the Honourable Minister for Postal Services asked them to listen and when they did and they investigated they found all of it to be true. The fact that the Police decide or not decide to investigate does not mean it is a lie.

HON J E PILCHER:

Mr Speaker, I will now come back to the Honourable the Leader of the Opposition. I think certainly one thing that I can say for him is that the money that his parents spent on him in education was certainly very, very successful as far as his oratory powers are concerned. He spoke for a long time, Mr Speaker, and in the vein of his normal contribution he spoke very well. But of course, that type of politics went out the window in 1984, Mr Speaker, when it was only enough to get up and speak well and the people of Gibraltar then said, "He is a very good speaker, he must be good, we will vote for him." That no longer applies. It stopped applying in 1984. Mr Speaker, I took the liberty of listening to every single word that he said and if I can utilise, I will choose my terminology carefully. If I take out of the equation the moans of the Honourable Member opposite including the moans that the system of the House of Assembly is not up to date and he would like to see new laws, more secretaries, more..... I mean we would all have liked to have seen that in our time, but there are certain priorities and we, like we have done the legislature, have always treated it very kindly but always cut its costs because we assumed that people would then feel that we were spending money on ourselves. Hence the lack of air conditioning in the hall which we could have done but obviously, Mr Speaker, it would have made our life more comfortable but we felt that there were better things to spend our money on. If I take out of the equation the moans, there were very few things, Mr Speaker, that he said. The same message again that he has been saying in this House for the last nine months about the lack of information, the changes in the accounting system and all the related matters took up probably 85 to 90% of his contribution to this House. I will not comment on those because, like the Honourable Juan Carlos Perez said, as far as I am concerned the Chief Minister will answer the part on the economy. But you see when I then analyse the other 15 per cent I see he is so inconsistent that I do not think that he fools anybody. He has been sitting in this House for the last year. He has been analysing, I expect, the contributions of this side of the House, and he, by his own admittance, has read back the Hansards to 1984, and yet he makes comments like, "Although there

has been the required growth, there has been no perks for the people of Gibraltar. Why do we not lower the tax system so that the people can see that there is something for the ordinary citizen?" To the point where he got to the situation where, when we laughed on this side of the House, it was not due to nervousness, Mr Speaker, it was because he had worked himself up to such a point that he genuinely thought that he was going to do a Winston Churchill or he was going to do a Ceasar on us. That, Mr Speaker, is why we laughed and he got to the point saying there are no perks at all. We have been explaining to the Honourable Member opposite

HON P R CARUANA:

I have not used the word 'perks' in the whole two and a half hours that I was on my feet.

HON J E PILCHER:

You see I do not have an Oxford or Cambridge background. I say 'perks', you say something a bit different. It is pure semantics, Mr Speaker. What I meant by 'perks' is giving accordingly to him, giving to the citizens what the citizens deserve in this growth or double the growth that we have had in the last four years. Mr Speaker, we have been explaining to the Honourable Member opposite, personally, and to his Opposition over the last three or four months, the difficulties, which he understands because he brought them up in his own contributions, that we have. The Honourable the Chief Minister spent a substantial amount of his contribution on that subject. The fact that we have got to run just to stay where we are. The fact that because of the cut-backs in the Ministry of Defence, because of various factors, the increase in the output of the economy is only to keep us where we are and in fact he said that over the next four years it will be the same. We intend to grow by another 50% just to stay where we are. So we cannot give and we cannot afford to look, at this stage, at tax cuts, Mr Speaker. He knows that and, therefore, the only natural conclusion is that the Honourable Mr Caruana is playing to the gallery but he does not fool anybody. The other thing is that - I think, Mr Speaker, here perhaps it is again playing to the gallery but in a way that one has to be very careful of because obviously most of the contribution of the Chief Minister is an economic contribution where he is actually giving out figures - the Honourable the Leader of the Opposition changed that round as if to say everything that the GSLP have done over the last four years is in aid of the Honourable the Chief Minister standing here today and saying we have doubled the output economically in the country. Mr Speaker, he said - again I will not quote him - something like we had boosted the economy but what about the citizens, what have we done for the citizens?. Mr Speaker, he is talking about boosting the economy. Let us look at what it is that we have done over the last four years

for the citizens. I think that the Members of the Opposition, in standing up today, have had very little to say. Why? Because we have tackled probably the most serious problems of Gibraltar's (in 1988 it was its future, now it is its past) housing, the grave problem of infrastructure, the grave problem of electricity, the grave problem of water, the grave problem of incineration and created through the medium of certain entities, which my colleague the Minister for Trade and Industry is responsible for, a land bank and a future which is the only way. The Honourable Member opposite said now that he would not have spent in the New Harbours. But the New Harbours is a mechanism for the creation ..

HON P R CARUANA:

I said perhaps.

HON J E PILCHER:

You said perhaps? I have to be very careful because the Honourable Member opposite is a lawyer and he thinks that he is in a court of law, Mr Speaker.

HON J L MOSS:

If my colleague will give way. On a point of order, he may be Leader of the Opposition but he is not 'Il Duce' yet who can stand up without asking for permission.

HON J E PILCHER:

Mr Speaker, he said, "Perhaps I would not have spent money on the New Harbours". I think, that is what he said.

HON P R CARUANA:

I did not. What I said is that I might not have borrowed money in New Harbours in preference to borrowing it for something else like the 50/50 scheme. I am sorry you do not have to be in a court of law to require accuracy when citing other people in argument.

HON J E PILCHER:

I accept that but you see his argument gets more and more and more difficult to follow and if it gets more and more difficult to follow by me, it gets even more difficult to follow by the ordinary citizen which he says he is trying to defend. You answered precisely the same to the Honourable Minister for Housing when he tried to corner you on the £28m of the 50/50. You said "Perhaps I would, perhaps I would not. I may have borrowed for this but not for that". In the New Harbours it is the same but your overall policy is that we borrowed too much. So if we borrow too much, if you would have done the 50/50, if you would have done the Gib 5, if you would have done the New Harbours, if your members now want us to do a new hospital. I mean I know he can jump sideways everytime we try and corner him but he jumps sideways here in this

House and he may think he has scored a political point, but the people out there, like they asked themselves during the election, will be asking themselves now, what is it that he would have done or not done? We have spent money in the 50/50 which was to solve one of Gibraltar's most serious problems and the problem which to the ordinary citizen - although we accept that there are still problems was the gravest problem that we had in Gibraltar. Our record speaks for itself, Mr Speaker. All citizens have expectations. All of them, every single one of them even Members opposite have expectations. The Honourable Mr Ramagge wants to buy a coin and he has to go to Spain, so we all have expectations, but, Mr Speaker, in general, the citizens are happy. Most citizens are happy because of what we have done over the last four years and they proved that during the election campaign. I think the only other point that I would like to mention as regards the comments of the Honourable the Leader of the Opposition was when he interrupted, I think, my Honourable colleague the Minister for Education, Joe Moss, when he said that in the CPA people were horrified when we had expressed these comments. Mr Speaker, I led the delegation to Guernsey and I can say to the Honourable Members opposite and to this House; and he has got in either side of him two of his delegates, that as an entity, as a delegation, we were probably the most successful delegation in Guernsey because of our parliamentary discussions and because of our contributions and nobody was horrified. What people were horrified depends obviously on what side of the fence you are on. Whether you are Government or Opposition and I will give you one little comment. Where I was horrified - but because I was sitting on the Governmental side if you like of the delegation, and I do not want to be desultory because I genuinely believe in democracy. I am not saying this to knock the delegate who was the promoter. I have a great respect for the democratic system in Malta and I know a lot of them personally. But in the debate on the public auditing of the finance, he got up, he was a member of the Opposition and he said that what he had recommended or proposed to the Maltese Parliament was that they should have an independent commission, chaired by an independent person and by members of the opposition, with authority, at any stage, to go into any government office and check anything that they liked, get any information, any figures or any documents. Of course, that shows, Mr Speaker, that the difference is not that you can be shocked or otherwise, depending on what he said, but whether you agree or otherwise depending on the responsibility that you have. I know that there is a motion and I do not want to debate, it was just merely a pointer to the Honourable Member opposite when he said and I hope that this is not the information that he got from his colleagues, but a momentary lapse because he lost his temper - that he was horrified that other countries might be horrified at the things that we said and this is certainly not the essence of our delegation's contribution in the CPA in Guernsey or in other CPA that I have been or other of my colleagues have been.

HON LT-COL E M BRITTO:

If the Honourable Member will give way. I agree with the comments of the Honourable Minister for Tourism that as a delegation we acted in an exemplary fashion and I think we were probably commended on it, especially bearing in mind that most of the other delegations represented legislatures that were committee based and not Opposition and Government. He made the point in private beforehand and actually on the debating floor, to present a united front and to avoid anything that could be controversial. The only issue that was obviously controversial - and we had cleared our lines beforehand, the Honourable Joe Moss and myself who were the two speakers on this particular debate - was on the debate of parliamentary scrutiny of public expenditure where obviously we knew even before we could speak that we would make opposing statements on the advisability or otherwise of having a Parliamentary Accounts Committee. Obviously the Minister was going to speak against it and I was going to speak in favour. This actually happened. It was done in a manner that was non-controversial. It was purely a statement of fact and I think the Honourable Joe Moss will agree with me that we did not in any way cross swords or tried to play party politics on it. What may have happened, in this I blame myself in maybe not communicating accurately with the Leader of the Opposition, was that there were comments made to us in private afterwards. These showed, as there were actually in the public debate as well as most of the other delegations did not appear to react favourably to the idea of not having a Public Accounts Committee, a little bit of stronger reaction and stronger comments specifically from the United Kingdom delegation of MPs from the House of Commons. But they were, I must stress, comments made in private and not in the debate and it may be my fault because when we spoke about this point, my Honourable colleague and myself, it may not have been made clearly to him that it was not in the debate, that it was in private. I hope that clarifies the situation, Mr Speaker.

MR SPEAKER:

Well, if the Honourable Member, has not got anything to say on that point, we can now recess until this afternoon at 3.15 pm.

The House recessed at 1.00 pm.

The House resumed at 3.25 pm.

HON J E PILCHER:

Mr Speaker, before I continue my contribution, I think, I used a word this morning out of context and I would like to put it back into context. Instead of 'in a desultory fashion' when I was referring to the comments

made, it was in a derisory fashion and I should have said that the political manoeuvres of the Leader of the Opposition were desultory, Mr Speaker. I think, Mr Speaker, having finished with the various comments that I had on the contributions of the Members opposite, I would like to concentrate now on the department which I am responsible for. Before doing that there are two elements, Mr Speaker, that I would like to clarify. It appears to me that although I have answered questions in this House and although the position certainly, as far as we are concerned, was a clear position, nevertheless I would like to go through it one more time in this House so that everybody, including the media, is clear on the changes that we have had in the Tourism Agency over the last two or three months. As I have explained in the last House there have been changes in the way that the Government does its marketing and its direct advertising and public relations. These, Mr Speaker, as we explained in the manifesto, is now being done by the Gibraltar Information Bureau. The thrust has always been the thrust in the UK market and therefore the major thrust of that advertising and public relations policy is being done by the GIB in London but if we have other areas that we want to target it will be done through the Gibraltar Information Bureaux in the countries in which the advertising of the public relations was being done. There is some confusion and perhaps my Honourable colleague, Mr Feetham will explain that as well in his contribution. There is a difference in the direct marketing which the Government does through the Gibraltar Information Bureaux to the marketing that is being done in the International Development Board, which is a joint approach, if you like, by the private sector and the Government of Gibraltar. I think it is chaired by Mr Savignon and my Honourable colleague is a member. It fulfils a different role. I needed to explain the two different roles of the new emphasis in marketing and I think, Mr Speaker, as I said before, it follows the pattern which we established quite clearly in our manifesto just before the elections. Normally at this stage, I also explain what the strategy for the marketing is. But, of course, during question time, Mr Speaker, only two or three weeks ago, I explained, after various questions from the Honourable Member opposite, Mr Vasquez, what the strategy was short-term, medium-term and long-term. I do not think that I need to dwell on that subject, although if the Honourable Member in his contribution makes any comment on those, then I am sure he will allow me the opportunity to answer any specific comments or not, as the case may be. We will see what the character of the Honourable Mr Vasquez is as he makes his maiden speech in this House of Assembly, Mr Speaker. I think the role of the agency also needs to be explained because you see, Mr Speaker, again, if the Honourable Member opposite has looked through Hansard he will see that I explained the enhanced role of the Tourism Agency in the Budget session of 1990. There is no change in the role of the Gibraltar Tourism Agency.

It is the party contracted by the Government to look at the tourist product and having taken out of the equation the marketing and external public relations, it separates the external and the internal. The Tourism Agency is therefore responsible for all tourist infrastructure and responsible for an enhanced product. We took over the gardens, the toilets, the beaches, all the tourist infrastructure. This is a particularly favourite of my colleague. There is no change to that and as I answered to a question earlier on in this session, Mr Speaker, the Agency is looking at different ways of operating in order to produce more efficiency but there is no change in the overall role of the Tourism Agency and there is no change which is envisaged in the foreseeable future. Mr Speaker, we have already - I think that this is basically again just trying to follow up the various questions that I think the Honourable Member opposite which is shadowing me asked me - put in stream the advertising programme in Spain. I think it started, if I am not mistaken, last Friday and it is particularly geared at the Expo market and that together with the efforts being made by the Gibraltar Information Bureau in London, Mr Speaker, about which we will speak, I am sure, in Committee Stage when we view the budget input by the Government for marketing, is something which is already in stream. The other thing; trying to keep to a certain order and in following up the questions that were put to me in this session during the supplementary questions; is that I think both the Honourable Mr Vasquez and the Honourable the Leader of the Opposition made some mention of the fact that although I had made certain comments here, those comments were not shared by the professionals. The logic behind that statement was that the Chairman of the United Kingdom Gibraltar Tourism Association had made certain comments to the Chronicle in 'Golt in Print' which virtually run contrary to various statements that I had made in conjunction with the UK GTA and various comments that I had made in relation to the partnership that the Gibraltar Information Bureau and the trade had for looking at the problem of trying to market Gibraltar. I committed myself, Mr Speaker, with Members opposite to clear the lines between the Agency and the UK GTA which I did last Thursday and I am glad to see that the UK GTA has issued a press comment disassociating themselves as an association from the comments that were made by Mr Gary David. That does not, in any way, mean that Mr Gary David, who is a professional, does not believe what he said but I think what the UK GTA said (I will not bore Members opposite by reading the press. I am sure that they have done so themselves already) that those comments were quite clearly spelt out in the association meeting as being the comments of Mr Gary David as an individual and in no way shared by the other members of the UK GTA. The latter, as I have said continuously; were working, and are working at tandem with the Government, in a relationship and a partnership with us for the best benefit of Gibraltar in trying to market and to advise us what the best way of spending the money is and of the way that they would like to see the situation. Whether it should be more on public

relations, less on advertising etc. I think, Mr Speaker, the relationship that we have with the United Kingdom Gibraltar Tourism Association is important. It is a first on record. We have different competing forces working together for the common good of a destination. It is a link-up of the Gibraltar Information Bureau and the Government. I think it is also important because, in interchanging ideas, one always gets to the root of the different problems. Before I carry on with that let me say, Mr Speaker, that as is common knowledge, 1991 was not a good year for tourism. Although the statistics are not ready yet - I hope to table them at the next House - a preview of those statistics is that hotel occupancy was down in 1991 by about 25%. Although the numbers held; we had about four million crossings in the frontier as regards the day excursion element. There are varying reasons why day-excursionists come to Gibraltar. It could be shopping, it could be seeing Gibraltar. There are varying reasons, but a pointer to that obviously is the number of people that visit the sites. The pure day-excursionist at one stage or another visits the sites and the sites were down between, I would say, 10 and 15%. So although there was a maintenance of those numbers, I think from the point of view of the people visiting the sites, there has been another drop of about 10 or 15%. I say another drop because, as we are all aware, 1990; because of the reasons that we discussed last year, was not a particularly good year. What one cannot do is look at Gibraltar in isolation. I was really upset about one of the things of the Honourable Member. I hope he does not repeat it this afternoon. One of the outbursts of the Honourable the Leader of the Opposition yesterday, was in relation to the contribution of the Honourable Juan Carlos Perez. He stood up and - again perhaps I misquote him but I normally do anyway - said "At least if you are going to argue, you argue with the truth". I do not know whether I have got that more or less accurate but that, Mr Speaker, is the type of discussion and parliamentary debate that we should have here. During the election debate in one of the debates of my Honourable colleague Mr Feetham with the Honourable Mr Vasquez in a programme related to development but 75% of which ended up discussing tourism, he said, Mr Speaker, "But there is a boom in Spain, how is it that there is a recession in Gibraltar?". Well, there is no boom in Spain and I am not sure how the Honourable Member spends his day. Whether he reads the papers, whether he sees Sky News, whether he watches CNN, whether he watches.....

HON J MOSS:

He may play polo.

HON F VASQUEZ:

I do not play polo.

HON J E PILCHER:

Well, he may not play polo but he may read the newspapers. There is worldwide recession. Only the other night in Television Espanola, Mr Speaker, I heard the Minister

for Trade and Industry in Spain, which had just received a report from the Ministerio de Turismo in Spain, says that 1991 was a disastrous year. In Spain, there was a cutback of 25% of overall tourism and it is expected that this year it is going to be worse. The same message, Mr Speaker, was the message that during our parliamentary visit we got from the other countries and with the exception of Cyprus - that is a success story on its own - the other countries were suffering in tourism. In the tourism world - this is why I want to link back to the United Kingdom Gibraltar Tourism Association - recession is still with us. I will give you two comments, not made by me, but made by the professionals in the UK GTA. One of the sure signs that the recession in the tourist industry - certainly in the UK market, which is our main market - is still with us, is the big discounting by entities like Thomson who are now discounting like mad in order to get their share of the market in the UK. That creates a situation where, as probably all of you who look at tourism magazines will have seen it, we have £59 return trips to certain destinations. Full-board, all expenses paid as far as flights, coach and everything related for £120 for 7 to 10 days stays. Mr Speaker, recession is biting hard at the trade and we have another major problem in the European market - again mentioned not by me but the representatives of GB Airways in the UK GTA - which is that there is distress marketing in the transatlantic routes. The major carriers in the transatlantic routes are now discounting like mad to get their aircrafts filled and therefore are producing tremendous client/customer orientated programmes very, very cheap and you can go probably to anywhere across the Atlantic today cheaper than you can get to Europe, Mr Speaker. When the Chief Minister was referring to the recession and he made, what I consider from what I have read, a logical assertion as to the difficulties ahead in the worldwide markets, I saw the Honourable Member opposite sniggling as if to say, "There is the excuse". Mr Speaker, there is no excuse. The world is in recession and the tourism industry is in recession. We have, to a point, not been unfortunate in the day-excursion market because we have not suffered tremendously. The Honourable Member opposite - this is a point that may or may not be answered by my Honourable colleague - talks about the retail industry. I think that the retail industry in Gibraltar is doing relatively well compared to other retail industries in other destinations and all you need to do is walk up and down Guernsey to see that they are not. The amount of people visiting Gibraltar as a shopping destination, Mr Speaker, is not contracting by the same amount that it is contracting elsewhere. The overnight market has been the market that has been the most hit. When I say the overnight market, it is quite clear from the comments that I have made that it is the hotel occupancy. It is not something that I am happy about and it is something which is difficult to analyse. Sometimes, Mr Speaker, I think the saying goes I stand

again to be corrected - 'one misses the wood for the trees'. In the UK GTA, Mr Speaker, there was a report done by a certain advertising agency. I mean it is immaterial, it is one of many advertising agencies that are now tendering for the contract. It is important because, as I say, it is not something that we had thought of but it is something that on hindsight, not only on the Government but it also made a great impression on the United Kingdom Gibraltar Tourism Association. I am referring specifically to the overnight market and the report included the strengths and weaknesses of the destination, Mr Speaker. I will not bore the House by reading all the strengths and all the weaknesses, but I would like to point out one of the strengths. One of the strengths of Gibraltar as a destination was its proximity to Spain and Morocco. That was deemed to be by the advertising people, who had not dealt with Gibraltar before but did a market study - to see if they took on the account - on what were the strong points and what were the negative points. In the strengths it had proximity to Spain and Morocco. In the weaknesses it had proximity to Spain and Morocco and the initial reaction was precisely the initial reaction that I have got from the Members opposite. But if you think about it, Mr Speaker, when the frontier was closed anybody wanting to come to Gibraltar would have to come to Gibraltar and stay here whether it was three, five or seven days. It is now a weakness, Mr Speaker, because Gibraltar now is being sold as part of the package of the adjoining areas. So if you want to go to Gibraltar for a holiday, you do not necessarily have to come to Gibraltar. The advertising agent was saying that it is a weakness because that weakness is being exploited by people on the other side who are saying, "Well, if you want to go and see Gibraltar you can come to the Costa del Sol, stay here, we have got better beaches, we have got this and that, and then you can go and see Gibraltar". So, Mr Speaker, it is a factor which, at the end of the day, we have to take into account. There is very little, we can do as a Government; as I have answered the Honourable Member opposite at question time, within our limited resources. We continue to market Gibraltar. We continue to create many mechanisms particularly on the public relations side. We do that quite actively and again, the people who follow the news, will see we have brought people from the United States. We have brought over journalists and tour operators. We continue to do this, Mr Speaker, in conjunction with the professionals in the trade but, as I say, at the end of the day, there is worldwide recession and Gibraltar is not immune to this. The predictions are that 1992 is not going to be a better year. I cannot round off this subject better than in the words of the Honourable and Gallant Lt-Col Britto in GBC radio when asked by Alice Mascarenhas what, in the debate on tourism, had been the solutions that the delegates had come up with. His words were "Patience, there are no solutions, there is just

patience, we have got to wait for the market to pick up and that is what we need to do". If the Honourable Member thinks that I am now quoting out of context I have got the tape recording of that interview which I am quite happy to play back to him. That is the truth of the matter and I am glad to see that in the spirit of the partnership that we have established as fellow delegates in the Commonwealth Parliamentary Association, the Hon Ernest Britto with his hand on his heart, said the truth of the matter as regards tourism, Mr Speaker. The other aspect which is dealt with directly now by the Gibraltar Tourism Agency is the improvement to the market. The improvement continues. This is something that is updated so I will not again bore the House but we all know that the Nature Reserve has started. That is working well although it is difficult to compare because we are now no longer comparing like with like. One of the Honourable Members opposite said that we have not taken advantage of Expo. Certainly in the day excursionist market, we seem to be. There are more day excursionists coming. The pointer that I referred to before and I am using the same pointer, is the pointer of the sites. I can monitor the movement in the frontier but the pointer that I have always used is the pointer relating to the sites. It is not a marked improvement, but it is a slight improvement on 1991, Mr Speaker. Obviously, 1991 was not a particularly good year but the percentages of people visiting the sites is up. That in no way means that it is not a bad year. It is just that in giving you the picture of what happened last year and what is happening this year, Mr Speaker, then I thought that I should advise you, although I stress that I am not comparing like with like because the Nature Reserve is now a different entity, so I am not monitoring visits to the St Michael's Cave or visits to the Apes Den. As a pointer I am using visits to the Apes Den because I think that; as anybody in the trade will tell you, people may miss the Upper Galleries, may miss St Michael's Cave, may miss the Museum but are not likely to miss the Apes Den, so I am using the figures of last year's Apes Den with this year's Nature Reserve and, Mr Speaker, at this stage it is slightly up. We continue the project of the botanical gardens and the Alameda. I think we said initially it would take some five years before we had a botanical garden of international repute. I think that may well be a three year period. It is working very well and I am sure that if Honourable Members had bothered to walk the site, they would have realised the major improvements that have been made there. Let us not forget that that is a Government contract. It is very easy sometimes, Mr Speaker, for the Members of the Opposition and indeed a lot of members of the public, to criticise when something is going wrong but to totally forget when something is going right. The botanical gardens, Mr Speaker, will be one of our success stories and I hope it is going that way and I hope within the period of two to three years that that will be one of international repute. We tackled beaches very early on

and it is now a question of refurbishment and maintenance. I have no difficulties. I think the beaches will be ready this summer. At Eastern Beach, the beach cleaning equipment now seems to be working well and the difficulties that we were having initially in 1990 and in parts of 1991 do not seem to be with us again. In planted areas, Mr Speaker, we have had a major improvement and we will continue to have improvements in that area. Sites, I think, we have already mentioned. There is now a linking together of the Taxi Association, Public Service Vehicles and ourselves to look at the beautification particularly of the frontier area. The Chamber has asked us to look at it because it is the area that is the first visual effect of visitors coming into Gibraltar. I think, Mr Speaker, I cannot finish my contribution without making a special mention of the Litter Control Committee. The Litter Control Committee, which I chair, was set up as you all probably know, after we passed in this House of Assembly the Litter Control Regulations. I think, Mr Speaker, very little is known because it is a Committee that works behind the scenes. I praise all the members of the Litter Control Committee. It is a committee that brings together all the enforcement bodies and some of the advisory bodies. I am talking about the Police, the Environmental Health, the Housing Department and the Cleansing Department. All work in tandem in looking at cleanliness in the overall sense of the word and, Mr Speaker, I am glad to say that I have noticed; and I am sure a lot of Gibraltarians have noticed, a marked improvement in many areas of Gibraltar. I think the Litter Control Areas have been a total success. The parking prohibitions within the Litter Control Areas created a bit of a problem to start of with, Mr Speaker, but I think the cleanliness of Gibraltar and the ambience of Gibraltar has benefitted and the Committee is to be congratulated. Although I chair the Committee, Mr Speaker, in most instances they work independent of me and I think it is worth praising them for the work they do. At this stage, like I always do every year, Mr Speaker, I would like to say that the Litter Control Committee or the Cleansing Authority or any other Authority cannot work without the cooperation of the public at large and particularly because this is a problem that it is quite evident, cannot work without the help of the private sector. When we are looking at the cleanliness of Gibraltar there is a marked improvement but there is still some way to go and I think we require the help, not only of the individual citizens, but we also require the help of the private sector. With this aim in mind I am glad to say that after having a meeting with the chairperson of the Chamber of Commerce, a member of the Chamber will join us in the Litter Control Committee to try to help us with the private sector in getting it to cooperate with us for a cleaner Gibraltar, Mr Speaker. The Honourable Member opposite, Mr Francis, was talking about a Ministry of the Environment. It is true that on this side of the House we do not have such a Minister for the Environment although a lot of the things

that he has mentioned, Mr Speaker, are dealt under the guise of my Ministry; that is nature protection, monitoring and working with GOHNS, working with bodies to look at the nature aspect of it and the environment. We also do that on the beaches. So there is, Mr Speaker, a lot of work that has been done and although there is not a Ministry for the Environment, I assure the Honourable Member, as he rightly knows, that on the operational side the Tourism Agency and in fact the Litter Control Committee do look at aspects of the environment like Health Environment is being looked at by my Honourable colleague Miss Mari Montegriffo. The partnership works well. I do not think we require it, at this stage. Obviously it is the Chief Minister's prerogative in looking at changes to take this on board or not. But the system, at the moment, works well and environment is fully covered, on the health aspects by the Minister for Health and on the aspects of nature, of cleanliness, of pollution is covered by them, Mr Speaker. I think I have covered most of the points, I think all in all we continue the progress in the infrastructure. There are difficulties in the overnight market and we continue to work together with the trade to try and resolve that. 1992 is not going to be a good year but we hope that with the help of all the entities to make it, at least, not a worst year than 1991 which was a very bad year. As I have said before, Mr Speaker, if there are any points which the Honourable Mr Vasquez, who shadows tourism, makes, I will answer them at that stage or at the Committee Stage. Thank you very much, Mr Speaker.

MR SPEAKER:

You cannot ask for him to give way after he sits down. Would you like to give way?

HON J E PILCHER:

Yes, Mr Speaker.

HON M RAMAGGE:

Mr Speaker, at the beginning of his speech, the Minister for Tourism referred to my contribution as a hobby horse speech. It shows his lack of listening power or to put it.....

HON J E PILCHER:

Mr Speaker, in giving way I thought I was giving way to a point of clarification not a second speech. If not I will then speak again on the same subject.

MR SPEAKER:

You can only speak once unless you are proposing a motion which of course as a mover you speak at the end. You can only ask for clarification of any point that you have not understood or a point that you may wish to make but it has got to be brief. Something that you might wish the Minister to answer you.

HON M RAMAGGE:

No. Thank you, Mr Speaker.

HON F VASQUEZ:

Mr Speaker. It does fall on me in my contribution to reply to the contribution of the Honourable Member opposite for Tourism. I have to say, Mr Speaker, that I do it with a certain amount of trepidation because having looked at my Hansards over the last few years, I do appreciate that to get up and criticise the Honourable Member opposite for his performance in the field of tourism is rather like kicking a rockweiler with a sore head. You tend to get your head bitten off in return. I would refer, for example, Mr Speaker, to the contribution that Mr George Mascarenhas, my predecessor, made at this debate last year, when he had the audacity to criticise the performance of Government related to tourism. In reply it was inter-alia said that Mr Mascarenhas was making a personal attack on the Minister with responsibility for tourism out of personal motives related to Mr Mascarenhas's resignation from the Association of Travel Agents. It was said that he had a vested interest in the matters he was referring to and it was suggested that he was mounting an illogical attack out of madness or stress and I quote from Hansard, Mr Speaker. I, therefore, wish to place clearly on the record that I do intend to have a go at the Honourable Member opposite for his performance as Minister for Tourism but I want to make clear at the outset that I have no personal vendetta against him or any other Member on the other side, that I have no vested interest and certainly that I am not mad or suffering from stress. I simply do not happen to think that he has done a particularly good job over the last year as Minister for Tourism and I do not have to be mad to hold that opinion. I do hope that the Honourable Members opposite will accept the criticisms and the constructive suggestions that I do intend to make, Mr Speaker, and will accept that they are made on objective analysis after consultation with individuals and bodies involved in the industry. It will be refreshing if the Honourable Members opposite would accept these criticisms and suggestions in that objective aim as being well founded and to be confronted not as an emotional level but on the merits of the arguments and the points that I intend to raise. My predecessor in the Opposition benches, Mr Mascarenhas, who shadowed responsibility for tourism, made consistent attacks on Government's records on tourism as being the sector which was certainly their largest failing, Mr Speaker. I have to say that nothing that has happened in the last six months or in the last year has swayed me to believe that Mr Mascarenhas was in any way wide at the mark. It now falls upon me to carry on where Mr Mascarenhas left off in an effort to try and demonstrate that the Minister for Tourism is somehow getting it wrong. It is clear - in fact the Minister has confirmed - that the last twelve months have confirmed that the local tourist industry generally and the hotel sector in particular is in some

crisis. I would go as far as saying that the hotel trade is in severe crisis and on the verge of catastrophic decline. It should be stressed and I think the Honourable Member opposite would not disagree with me, that it is impossible to overestimate the importance of the tourist industry to the local economy. My predecessor again used to accuse the GSLP administration of not attaching enough importance to tourism and time and again the Honourable Member opposite would leap to his feet and regularly come to this stressing that the GSLP did indeed take a very important view of the contribution of tourism to the local economy. Certainly that is my point of view, Mr Speaker. According to the last employment survey, some 700 people are employed directly in the catering and hotel industries in Gibraltar. The Chief Minister will no doubt agree with me that the contribution of the industry to the local economy goes beyond the mere employment of those 700 individuals. The tourist industry constitutes one of the most important sources of external revenue into the economy and the multiplier effect of tourist spending in the economy filters through to almost every sector of economic activity. The Hon Mr Bossano, in fact, in his speech yesterday referred to Gibraltar's credits and debits. Well, clearly tourist spending in Gibraltar are important to Gibraltar credits. We are selling our services to tourists who come to Gibraltar and it is essential that the Government does everything to maintain that flow of income into the economy. The tourist industry has in recent years been an essential element in Gibraltar's economic well being and should continue to do so. Tourist spending made an important contribution at keeping the local economy afloat during the years of economic blockade and in the years immediately following the opening of the frontier made a very important contribution in resuscitating local fortunes. Any administration that underestimates the importance of tourism does so at its peril. The record of the GSLP administration, Mr Speaker, in the tourism/hotel sector has been and continues in my submission to be deplorable and the figures speak for themselves. Throughout the 1960s and 1970s, hotel occupancy in Gibraltar averaged out at approximately around the 50% mark. In the four years up to 1988 which is the year, as we all know, that the GSLP won the election and came in to form the Government - it stood at an average of 51½%. By the late 1980s it was averaging over those four years up to 1988 at about 51½/52% per annum hotel occupancy. That is not brilliant, Mr Speaker, but it is certainly enough to keep the industry ticking over. It was enough to make an important contribution to the local economy. There are lots of tourists who would be most dissatisfied with those figures but for Gibraltar, in a period of transition, it was not a bad figure at all. In 1989 the occupancy figures dropped to 44%. So immediately in the first year after they got in, we had a 7 or 8% drop. The following year it dropped to below 41%, that was 1990. The figures for 1991 we know are not available although all indications are - in fact the Honourable Member has confirmed - that there is going

to be approximately 25% down. 25% down on 41% means that in 1991 we were in the region of between 30 and 35% those were the figures that I have received from the industry - for hotel occupancy in Gibraltar. All the indications are that this year is not going to be much better if it is going to be better at all. So we are stuck at what I would consider rock bottom. Something between 30 and 35% occupancy rates in our hotels. Guest nights sold dropped in 1990 below 200,000. They were much lower in 1991, possibly a third down on that figure and when one considers that between 1985 and 1988 they were averaging at 275,000, again one gets an idea of the enormous drop in business that there has been in the local hotel industry. Again, all the figures speak for themselves. The average length of stay fell from being in excess of six nights in the 1970s and early 1980s to less than three now. Business generally is reckoned to be at least one third, if not more, down on the figures that we were experiencing only four years ago, just before or at the time that the Honourable Members opposite formed the first GSLP administration. What is clear to the industry, Mr Speaker, is that the overnight tourist trade has almost completely disappeared in Gibraltar. It is virtually non-existent. What is keeping the hotel industry afloat, Mr Speaker, is passing trade and business visitors, military personnel and other incidental visitors and this explains the short average length of stay. We virtually do not have any holiday-makers coming to spend their holiday in an hotel in Gibraltar, Mr Speaker. There is not an hotel in Gibraltar which is not facing financial difficulties and as the Honourable Member is aware, many if not all the hotels are having great difficulty paying their municipal charges, their electricity and their rates etc. Some hotels are having to cut down their operations which have never happened before and there is the real risk. I am not trying to exaggerate - I do not think the Honourable Member across the floor will dispute this - but there is a very real possibility that in the next few months a substantial player in the local hotel trade is going to go bankrupt. It is going to have to close down. It is going to add to the sorry catalogue of redundancies and closures in Gibraltar and clearly I put it to the House that what we have before us is a very bleak picture indeed of the state of the tourist industry in Gibraltar. An industry which I would put to this House is in crisis. The Honourable Member opposite, this time last year in this debate, denied that there was a crisis. I would hope that he now would accept that the industry is deeply in crisis and I ask a rhetorical question. What has happened, what circumstances have changed that have made Gibraltar a less attractive holiday destination? The answer in my submission, Mr Speaker, is that nothing at all has changed. The Rock is still there so is the Apes Den. The shops are still open. The hotel beds are waiting and the airlines are flying out to Gibraltar bringing their empty seats with them, Mr Speaker. A year ago, the Honourable Member on the other side blamed two factors; the Gulf War and the economic recession, for the atrocious figures that we were having in 1990, now

14 years ago. Those figures have not got any better. The Gulf War, Mr Speaker, is now ancient history and whatever the Honourable Member might say across the floor, my understanding is that the tourist sectors in almost every other destination are bouncing back. They might not be at pre-Gulf War figures, but they are certainly bouncing back and reporting substantially improved figures on Gulf War figures.

HON J E PILCHER:

If the Honourable Member will give way. I want, for the record, to categorically refute that, Mr Speaker, so that it can show on the record.

HON F VASQUEZ:

The Honourable Member refutes it. I do not have figures in front of me. I am talking from my conversations and reports that I have had from members of the tourist industry. We do not have the figures for this year yet. Time will tell, but I will suggest to the Honourable Member opposite that certainly most other tourist resorts, including the Coast, will be well up on last year. Substantially better than the Gulf crisis year. In Gibraltar that is not the case. In my submission, Mr Speaker, what has changed over the last four years, which would adequately explain the radical drop in the fortunes of the tourist industry of this community is that there has been a GSLP administration. For all their faults (and the Honourable Members across the floor laugh) the AACR administration had a Tourist Ministry. They had a Minister with singular responsibility for tourism, who had clearly identified responsibilities. He had a clearly identified marketing budget. He had clearly defined objectives to fill airline seats and to get our hotels full. Since 1988, Mr Speaker, we have seen the dismantlement of the Tourist Office and what I consider to be a disjointed, uncoordinated, ill-researched and unsatisfactory fragmentation of responsibilities relating to tourism which has had a disastrous effect on the local tourist industry. There is simply no coordinated policy either for the marketing or advertising of Gibraltar as a holiday destination or for the efficient administration of matters relating to tourism in Gibraltar. In 1988, Mr Speaker, in his first speech on tourism at the second reading of the Appropriation Bill, Mr Pilcher said the following: "The essential element which is missing is the coordination of policies in this area. We are committed to having a sector that is compact and successful. It is with the help of the professionals in the trade that Gibraltar will have a place in the market". Now I ask what on earth happened to that compact and successful sector? The first thing that the GSLP did was discard the Tourist Office; as I have already said, replacing it with a Gibraltar Tourism Agency Limited. The logic of that move always escaped me and it continues to escape me. If the logic of it was that the Gibraltar Tourist Office was an ineffective organ, well what on

earth is achieved by having it of in the Gibraltar Tourism Agency Limited with exactly the same employees and exactly the same people running it. It is my view that absolutely nothing was achieved by having it off in that way. After a while, we have now heard, it became apparent that the Gibraltar Tourism Agency Limited, for whatever reason, was incapable or not appropriate to run the marketing of Gibraltar. So we have further divided the Government's responsibility for the administration of the tourist industry. The Minister already having created this Agency; the Agency then devolves the responsibility for marketing to the Gibraltar Information Bureau. Again, the benefit of that escapes me, Mr Speaker. I do not see the benefit other than possibly that the Minister can wash his hands of everything that goes wrong with the GIB and take the benefit for everything that goes right because we know for example that the GIB made, what can only be described as a substantial cockup, when Cadogan Travel introduced their brochure, advertising Gibraltar as a multi-stay holiday. The very thing that he is now saying his advertising agency are suggesting now. There we had a brochure proposing marketing Gibraltar as a multi-stay centre and the GIB promptly go and stop it. The very office that is meant to be marketing Gibraltar, stop the circulation of that brochure. I do not know what on earth that office thought it was doing, Mr Speaker. I am not very clear who is responsible for making the policy decision as regards the marketing of Gibraltar through that office. As far as I am concerned, it is the Honourable Members' opposite political responsibility to make sure that Gibraltar is marketed as effectively as possible and I do not have a clue, Mr Speaker, how he thinks he is achieving that by putting marketing in the hands of a Gibraltar Information Bureau unlike the Gibraltar Tourist Office in London. The Gibraltar Tourist Office was designed for the marketing and promotion of Gibraltar 'period' as a tourist product. The GIB Office, Mr Speaker, since they are doing one hundred and one other things at the same time is marketing Gibraltar services in every sector and not strictly confined to pursuing contacts and marketing Gibraltar's tourist product, which is what Gibraltar needs today. It certainly does not seem that in the four years that he has had control of the industry in Gibraltar, the Honourable Member opposite has achieved the compact and successful organisation that he set out to do. Anyone with a modicum of experience in business management will see it as a ramshackle ad-hoc arrangement with no clearly identified responsibilities, no identification of goals and no clearcut managerial systems for achieving them. All this fragmentation, Mr Speaker, is reflected in the Estimates because I have to shadow a ministry which really is not a ministry at all. It no longer appears in the Estimates.

HON J C PEREZ:

Better for you.

HON F VASQUEZ:

No, it is not better for me. I wish it was, Mr Speaker, because nothing is being done to protect the industry locally. Go and talk to the hoteliers. Look at the state of the industry. The Honourable Members opposite seem to think it is very amusing. I think that there is nothing particularly funny about overseeing the dismantling of a tourist industry in Gibraltar. Looking through the Estimates one sees the fragmented nature of Government expenditure on the tourist product. We have under Head 16 under the Secretariat, 'Tourist and other Promotions'. Again we see Tourist and other Promotions. What other promotions? It is my argument, Mr Speaker, that this Government has not dedicated enough to the marketing; to the advertising of Gibraltar. The Honourable Member, Mr Pilcher on the other side has stated repeatedly over the last four years that the GSLP administration has spent more than any other previous administration on marketing Gibraltar. I would question that. Marketing Gibraltar in what way? Because if he considers that Ministers flying to Thailand and Latvia and wherever else they travel, is effectively marketing Gibraltar tourist product, I would argue with that. That is not marketing tourism; that is not marketing hotel beds in Gibraltar. It is marketing Gibraltar as an economy which they are trying to get off the ground. But I am talking about tourism and there has not been successful marketing of Gibraltar as a tourist resort in the last four years. In fact, despite repeated questioning both by Mr Mascarenhas before me and by myself, the Hon Mr Pilcher has refused to be drawn on the most important point of all. How much; and I still do not know the answer to this question, in the last year did Gibraltar spend on advertising the Gibraltar tourist product in England and how much is projected for this year? We have seen under the Head that I referred to that £400,000 has been set aside for marketing and other promotions. We do not know. Is that for the running of the GIB Office? Is that for the travelling expenses of ministers all over the world? How much, Mr Pilcher, is being spent on advertising Gibraltar? Who is the advertising agency? When is the product going to be launched? When is the campaign going to be launched? Are we in time for this year's market? When is it? Where is the result? I will certainly stand down if ...

MR SPEAKER:

You have an opportunity to find that out at Committee Stage.

HON F VASQUEZ:

In Question No. 94 of this year, Mr Speaker, I posed that very question and the Honourable Member opposite said that the money that is intended to allocate is included in the Estimates of the current financial year and when the Estimates are discussed the explanation will be given. I certainly am not aware of those figures at present, Mr Speaker, and certainly what I can say is; from my experience and the experience of those in the trade, that there seems to be very little evidence of a concerted advertising campaign and we saw that now, for example, who the advertising agents are who have the contract to deal with this. Advertising, Mr Speaker, is the lifeblood of tourism. Every holiday destination launches its advertising campaigns in the late winter to catch the summer holiday makers when they are making their plans in the spring of the year before their summer holidays. Time and again, Mr Mascarenhas before me would ask the Minister what is your advertising budget? When are you launching the campaign? The Hon Mr Pilcher would reply by referring to the 1988 four year plan of the Tourism Agency. What was that plan? What were the results of that plan? Where was the advertising under that plan? What was the scheme? Who is it aimed at? It was never clear.

HON J E PILCHER:

If the Honourable Member will give way for a moment. The advertising campaign was launched. The advertising continued throughout the three years. The amount of money for marketing I gave him last time. The new money for next year he will get during the Committee Stage as he has rightly pointed out. The late winter advertising in advance of the summer season was completed in January of 1992, Mr Speaker. There was an advertising campaign which was, according to the professionals, a very successful campaign which we ended the last week in January or beginning of February this year. This was the late winter for the April and Summer campaign, Mr Speaker, so I do not honestly know what the Member is referring to in that particular aspect.

HON F VASQUEZ:

Well I am intrigued to hear that because I am certainly not aware of where the advertising was directed. What media it appeared in and how it was aimed but you have done that?

HON J E PILCHER:

But why should you be?

HON F VASQUEZ:

Well, nor a lot of people in the industry, Mr Speaker.

HON J E PILCHER:

They are.

HON F VASQUEZ:

The Hon Mr Pilcher would also reply to the questions, as in fact he has done to questions put by myself, as regards the advertising budget on tourism of the Government by referring to the £380,000 spent on marketing - always marketing - in 1989/1990 and £450,000 again on marketing in 1990/1991. It is still not clear what the advertising budget is. I want to separate, Mr Pilcher, the question of advertising from what you would consider marketing Gibraltar. I want to know how much you have spent on advertising agents in England advertising the Gibraltar tourist product. We know that in 1987 the AACR administration spent £600,000. That was the last AACR budget on advertising the tourist product. At today's prices that would be £750,000. I am very sure, Mr Speaker, that the Honourable Member opposite is not planning to spend anything like that sum on advertising of the local product. Without advertising in the United Kingdom we are simply not going to get the tourists here. All the experts say the same. At this debate last year, Mr Speaker, the Honourable Member opposite said "I have had meetings, as I have said, with the tourist industry, with the Tourism Council, with the Association of Gibraltar Travel Agents, with the Association of UK Travel Agents and I have had nothing but praise about what we are trying to do". He seems to be basking in the glory of unmitigated praise from the Association of Travel Agents in the UK. That might have been his perception but as he has already indicated in his address, Mr Speaker, the impression of the Chairman of the UK and Gibraltar Tourism Association was something that was very different indeed. I intend to quote from the interview he gave in the Chronicle recently on this point. This is Mr Gary David talking about the UK Gibraltar Tourism Association, he said "The UK and Gibraltar Tourism Association....

HON J E PILCHER:

If the Honourable Member will give way. He must understand that the UK GTA has issued a press release disassociating itself from the comments he is going to make now if he is going to make them on behalf of the UK GTA. On behalf of Gary David he well can but after today's statement, he cannot use that as the feelings of the UK GTA. He can do it as the feelings of Mr Gary David.

HON F VASQUEZ:

Mr Speaker, this was the feeling in April of this year of the Chairman of the UK GTA. He is a professional in this field. The present Committee may have disassociated.

I do not know the circumstances why that has happened, certainly people who speak up vociferously against Government seem to disappear from this type of Committee. It has happened before but certainly these were the views of the professional, the very man who founded it. If I can quote him "The UK and Gibraltar Tourism Association was instigated by myself". He is the very man that founded this Association for one purpose and one purpose only. To act as a pressure group of the Gibraltar Government and to encourage them to spend more on advertising, PR and to encourage people to travel to Gibraltar. Unfortunately, due to the obvious lack of funds and interest in any of the above areas, it became much more necessary for the Association to become pro-active in having to lodge its own PR, advertising, press clips and eventually a brochure to the area in order to fill the gap that the Government had not identified. The lack of action on the part of the Government seems to have been unaffected by the Association's suggestions. I believe that the private sector involvement is important, however, due to the lack of promotional activity, is the Minister saying that the Government has been activating this promotional activity? Well, the former Chairman of the UK Travel Association..... The Chairman at the time that he made these remarks and a professional in the field (I do not think that he was dreaming them up) said "I believe that the private sector involvement is important, however due to the lack of promotional activity on the part of the Government, the private sector has suffered badly through the lack of tourism and I believe that Government should carry the can for its future growth. Whilst I fully appreciate the hard efforts in positioning Gibraltar as a tourism destination, I believe that due to the lack of all the necessary promotional activities in the UK to stimulate tourism in Gibraltar, it falls far behind its competitors". Let me come to the following piece. He was asked by the journalist a question "Your meeting last week here had a very heavy agenda, what decisions were taken?". And he said "Our Association meeting in Gibraltar this week highlighted the following that although the Gibraltar Information Bureau had now been given the role of promoting the destination, the fact that they still had no budget for the forthcoming promotional activities meant that they had once again missed the boat. Whilst other tourist offices completed their summer activities at the end of March, Gibraltar is unlikely to start their summer campaign until at least May or June of this year. This is most definitely far too late and will be money thrown away. I emphasised that if tourism took a nose dive this summer or next winter the Information Bureau would be held in the main responsible for this". And here is the President of the Association blaming not the recession, not the Gulf War but blaming the GIB's own inactivity and saying - this was only a month ago, this was in the middle of April, Mr Speaker - that the GIB still had taken no steps to

even allocating a budget for the launch of the summer campaign for the marketing of the destination. And that is my understanding and is still the case. In fact, the Honourable Member opposite referred to a tender he had received from an advertising agency and I am intrigued that if he has only recently had that; that, Mr Speaker, would seem to indicate that Government is still at this stage, in late May 1992, tendering for the advertising contract for Gibraltar. What good is that going to be at this stage? In April Mr David is already saying "We have missed the boat. If you do not get your act together by late winter, early spring, it is too late, it is money thrown away". Throughout these four years of GSLP administration, Mr Speaker, we have seen this time and again. Ineffective marketing. Insufficient and ineffective marketing. Mr David finished "I do not know who is to blame but I have never experienced the situation where the world stops and tourism dies for months because nobody can make a decision on a budget which has a major bearing for many people. Tourism benefits hotel trade, restaurants, shops, taxis and helps employment. Without this budget all this is being neglected". In fact, Mr Speaker, I do not know if the Honourable Member wants me to give way. In November of last year, Mr Mascarenhas again - I have been researching his contribution to the effort to try and stimulate some promotional activity for the tourist industry-specifically asked the Minister, "Will the Minister for Tourism state how the Government will promote tourism to Gibraltar during 1992 and what expenditure levels he envisages for this purpose?" And the reply was, "Mr Speaker, I am sure that this House is aware of the four year plan which was instituted by the Tourism Agency in 1988 since I explained this in this House on various occasions and the Member opposite in his private capacity. During 1992 the policy will have to be reviewed but this will be done after the next general election". And Mr Mascarenhas then asked a supplementary "Mr Speaker, at the possibility of accusing the Honourable Member again of being the worst Minister for Tourism in the history of Gibraltar, that is not a satisfactory answer. Have the Government anything further than what the Minister has said in terms of promotion seeing that tourism works in advance, as he well knows. Is nothing earmarked promotionally for 1992 or have I misunderstood his answer?" And the answer was "No, Mr Speaker, the Member has not misunderstood my answer at all. My answer is quite clear, there is a four year advertising plan which ends in 1992. The end of which will be in the autumn/winter and winter/spring campaign which is part of the four year plan which leads us into the summer of 1992, so that is the end of the four year campaign which is what I have explained. What will happen after that ie for autumn 1992 is something which will be reviewed after the next general election". Now it is unclear, Mr Speaker, what the expenditure that Government is budgetting in the present Estimates, the £400,000 for marketing, is for this summer's campaign or for the autumn

campaign? Certainly, Mr Speaker, if it is for this summer's campaign, it is simply far too late. It is too little, too late, they have missed the boat and it is money thrown away. So, that is clear from that interview with Mr David. They were his own views. It appears that he is no longer the Chairman of the Association. I do not know what friends of theirs the Honourable Members opposite have managed to pack into the Committee in London, but that were the independently expressed views of the professional marketing Gibraltar in London only six weeks ago and what they clearly.....

HON J E PILCHER:

Mr Speaker, if the Honourable Member will give way. We do not pack the Association with any of our Members. The Association has got its own rules of membership and only entities serving the Gibraltar market can apply for membership and the people or the entities which are members are all members of the industry in Gibraltar. I can go through them if the Honourable Member likes but I assure you they are the three major hotels, the two airlines, another of the airlines which is looking at the possibility of linking up with Gibraltar in the future and I think the Gibraltar Information Bureau. So it is not a Committee or an Association which is packed by GSLP militants, Mr Speaker.

HON F VASQUEZ:

Mr Speaker, what is certainly clear from that very candid interview given by Mr David was that the UK Association was certainly anything but full of praise for the efforts of the Honourable Member opposite as he claims was the case at this debate last year. What is clear from those sentiments and they are sentiments which have been repeated to me by other sectors of the industry, is that the down turn interest activity is caused not by any external considerations. Excuses have dried up. They have been caused by this Government's failure to commission and activate a proper advertising and marketing campaign in the United Kingdom which is where our medium and long stay tourists come from. From this side of the House, Mr Speaker, we call upon Government to recognise that we need a proper advertising budget. Even the AACR could get this right, Mr Speaker. It is not a question of whether we can afford it or not. It is a question of whether we can afford not to have a proper advertising budget allocated for the marketing of Gibraltar as a tourist resort in the United Kingdom. Unlike other recurrent expenditure tourist advertising pays dividends. It is not that the Honourable the Chief Minister took a comparison yesterday with the building of a new school. It is not like building a new school. It is not an intangible expenditure which yields benefit which can be quantified in financial terms. Advertising yields income. It is expenditure which generates income for the local economy. Now let us suggest that £1m spent on advertising Gibraltar effectively at the right time

would yield a sum far in excess of that. It has been suggested, Mr Speaker, that all the Members on this side do is criticise Government and not offer any constructive proposals. So I call upon Government to save the tourist industry. To do something to lift the tourist industry out of the crisis in which it finds itself now by taking what I consider to be three elementary steps. (1) To give the tourist industry locally immediately the priority that it requires, Mr Speaker. It is certainly the Cinderella of Government policy. It is a question of setting policy goals clearly and this Government setting themselves objectives. They set themselves policy goals in other fields. I do not see why they cannot do the same for tourism and tell us how many hotel beds they expect to fill in the years to come. They do not commit themselves in that way because they do not have that commitment to the industry, Mr Speaker. I suggest that it is time that they prioritise tourism and gave it that immediate priority that it requires. (2) That Government should rationalise Government services, by giving the Minister for Tourism direct responsibility for all issues relating to tourism and giving this priority ie the Minister should be himself directly responsible for everything to do with the marketing of Gibraltar and the improvement of the product here. Not to do it through the Gibraltar Tourism Agency or the Gibraltar Information Bureau. It is his responsibility. He should carry the can. Mr Speaker, it is a question of identifying responsibility and getting a managerial team worked out to achieve those as quickly as possible. That is not achieved by putting inbetween the Minister and the end product an infinite series of middle men and agencies etc. Finally, to allocate a proper and sufficient advertising budget and appoint an advertising company to see it through. If we can compare Guernsey, which is only twice our size after all, has a tourist budget of £3m. We have a marketing budget of £400,000 and it is my suspicion, Mr Speaker, that much of that does not get spent on advertising. We need to spend money advertising Gibraltar in the United Kingdom. Only in this way, Mr Speaker, can we prevent the lamentable decline in Gibraltar's tourist industry and further damage to that industry and to the economy generally in Gibraltar. Mr Speaker, that closes my contribution on the matter of tourism. There are one or two other matters that I would like to raise specifically on the question of justice and law which is a separate heading in the Estimates. Both the heading as expenditure and revenue which gives rise to various matters upon which I would like to comment and I would like to raise. It is clear that the estimated revenue from the Supreme Court in the coming year is £790,000, Mr Speaker. That is in court fees and registration fees. I am not clear yet from these estimates, Mr Speaker, whether that includes such things as

Admiralty Marshall's commission on the sale of vessels arrested and sold through the Admiralty Marshall. Certainly, Mr Speaker, that revenue estimate of £790,000 appears to be quite conservative in that the forecast outturn for the present year is well in excess of that at £1,146,000. The estimated expenditure for the Judiciary and the Supreme Court for the year is £955,800 which again seems rather conservative because the forecast outturn for the current year is £1,030,000. What is clear from the figures is that this sector of Government activity is actually in a position to pay for itself. Certainly on last year's figures there was revenue outturn of £1,146,000 and expenditure of £1,030,000 leaving a profit of well over £100,000 in that department alone. Clearly, Mr Speaker, this is a department which is almost paying its own way. Has paid its way this year and it has every likelihood of paying its way in the year to come. It is a good record, Mr Speaker, especially.....

HON CHIEF MINISTER:

If the Honourable Member will give way. He will see that the estimate last year was £700,000 and it is the same estimate this year as it was last year. It is not possible to predict with accuracy how many companies are going to be registered during the year. Obviously if he spends less time talking here and more time registering companies, the figure will be higher.

HON F VASQUEZ:

That is my job. The only point I was wanting to make, Mr Speaker, is that obviously last year it was a relatively conservative estimate. We have gone well over that estimate and there is every possibility that we will do that again. The point that I am trying to make, Mr Speaker, is that it is a successful sphere of Government activity. It is a good record especially considering that included in all this is the provision that Government obtains from the Attorney-General Chambers. In fact, included in the forecast expenditure also, are court fees, on what I presume is the court case being pursued by Government in the European Court of Justice. So quite clearly there has been substantial expenditure and despite all that there is every possibility that the judiciary will be in a position to pay for itself at the end of the financial year.

HON CHIEF MINISTER:

The answer is 'no', Mr Speaker. What the Honourable Member is telling me is registration fees and that is predominantly company registry. You could say the Company Registry pays for the Chief Justice and the Attorney-General and the Crown Counsel and so on, simply because we choose to put it down in the same heading. If we

put the Company Registry under the Fire Service then you could argue that the Company Registry is paying for the Fire Brigade, but in fact neither the Attorney-General nor the Crown Counsel nor the Chief Justice is doing any of the work that is producing the money.

HON F VASQUEZ:

Well I only made the point, Mr Speaker, because the company formation is something which has always been associated with the Supreme Court. The Registry is in the Supreme Court. It is an activity which is certainly allied to the whole provision of legal services in Gibraltar and something which has always come under that heading. The point is this, Mr Speaker, that if we are going to succeed as a finance centre, we need not only the expertise of local lawyers, accountants, trust managers etc, but equally importantly, we need a properly functioning system for the administration of justice. We need a well ordered, efficient and prompt judicial system, Mr Speaker, for the resolution of commercial disputes. It goes a great way to attracting much professional work to Gibraltar, for two reasons. It gives prospective players and investors in Gibraltar security to use the services of Gibraltar professionals and the speedy and efficient resolution of judicial work can actually have the effect of attracting such work to Gibraltar, both by, for example, international commercial contracts making Gibraltar courts the jurisdictional courts for the contract and also for attracting markets such as admiralty arrests in this jurisdiction. The Gibraltar judiciary as well as the profession, I dare say, does have a reputation for fair and competent resolution of disputes. We have that good reputation, Mr Speaker. What unfortunately this jurisdiction does not have is a good reputation for promptness. Delays are experienced in the resolution of commercial disputes in Gibraltar for two principle reasons. One is that we have two judges in one court and secondly that judges are forced to spend time taking, what I call, chambers applications in chambers. These are procedural matters which are time consuming and relatively straightforward. They are matters which in England are dealt with by a master, not a full judge. A master, a quasijudge, not as senior or as learned as a judge, can take these matters. We do not have a master in Gibraltar, Mr Speaker. From this side of the House, I would like to suggest that an answer certainly to the court question is easily at hand because we have the Magistrates' Court which is easily converted into another Supreme Court. The Magistrates' Court already I understand there are plans to move elsewhere. For two months earlier this year it was sitting at the Sergeants' Mess. So from this side of the House I would like to ask the Honourable Members opposite to consider (a) the conversion of the Magistrates Court into an additional Supreme Court to give the second Supreme Court judge, a Supreme Court of his own and secondly the appointment of a master which will be a relatively straightforward

and cheap appointment for a master to take chambers applications which would relieve the burden on the Chief Justice and the Additional Judge and give them much more time to deal with the hearing of court cases which after all is what they are supposed to be doing. It is suggested, Mr Speaker, that these expenditures would be insignificant and would grant enormous benefit to achieve the enhanced efficiency and enhanced reputation of Gibraltar as a jurisdiction. It is something that is certainly directly more revenue for the court and indirectly far more work for the local professions which ultimately will be for the benefit of the local community. The second point I wish to make on the question of justice and law, Mr Speaker, is the matter of the Legal Aid and Assistance Ordinance. At page 18 of the Estimates, under the Consolidated Fund Charges, we can see under the Judicature Item 1, that we have entered the figure of £8,000 for the provision of legal aid and assistance in Gibraltar. Mr Speaker, that by any standards is a paltry figure. Taking into account that, as we have seen, it is a department that raises a substantial amount of revenue for Government, to provide £8,000 for the provision of legal aid for the whole of the community is a paltry amount. Now the legal aid system in England upon which our own Legal Aid and Assistance Ordinance is based, Mr Speaker, was something which was introduced by the Attlee administration in England in 1945 and was seen as an essential pillar of the welfare state. I am not a socialist, Mr Speaker. The socialists are on that side of the House. I am a social democrat and if I, Mr Speaker, can say that the provision of £8,000 for legal aid for the whole community is unsatisfactory, I only wonder what view the Honourable Members opposite can possibly take.

HON CHIEF MINISTER:

Mr Speaker, I can give my view now. The answer is, he may not know this, that the sums charged to the Consolidated Fund, such as the one to which he has referred, are not voted by the House. They are inescapable and therefore the figure that is put there is a figure that the people in the court think is going to be the likely outcome, but we are not putting a vote and saying only £8,000 is available. The people in the court think that they are likely to spend £8,000 and I can tell the Member that the rules on eligibility were changed not very long ago and brought up to a level which was considered at the time to be very close to UK and was left in a flexible shape so that it could be periodically reviewed. He is not voting £8,000 in the House. There is no need to vote any money. It is a statutory obligation.

HON F VASQUEZ:

Yes, Mr Speaker, I know that and I accept that. The point is that the Honourable Members opposite are in a position to make legal aid much more achievable and

something which the ordinary man in the street can take benefit of. The point is that everybody should be guaranteed that access to the courts. In the same way that they are guaranteed access to health services. Two things are wrong with the system, Mr Speaker, and not one which the Members opposite can put right. The first of these is the rates of remuneration which have not been reviewed since 1983 and they are appalling. Yes, I can see that the Honourable Members are already suggesting that I am raising this so that I can get more for myself. The fact is that nobody, Mr Speaker, does legal aid work to get rich. It is work that all lawyers do out of charity because it simply does not pay. The brief fee for a jury trial at present, Mr Speaker, is £100. That is the brief fee. Generally the fees that are paid under the Legal Aid and Assistance Ordinance currently are running at approximately 25% of the rates paid in England and in England, as you will be aware those rates have given rise to a number of complaints. I am not suggesting that the rates be improved in order that members of the profession can earn more. What worries me, Mr Speaker, is that at the moment the Honourable Members opposite can speak to anyone in the registry of the Magistrates' Court whenever a case comes along and the defendant is seeking legal aid, the Magistrates' Court spends the best part of the morning ringing round every lawyer to see what lawyer will do this case out of charity. The question of the Legal Aid and Assistance Ordinance is meant to protect people who are undergoing a criminal trial and the way the system is being administered at present is simply not being achieved because the rates of remuneration are such that lawyers cannot be found to do the work. So that is the first point. It is absolutely essential that the rates of remuneration under the rules be reviewed and the second point also is the rate of qualification. The Chief Minister has indicated that this was raised. Yes it was raised two years ago for civil claims up to the level of £5,000. The point is that anyone with an income of over £5,000 per annum is not qualified for civil legal aid. What is clear from that, Mr Speaker, is that basically only people who are unemployed qualify for civil legal aid. Anyone in employment now is earning more than £5,000. Again that threshold is far too low. The Honourable Members opposite may not be aware but there are injustices being perpetrated because there are people who cannot afford to take their grievances to court and this is something which, with a little revision and no great expenditure we are talking about the paltry figure of £8,000 - that figure should not be substantially greater to ensure that individuals who do not have the material means are not deprived of the rights of taking their dispute to court. Finally, Mr Speaker, under this Head, I just want to once again mention the question of the Ordinances. I know my colleague has already referred to these. The state of our laws in Gibraltar are a disgrace and a shame. It has got into the situation, Mr Speaker, where it is affecting Gibraltar's reputation as a serious

jurisdiction. In the eyes of the law everybody is deemed to know what the law is. I question whether there is a single set of the laws anywhere in Gibraltar which are completely accurate and completely up-to-date. There is a plethora of statutory amendments. Amendments to amending ordinances, ordinances which have been brought into effect by legal notices, ordinances which have been partly brought into effect by legal notice, regulations, rules, etc, passed by legal notices, amendments to regulations and amendments to amendments to regulations. It gets to the stage, Mr Speaker, when one is researching the law and hoping that the advise that is being given on the law is correct. It takes legal research not to advise as to a legal problem but to advise exactly what the law is in any given circumstances. The situation is completely unsatisfactory and is something which has been brought to the attention of the Honourable Members opposite time and again. What we need urgently are annual updates of legal notices and ordinances with indices brought up every year at six monthly periods. We also need a complete new set of laws in a loose leaf matter to be printed and brought regularly up-to-date in loose leaf form. Without this, Mr Speaker, we just simply do not have the system available to us to know what laws are currently enacted. There are legal publishers that can achieve this, virtually at no expense to Government because once these have been printed, they can be sold. They are sold to practitioners. They are sold to law libraries all over the world and it is something that will virtually pay for itself if put in the hands of legal publishers. I can see no reason why Government should not take immediate steps to do something about such a disgraceful state of our laws. I am grateful, Mr Speaker.

The House recessed at 5.00 pm.

The House resumed at 5.20 pm.

HON M A FEETHAM:

Mr Speaker, I recall that in the closing remarks of my colleague, the Minister for Government Services, he described the Chief Minister as a person with great skill in the technical, in the economic and in the political arena. I obviously begin by saying that I agree entirely with those sentiments. In fact, I think it is an underestimation of the capacity of the Chief Minister. However, as far as I am concerned, I wish to simply describe myself as a person of average capacity and slightly politically motivated. I say that because I am not quite sure, Mr Speaker, of what has been said by some Members opposite about Gibraltar, about the way that we have been running the economy; whether, in fact, we have both been living in Gibraltar during the course of the last six to eight years. Therefore, in very simple language, without any scientific arguments, I want to describe the Gibraltar that I believe we lived in at the time we came into office. The Leader of the Opposition said that we had taken a great gamble and

that the work begins now in order to justify that gamble. I think, Mr Speaker, that there is a need for a correction there. I think the real work for Gibraltar started in 1985 with the opening of the frontier and the declaration of the British Government that the dockyard closure was imminent. I am not going to say what should have been done or should not have been done from 1985 to 1988. I think, what I am entitled to point out to Members opposite, who have got short memories, is to say how we found Gibraltar in 1988. The Gibraltar economy as the statistics and the scientific arguments would demonstrate to those who are cleverer than me, was stagnating in 1988. That GSL was in serious difficulties in 1988. That there was a mass exodus of Gibraltarians going and living in Spain - never mind Sotogrande for those who are quite entitled to have their second homes there or their first homes there, nobody is criticising that. There was a mass exodus of Gibraltarians leaving our shores to live in Spain because there was no housing in Gibraltar for people to live in. There was a rundown infrastructure available here already overburdened by the three years of the opening of the frontier putting excessive demands on the economy of Gibraltar. Those Members opposite who are in the legal profession will agree that there was a lack of positive legislation in different areas that were required to begin to stimulate growth in different areas of our business community. Whether we like it or not, the world was going into recession in 1988. I do not have to remind Members that it did not happen now. It did not happen twelve months ago. It was going into recession in 1988. It was seriously affecting the British economy or are we forgetting already the arguments put forward during the recent election by the British political parties in the United Kingdom. If I am being reasonable in the description I have put over to the House, then on coming into office we had to exercise options because, at the end of the day, if you want to govern Gibraltar you have to go for an option. An option must be for the political point of view of what economic programme we put into effect in Gibraltar to stop this stagnation, to provide alternative jobs and to stimulate growth. There are the options that we tried. Of course, there was the other option and the other option was to continue what the AACR were doing. Let me tell Members opposite that we discarded that option. Of course we had to discard that option. If we had gone down that particular road which is maybe what the Members opposite are advocating that we should have done, I can tell you for sure that it would have been no good talking about the 2,000 jobs that we are going to have in the MOD which the Member opposite Mr Corby was saying. There would not have been 14,000 jobs in the economy today if we had continued to go the AACR way. But I am not going to be talking about the AACR way. I am talking about options. We went for our option. Our option, by the very nature of what we wanted to do, was to create a strong economy over a period of time. It would have been ludicrous

to have decided to beautify Main Street so that Members opposite who were predominant in the Chamber of Commerce and in the trading community in Main Street would have made more money. That would not have been the sort of action to have taken and it would have been eaten up by the recessionary spiral that has taken place in the last four years. That is what I put to you. That would not have created real economic growth or real jobs. Why? It is very simple. If Members opposite would care to look at the statistics before the opening of the frontier, one of the arguments that was being put over by the trading community in Gibraltar was that, in order to man their shops, they had to have a certain level of employees and that most of them were underutilised and I can understand it because it was a numbers game. What the opening of the frontier did initially, was to provide a better utilisation of labour. It did not create jobs immediately. It created a more effective utilisation of existing labour. Therefore, in terms of cost to the trading community it began to bring it down and it began later as a result of what has been happening to create a number of jobs. If Members opposite are seriously telling this House that by not having looked in two or three particular areas of our economy, we have missed an opportunity, I have to take issue with that view. We were not going to accept going on the road that the previous administration had gone, otherwise we would have elected them into Government. One thing that we certainly would never have exercised as an option would have been to go to the British Government cap in hand, not for a hospital, but to say we need budgetary aid and to let the Governor in the Convent Place run Gibraltar and give all the powers to the Financial and Development Secretary to run our economy. No way! The Financial and Development Secretary, with respect to him, is a Civil Servant. The political responsibility for the economy of Gibraltar runs with the people who are elected. That is where the power stays, Mr Speaker. We took our option and our option was to begin to attempt to consolidate our economy. To begin to attempt. Two vital areas that are prerequisite are obviously land and the people of Gibraltar. Two vital elements in creating economic growth. It is a fact that Gibraltar was predominantly in the hands of the Ministry of Defence. It is only very recently, and it is no good talking on hindsight, that we made a very important decision. We were not going to get into an argument with the MOD, the Admiral, the Air Commodore, the Brigadier about what they should do or what they should not do in Gibraltar. We went into a land reclamation programme because it was necessary to create land to create economic growth and we did it for two reasons and two reasons alone. One was so that my colleague could provide all the houses that were necessary and bring the Gibraltarians back to Gibraltar where they belong and not in La Linea and to be able to give the people of Gibraltar an opportunity to go into home ownership for the first time in their lives on a mass scale and increase the home ownership from 6 to 25%, as we have done and to try to attract investment to Gibraltar. Now investment to Gibraltar,

Mr Speaker, seems to be a sour point with some of the Members opposite or some of the Members of the Party opposite. I just wonder why it is that some Members opposite appear to be so anti investment in Gibraltar. Why? Well, I will tell you why. What the Members have been saying only three months ago during the election campaign, Mr Speaker, was that all the things that we have done during those three years, in fact, was to spend £100m in investing in the economy to stimulate it. That is what you all said and today the proof of the pudding is in the eating. We did not spend a penny. All the investment, all the growth in the private sector; in the economy of Gibraltar up to very recently, up to nine months ago when we started borrowing money, was done through private sector investment, Mr Speaker. That is where the growth was. All of you, including the previous speaker in the radio debate with me and Mr Britto, were arguing that we had spent £100m in three years. None of that is true. That is a big lie. So do not talk to us or preach to us about hypocrisy. It is about telling facts and the facts are there, Mr Speaker. So about the private sector investment that came along, which must be a credit to the Government, I wonder what the Members opposite would have said to the Danish investors. "No, go away, we do not want your investment" and having said that presumably they would have also given up the millions of pounds that the Danes have paid for the land that I reclaimed. If I had told the Danes not to pay for the land on which to build, presumably they would not have had the building components factory with 120 jobs for Gibraltarians, that has built the Europort and is providing components for the Gib 5. Presumably they would have been against that. We have created the land and we have brought investment to Gibraltar. The incinerator would not be there because of course Baltica would not have been in Gibraltar. I think, Mr Speaker, that in terms of my responsibility in putting into effect the development plans for Gibraltar, I think, that we have carried out what we wanted to do. We made it very clear from the very beginning. Get land, attract investment and provide economic growth. The Member opposite is now saying that the work begins now. That we have got to fill up the offices. That we have to sell the flats. Is it not better to say that we have got to fill up the offices and that we have got to sell the flats than to have nothing at all there to do. Is politics not about a continuation? Did we ever say, Mr Speaker, that we only wanted four years to cure Gibraltar. We need an awful long time because today we are in just as serious a situation as we were in 1988. The only thing is that hopefully we may be in a better position to manage with all the competition that we are up against everywhere.

HON P R CARUANA:

If the Honourable Member will give way.

HON M A FEETHAM:

No. I am not going to give way because I do not think you need to justify your position. You have made it very clear, Mr Speaker, so therefore, at the end of the day, it is a matter of having exercised judgement. It is a matter of having gone down a particular road and, in my opinion, we are in a stronger position to attempt to consolidate Gibraltar's economy today than we were in 1988. That we have begun to borrow money for the 50/50 and that we have gone down the particular road of the industrial park, again it is a matter of judgement. We believe that, as my colleague the Minister of Housing has already explained, it is a sound decision that we have taken in assisting people to purchase their houses. We stand by that. I believe that it is a sound decision to have built the industrial park and time will tell. I would have great pleasure, quite frankly, in seeing it become a sound success. There are enormous areas of potential in Gibraltar that we have not even begun to look at, because we are virtually a very small economy with very limited resources and there are only twenty-four hours in the day and the Government tries to do as much as possible in trying to attract new businesses to Gibraltar. I am convinced that we will be able to attract new businesses to Gibraltar in the light manufacturing areas and in areas that we feel could use Gibraltar as a base for exporting into the Community. In my view it is a risk worth taking. At the same time I am sure Members opposite are not protecting vested interests in Gibraltar - I also thought and time will tell, that quite a lot of Gibraltarian businesses require to expand and were being constrained in their capacity to grow because storage space is important to them. Time will tell whether in fact this is not the case. Indications are the opposite. Of course I will not be pushing anybody in that particular direction. If anybody is pushing them in that particular direction, it is the leaseholders and the landlords who are actually increasing rates to such a level (let me say that most of the leases are Government and they are subleasing and increasing rents) that they are actually pushing people into the industrial park because it becomes more competitive going in that particular direction. The Government is not exploiting anybody. Having said that, Mr Speaker, the termination of development plans is virtually coming to an end with this meeting of this House. You will see that the reclamation is virtually complete. All the infrastructure is already virtually complete. There are some tying-up processes being done but all the infrastructure is now there. The private investments are now coming on stream. The industrial park is the one that is due for completion in the early part of the next year. So, therefore, that is not quite complete. Generally the things we think were necessary to have done have come to fruition. The next thing is where do we go from here? Of course, although nothing new, nothing scientific, it is important to sell Gibraltar. I think, everyone of us in our own way, in

our own particular profession, are trying to do that daily. What I think it does need is, of course, more coordination. More understanding of what the right hand is doing from the left hand, so that everybody knows exactly what we are selling. Insofar as business opportunities and the wider issues involved, the setting up of the Gibraltar International Business Board is a step in the right direction. I have to congratulate those initial pioneers in the private sector who have gone about setting-up that Board. I think it is a step in the right direction. I think an initial attempt on my part when we were practically entrenched on financial services was the setting up of the team with me. I asked people to serve in their personal capacity with me and we were able to get the financial services in place. We were able to get the Financial Services Commission in place despite the recommendation from official quarters who wanted to keep it inside the Government. I thought it better for it to be done outside the Government with industry expertise behind it. I think it has proved to be correct and I think it is the right policy to have pursued. I hope that that having happened, the Business Development Board strategy will take a similar line and will complement what the Government and Ministers are doing in their respective departments in terms of marketing their product. It will complement what we are doing. I think results will be seen. I hope results will be seen. Quite frankly, whatever Members opposite may say or not say, the reality is that Gibraltar has to survive. One of the things that we cannot do for political gain or to have a bigger headlines in the newspapers or whatever, is to shoot ourselves constantly in our own foot. We have got to be careful of what we say so that our image outside is correct. So that what we do say and what we do print is not a constant barrage of Gibraltar's ailments because that is what is falling in the hands, not just of Spain, but of other people who are constantly manoeuvring to try to bring Gibraltar down. I hope that in looking at the marketing exercise and at the work of the next four years that it is a united Gibraltar approach on that issue. Because I cannot overemphasise our serious predicament. It is not whether the Government can pay the debts; surely the Government can pay their debts. It is a serious predicament of being left out of the changes that are taking place in the Community in terms of business opportunities and the worldwide changes that are taking place that we have to capitalise on. Because we are small, we have got to try that much harder. I hope that the urgency that I am trying to express in what I am trying to say quite sincerely filters through and, at the end of the day, we think before we speak out and we think before we say things that could do us more harm than good. So I welcome the Business Development Board, I will work closely with that Board insofar as my responsibilities are concerned and we hope that it will be a success. Mr Speaker, I think, really a lot has been said. I do not want to continue to repeat what Members opposite quite well know,

so I am not going to prolong my speech. There are two or three points that have been made on the shipping registry. At Committee Stage I will have a lot more to say about that. On the consumer aspect, let me repeat once again that consumer matters is not just about lodging a complaint. A lot of consumer - related activities constantly take place in Gibraltar. In public health and in finance and in trade matters and so on. EEC Directives are being brought up to date. I can assure Members opposite that in the next twelve months we will resolve the problems about the office where the complaints can go. I hope that Members opposite will find it acceptable, Mr Speaker. Having said that, just to summarise; the four years development plan of the Government is now in place. We now enter a new era of marketing Gibraltar or trying to attract businesses into Gibraltar. There is a big market out there, but there is an enormous competition lined up against us. We will see how successful we are in the next four years. I hope that the message I have tried to put over; that it will take an awful lot of effort by everyone is understood. I think the key to our success is understanding the message that we have got to be more professional and less amateurish in our approach to all the things that we are doing, Mr Speaker.

HON LT-COL E M BRITTO:

Mr Speaker, before I start on my contribution proper to this debate on the Appropriation Bill, I think, it would be right and fitting to remind the House, as I am sure Members know or at least some Members maybe do not know, that it is parliamentary custom to congratulate speakers who make their maiden speech on any particular occasion and that the usual practice is for the speaker immediately following the maiden speaker, if I can put it that way, to do so. However, I appreciate that this model probably suits Westminster more than a debate in the House of Assembly on the Appropriation Bill, so therefore, maybe that is possibly why it has not happened today. I would nevertheless like to take on the job of doing it myself, mainly because my colleague the Leader of the Opposition has already spoken and secondly because I think it is probably fitting as I can call myself the longer serving Member on this side of the House. I think, all five speakers who have had maiden speeches today have spoken well and have presented well thought out structures and well prepared speeches. Mr Speaker, there have been two exceptions. I know the Honourable Mr Baldachino expressly congratulated Mr Ramagge and the Honourable Mr Pilcher did the same to the Honourable Mr Francis at some stage, but it is hardly the occasion to attack a Member on the opposite side of the House by saying that he is making a speech on his hobby horse or by knocking him on without having actually congratulating him first. I will not labour the point. I think congratulations are deserved and I hope we can keep that tradition, possibly one of the nicer parliamentary traditions for the future just as we have had it in this House in the past. Mr Speaker, there

is no doubt and Members on both sides have made the point during this debate, that the worldwide recession that we have been experiencing has had serious effects on Gibraltar and on its economy. This we all know is particularly felt in the private sector and especially in the finance centre and in the commercial and tourism orientated areas of the economy. But, Mr Speaker, despite reports from the Chief Minister of increases in GDP up to £300m for the coming year from £150m in 1988, there has also been reference, I think, by Members on both side; I think the Honourable Mr Feetham did it just now, there is, if not crisis, a situation approaching crisis in Gibraltar today. There are certainly fears being openly expressed out in the market place. We have heard of a major player in the hotel industry on the verge of having to close down. There is talk in the town of businesses having to close down and some having had to do so already and this all comes, as we are all aware, at a time that is particularly worrying and particularly difficult because of relatively high unemployment and the possibility of increasing unemployment as the job losses expected in the MOD take place. The Honourable the Minister for Labour and Social Security gave me, in answer to a question, the latest figure. It was 490 as opposed to a peak figure of 559 in September 1991 given in answer to another question from the Honourable the Leader of the Opposition. This shows that there has been a marginal drop but, I am sure the Chief Minister will agree, not as substantial a drop as I am sure he would have liked to have seen. Indeed the Chief Minister himself in his contribution - I hope that to a certain extent it may have been due to the effects of the travelling that he did in the few days immediately before the meeting - to this debate yesterday was not the Chief Minister that I have seen in the last previous four years in this House. He was not the standard bearer and the ensuring confidence and the Chief Minister who has given us speeches in this House which has shown confidence in what is happening. We have heard from him reports quoting experts on the degree of recession expected to carry on into 1993/94. We have heard from him not only that the Improvement and Development Fund is declining for reasons which he has explained and which we understand, but more worryingly his statement that, maybe tongue in cheek, I hope, he was not sure how the Improvement and Development Fund is going to be financed in 1993/94. But most worrying of all, Mr Speaker, is the figure of 14,000 jobs as a target for the next four years because, if we go to the Abstract of Statistics for 1990, we find that already in 1989 the number of jobs in Gibraltar was 13,974 and in April 1990, it was 13,843. In the Employment Survey for 1991, it is reported that levels of employment is nearing the 15,000 mark, totalling 14,782. I say worrying I assume the Honourable the Chief Minister will share the feelings because quite obviously, if we are intending to maintain the figure of 14,000 projected over the next four years that we have had three years back, the implications are that

on the private sector we have to increase the jobs - to put it in his own words, keep on running fast to stay in the same place - enough to take up the slack that the job losses are going to provide. I did not, with respect to the Honourable the Chief Minister, get from him, in his original contribution yesterday - I hope he will alleviate my fears when he exercises his right of reply - the confidence that this could be done. Something which I think was reflected in the Honourable the Minister for Labour and Social Security in his own contribution when, having said that it was Government's priority to keep down unemployment - which I found rather surprising for a Socialist - he then talked about the ideal unemployment levels staying between 3 and 5%. But anyway that is a diversion. He then went on to say that even if we had the priority of keeping down unemployment, and I quote "That they would try to take measures to reduce this unemployment". Hardly the level of confidence that I would have liked to have seen from that side of the House. Incidentally, Mr Speaker, if I can digress for a moment at this point, the Honourable Mr Mor also made reference to a comment by my colleague the Leader of the Opposition when he said that the Leader of the Opposition had said that social insurance had increased over the last four years and he corrected him by saying that it had not. What my colleague meant was social insurance in the terms normally accepted of the value of the stamp, which as we all know, is in the order of £17 to £28 over the four years. Mr Speaker, because of the absence of mathematical information in the Estimates, we are not really in a position to comment from this side of the House on the Honourable Mr Moss's statement - I think it was Mr Moss - that despite the difficulties, and I think I am quoting him, and tightening up due to recession there has been substantial progress in training and substantial funding in it. It is not possible for us to comment on this.

HON J L MOSS:

Mr Speaker, if the Honourable Member will give way. I may not have a crystal clear recollection of what I said, but I do not think I mentioned the word fund or funding in that particular context.

HON LT-COL E M BRITTO:

If that is so my note is not clear, Mr Speaker. If that is so, I will withdraw what I have said. In fact my note says substantial progress in training as opposed to funding, so, yes, I think that you are probably right. It may have been a comment from somebody else that I will not bother to look for now. What I am particularly concerned about is the retraining of individuals that has been referred to more than once in order to take up the difficulties in unemployment. Periodically we get generalised information from Members on the other side or through the media, of courses being offered by the Employment and Training Board and of the Youth

Training Scheme but in general terms - with the qualification that I have already made that it is impossible to make an accurate judgement or assessment -we feel that because of looming unemployment and because of the fears that we have all expressed, we feel that more resources should have been put into retraining to take into account the long-term job losses that have been expected. Incidentally, again if I can digress, the Honourable Mr Moss made reference to training in the Youth Training Scheme and said that he had not had suggestions or criticisms for alternatives that he had thought worthwhile taking up. Maybe the reason is that Members on this side of the House are not well acquainted on what is actually going on in the Employment and Training Board. If I could suggest to the Honourable Member that I would welcome an invitation from him to see the workings of that department because so far I do not feel that I have had sufficient information.

HON J L MOSS:

The point that I wanted to make, Mr Speaker, in reference to that is that a number of Members on the other side of the House, in fact, must have personal knowledge of how the scheme works because, as employers, they have taken on cadets. But I take the point that the Honourable Member makes and when we have finished our session in the House, I am quite prepared to invite him to my office and give him a detailed explanation of how the scheme is working.

HON LT-COL E M BRITTO:

I am obliged to the Minister. In fact, I have experience of how the scheme works in a personal capacity because I have had members of the Youth Employment Scheme and maybe that is one of the reasons why I have reservations which I will not go into in public and I will explain to the Minister when I meet him. Returning to the Estimates themselves, Mr Speaker, and to the mathematical content of these Estimates, I cannot avoid a passing comment on the worrying and the continuing trend established in previous years of finding ways of denuding these Estimates by leaving out information. As it is a subject of a censure motion and because of the directive from you, Mr Speaker, I will not dwell unduly on the £30 million excess of revenue that we understand has been extracted from these Estimates, except to say that I think it is totally wrong and completely unacceptable for any Government or anybody responsible for public funds to work on public funds in a way that does not disclose full information in the way public funds are being handled and there are

HON CHIEF MINISTER:

For the record I will just make the point that this is the allegation made by the Opposition and that when the motion is discussed we will see whether there is substance.

HON LT-COL E M BRITTO:

No, Mr Speaker, with respect, the allegation is.....

MR SPEAKER:

He just made an explanation. Let us leave it at that and carry on, otherwise we will have a debate before we know it.

HON LT-COL E M BRITTO:

And there are other examples, Mr Speaker, of this. For example, in previous years we have seen expenditure in tourism, which my colleague the Honourable Mr Vasquez already referred to, totally disappear from these Estimates, or almost totally except for a brief mention this year in two items. This year it is the turn of the Medical Services. On page 81 under Head 19 'Reallocations and Subventions' there is no provision this year for the Gibraltar Health Authority or indeed for any contribution to the Social Assistance Fund. Last year these two added up to £17m. Now, Mr Speaker, it is obvious that neither St Bernard's Hospital nor our medical services nor the Health Centre nor Community Care Ltd are likely to be closing down, so it is equally obvious that they are going to be funded from somewhere and that is obviously from the revenue that we know is not going to be shown.

MR SPEAKER:

Perhaps you could ask those questions at Committee Stage.

HON LT-COL E M BRITTO:

We shall see, Mr Speaker. But the point is that, at the end of the day, we are deprived on this side of the House, from knowing what funding is going into the Health Services and into Community Care to take two examples. Mr Speaker, I must stress the point that Government handling and spending of public funds in any democracy is subject to a system of checks and balances which is designed to safeguard all those concerned in such handling and should be made in such a way as to give as much information as possible. I must make the point that this Government is trying to do exactly the opposite to deny information to the public, to the media and even to the elected Members on this side of the House and I think that they will be answerable for it in due course. Mr Speaker, I do not want to stress the point, but all I will say is that if Members opposite do not agree, and maybe the Chief Minister can answer the point when he gets up in a few minutes, with what I have just said maybe he can explain to me why having decided to put the changes that he has made....

MR SPEAKER:

All that is going to come up in the motion. I am afraid

that you have the option of talking about that at this stage or wait for the motion and you decided that you would wait for the motion. You cannot have it both ways. So I am afraid I have to call you to order. You have got to drop that subject now.

HON LT-COL E M BRITTO:

Right, Mr Speaker, the subject of another substantive motion is the setting up of a Parliamentary Accounts Committee, something which exists

MR SPEAKER:

You are now going to anticipate the motion. Be careful, you see, because you cannot put a motion which you want to talk about later and start talking about it now. So I am afraid that I have to call your attention. That is anticipation and the rules do not allow it. So you will have to wait for the motion.

HON LT-COL E M BRITTO:

I just wanted to say that this is something that exists in all democratic parliaments and that has the powers of investigation into Government accounts and that I am afraid that if the Government sticks to its records that they will use their powers to defeat this motion. Coming on to government services, Mr Speaker, which is my responsibility to shadow, I will first of all like to establish a general principle so that Members opposite understand how we see things from this side of the House just in case there is any difference of opinion. We in the Opposition, Mr Speaker, consider that the essential services, like electricity, water, refuse disposal, telephones, remain a Government political responsibility even if they are privatised. Whilst we understand that after such utilities are privatised, it is not really possible or even practical to give financial information within these estimates, we nevertheless hold the Government politically responsible and answerable in this House for such things as the continuance, the quality, the efficiency and the cost to the public for such services. Earlier on in this meeting at Question Time, I attempted to obtain information from the Honourable Minister for Government Services regarding the terms of the contract between Government and the entities Nynex and Lyonnaise des Eaux. As you have already heard from my colleague the Leader of the Opposition; and I will not bore you by quoting again, the Minister refused to give the information that was being requested. I cannot resist the temptation to recall how incredible it is that after only four years in Government that the Honourable Chief Minister, who said in the Budget debate of 1988, and I quote from Hansard "We certainly would never have accepted a clause in an agreement that prohibited Government from making the agreement public", should today be allowing a Minister in his Government to make such a statement. The Minister,

in fact, Mr Speaker, made an attempt to distinguish between the contract with GibTel and the AACR and the contract between the GSLP Government and the Lyonnaise des Eaux and Nynex. But I put it to you, Mr Speaker, that whatever the differences, the principle is exactly the same and the principle is one of accountability and of people being informed of what is going on. The Honourable Mr Perez also told us that he had followed up the problems with Lyonnaise des Eaux that the public were complaining about and that he thought that everything was now corrected and everything was now alright.

HON J C PEREZ:

Almost alright.

HON LT-COL E M BRITTO:

Almost alright? I will not labour the point. All I wanted to say is that my information is that everything is not completely correct but I hope the Minister will succeed in correcting what faults remain and in providing a better service to the public. On GBC, Mr Speaker, we feel very strongly, as we have already said on this side of the House, about the question of support for GBC and in this we are a bit concerned that the restructure of GBC seems to have been done with fewer financial priorities in mind without a certain degree of attention to the marketing potential and the competitive situation of GBC vis-a-vis satellite television. We stress once again that we feel that GBC should carry on, has to carry on and ways and means have to be found of doing this. Perhaps at this stage I can take up the Minister for Government Services's invitation to comment at the Committee Stage on the Improvement and Development Fund grant of £150,000 and clarify for what sort of equipment. That is whether we are talking about capital expenditure or whether we are still talking about decoders. Also, Mr Speaker, on whether he can give us an indication of what effect the new Broadcasting and Telecommunications Ordinance, which he announced and which will do away with the monopoly of GBC, will have on GBC itself and what GBC itself fears on the implementation of this Ordinance. In his final comment which I would like some information on, he talked about no move for the prison, but about major repairs for the prison. I cannot find, and no doubt the Minister will correct me if I am wrong any reference in the Estimates or any provisions for these repairs. Mr Speaker, going on to Electricity, looking in particular at page 29 Head 3, 'The Electricity Undertaking', we find another example of deliberately not disclosing all the available information in these Estimates. Now following the closure of Kings Bastion, we understand that the necessity for the Estimates to be restructured and we see that they now show a total estimated expenditure on the Electricity Undertaking of £4.63m for 1992/93 against a forecast outturn for 1991/92 of £6.45m, a supposed saving of £1.81m. Now this estimated expenditure of £4.63m is

balanced on page 12 by a contribution of £5m from the Electricity Special Fund. This neatly balances the account but we are left completely in the dark about the true financial state of the electricity undertaking. Coming onto refuse collection and disposal - Head 15, page 61 - 'Support Services', I notice with some concern that the cost of collecting refuse has gone from £545,023 in 1989/90 to an estimated £1,540,000 for 1992/93, an increase of 85%. Similarly the cost of refuse disposal has shot up from £529,842 in 1989/90 to an estimated £1,050,000 for 1992/93, an increase of 98%. Combining those figures it will cost us 91% more to collect and dispose of our rubbish this year than what it was costing in 1990. During the same period, Mr Speaker, we have seen both the collection and the disposal systems being privatised and I will again invite the Honourable Minister for Government Services, during the Committee Stage, to give us an explanation for these increases. Before I wind up, Mr Speaker, I would like to make reference to one or two comments from other speakers on that side of the House. Initially to the Minister for Health Services, Miss Mari Montegriffo, to welcome the commitment to ensure that all these sporting facilities are in place for the Island Games and to express a concern that we, and I know that this is not the Minister's direct responsibility, make the best possible show in the running of these games by ensuring that the organisational, the official and the administration sides work as smoothly as it should do. I stress that I appreciate that it is not her direct political responsibility, but I have personal fears about the number of people necessary to run an event of this size as officials and administrators and so on. I hope that my fears are unfounded and the event is a tremendous success. Coming on to the Minister for Education, the Honourable Mr Moss, I am glad to see, and maybe I ought to declare an interest, that access funds are going to be available as from the following term and perhaps it will be interesting to know from those students who are affected whether in fact there will be any element of backdating in any claims or whether it will be purely forward looking measures. I do not want to get into an argument with him on the question of capitation but having taken his point that education has now become the biggest spender, our feedback and our information on this side of the House comes from professionals I understand, and from others in the field that even if capitation has not been frozen, as the question in this House was termed I would stress the need for funding of books and equipment to be maintained at an adequate level to at least, keep pace with inflation in our schools. I was surprised, I must admit, Mr Speaker, to hear the Minister for Housing - someone who I have learned to respect considerably; not to say I did not respect him originally, for his work and his efforts during the four or five years that I have seen him working in this House and for his efforts and what he produces - refuse today in answer to an invitation from my colleague to give the information on how the houses in Transport Lane, the ex MOD houses, had been

allocated. If it is, as the fears were expressed on this side of the House, that this housing was not allocated by the Housing Allocation Committee, then, I think, it is reprehensible on the Minister not to stand up and say so and to say why the system has been changed and what system has been used. A point arose more or less at the same time when my colleague, the Honourable Mr Ramagge, was challenged by the Honourable Mr Perez on the question of a possible fraud with stamps, that he should be going direct to the Police and not bringing it up in this House. I think it is perfectly legitimate for my colleague to have brought it up in this House because it is a matter of possible loss of Government revenue. Quite apart from any obligation to contact the Police on the subject, I think that there cannot be any doubt that it is a perfectly legitimate item to have brought up here.

HON J C PEREZ:

Will the Honourable Member give way?

HON LT-COL E M BRITTO:

Mr Speaker, I am very tempted to say no, because yesterday when I asked the Minister to give way, he said no to me. But being soft at heart I will forgive him on this occasion, but I promise that I will not do it again.

HON J C PEREZ:

Mr Speaker, I just want to inform the House that I have contacted the Police and that Inspector Mackay is to meet Mr Ramagge to take the evidence that he has and investigate his allegations.

HON LT-COL E M BRITTO:

Coming to the Honourable Mr Pilcher, I will just take him up in one small point. He complained about my colleague the Leader of the Opposition's comment on the law books and Hansard in this House by saying that it was not a priority for the Government side to spend money on the legislature less the electorate should think that we were pampering ourselves. I think that the comment is totally out of place. It is a perfectly legitimate comment that the Leader of the Opposition made that we, as legislators in this House, need to refer to law books that are up to date and that the work of those of us who are not professionals in the law field is seriously hampered by not having books that are up to date and not having Hansards made available to us more quickly. Again I stress what the Leader of the Opposition said. This is not meant to be any reflection on the staff of the House of Assembly who do an excellent job with the assets and the numbers that they have available, but the points that we are making are that those assets and those numbers ought to be increased. Finally, Mr Speaker, on the Honourable Minister for Trade and Industry, I

find it difficult to comment on his rather impassioned exposition of the gospel according to Michael Feetham on the state of Gibraltar and the way things were. But I cannot let his comments on the industrial park go by without saying anything. I share the hope which he expressed for its success but it is obvious that, at least until such time as rent in the private sector catch up and surpass those of the industrial park, the one basic advantage of an industrial park - I am quoting the Chamber of Commerce, not quoting myself - which is low costs and low overheads, has not been made. In fact, the Chamber of Commerce Report for last year specifically described it as a road to bankruptcy and pressing costs. But as the Minister said several times, time will tell. I am glad to see that on consumer protection, at last we have prevailed on Members on that side to do something about it and that changes are promised for this year. I hope that next year when you stand up in this House these changes will have already taken place. In conclusion, Mr Speaker, I would just like to dwell very briefly on Head 1 of the Estimates - Audit on page 22. It is just curiosity as much as anything else, but it was last year that the Honourable the Chief Minister said that he was very happy with the results being obtained by contracting out the auditing of Government accounts to private accountancy firms and in doing so reducing the manpower of the Audit Department from sixteen to six. Now despite this reduction, Mr Speaker, I see that the budget for the Audit Department this year is back almost to the level of 1991, before this policy was introduced. There is now virtually no financial saving. I also notice that under Head 18 on page 76, the Accountant General has actually reduced his estimate for contracted accountancy services. As I say, as much for curiosity as anything else, we would be grateful if the Honourable Chief Minister would comment on these figures and on the continuing success or otherwise of this policy to use private accountancy firms. Thank you, Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, it is not easy, in winding-up, for the Government on this year's Estimates of Revenue and Expenditure to defend the policy of the Government for the management of the economy of Gibraltar when it has not been attacked. I am therefore grateful to the Members opposite for their failure to find fault in our strategy because that is the essence of what we have seen here and of course I am not complaining. They have, in fact, expressed reservations as to whether we will be totally successful in achieving the results that we want but they have not questioned the desirability of the results. They have questioned the attainability of those results. Let me say, of course, that it would have been extremely difficult for the Members opposite to do anything other than what they have done today in this, their first Budget, given what they were saying to the people of

Gibraltar three months ago in a general election. Therefore, in defending the policy of the Government, I have no choice but to defend the policy of the Government in the context of what they claimed their strategy to be when they were trying to become the Government of Gibraltar because we have not seen it reflected in anything they have said here in this House. The last speaker drew attention to the figures in the Employment Survey which shows that the total level of employment in Gibraltar in the last year reached 14,700 and that, in fact, we are setting ourselves the target of maintaining employment at 14,000 between now and 1996. Well, the answer is of course, that we have reached 14,700 because we have built Europort and we have built Westside I and Westside II and we are not planning to build a Europort every two years from now on. If we were, then obviously we would require 2,000 people in the construction industry, which is abnormally high. I have already explained this when I opened. I said when I opened that one of the fortunate things about the structure of our economy is that if we go through a construction peak, we draw-in resources. We do the construction but unfortunately the resources then go elsewhere and we are not stuck with them. It would not be possible to build at the rate that we have built in the last three years if we had kept our construction industry at the rate of employment it was in April 1988, which was 800 people. With 800 people it would not have been possible to do any of the things we have done in the last three years. So, on the one side we see the expenditure of money and on the other side we see the increase of people employed and when the money has been spent the people stop being employed. It is that simple. Fortunately for us it does not mean that we will have permanently on our books 1,000 construction workers because those are construction workers that are mobile and they have been imported for specific projects and they will move because that is the way they normally work. They are used to it. They go to Seville and when the Expo is finished, they do not sign on the dole in Seville, they go somewhere else and therefore we have got mobile construction workers and I said in my opening statement that this is in fact not new. The development of the MOD complex at the south end near the Lighthouse was built by a company called Cybarco in the 1960s which was a Cypriot company that brought in Filipino workers. When the project was finished they went back. It has been a feature of our economy and it continues to be a feature of our economy and therefore we are looking at what Members opposite were calling the underline rate of employment. They seem to have forgotten it. We have not. That underling rate of employment, Mr Speaker, before we came in, before the construction boom, was under 13,000 in April 1988 and that is the one we expect to keep at 14,000 with the construction industry which will be in the order of 1,000 jobs. We consider that to be the sustainable long-term demand for construction workers in an economy of our size, not 2,000 like it is today. But, of course, it does mean that we have

to increase output. We have to increase the efficiency of our structures just to compensate for the 400 jobs that we are going to lose in PSA in the next three months. Our strategy is not one of gloom. I hope that I can reassure the last speaker on the opposite side that in fact I am not pessimistic but I think it would be wrong to minimise the difficulties to give the impression that this is going to be a piece of cake. It is not going to be a piece of cake. It will take a great deal of effort and a fair measure of good luck to succeed in a situation where everybody else is hoping not to decline. That is to actually succeed in growing. Everytime I go out I come back with an even worse understanding of what is happening outside Gibraltar from what other people tell me. I have just been outside Gibraltar, as a Member said, and I have been talking to people who are very large players in the international economy. They are talking about a recession lasting four or five years. As I have mentioned in my opening remarks the Treasury economic model for the United Kingdom has just been revised downwards and they are now talking about zero growth in 1992 and about a decline last year of 4.9% in the GDP. We are still predicting what would be considered to be very high growth everywhere else in the world. But we are saying we need to do that, not to be 50% better off, but not to decline. What we are doing is to protect our standard of living as it is today against a background where other people are accepting declines. We are not prepared to accept declines. Of course, the position that we face in this first budget of our new mandate has to be necessarily that having done what we said was needed which was investing heavily in resources, in infrastructure, in buildings, we now have to go and sell them to customers. We have never hidden that fact. We did not hide in the election campaign, that in our judgement, we could not go out and sell the stuff before we had it and therefore if there was a risk being taken, the only risk was that we would not be able to sell all of it. But there was no doubt that without it, there would be nothing to sell and there was no way that the alternative being put before the electorate in January could have been better. The electorate was being told in January, as the criticism of Members opposite, that we had been going too fast. That we had been growing too much. That there had been too much investment. There would not have been 14,700 jobs in that survey if we had been growing more slowly. If Members opposite do not want to be accused of political dishonesty in the sense of deliberately misrepresentating things to people, then they have to understand that there is a fundamental inconsistency in the Honourable Mr Corby saying that it is important that we train people for the construction industry because we have to get our people into those industries where there is work. I agree entirely. There are things that he said which we agree with 100% and that is what we are trying to do. But, of course, the other side of the coin is that you must borrow money and spend it and build houses, otherwise when you have trained the people for the

construction industry, they are still going to be on the dole. It is no good training people unless at the same time as you are training them, you are training them for employment. It is no good training them for unemployment. We found a situation in 1988 where there was a system in the Government of a number of apprentices being taken in and then at the end of the day when they finish there was no work for them. We still have in the Government clearly a surplus of a number of trades which we are committed to keep in employment and sometimes when you look at these Estimates, Members have to realise that quite often the size of the painting programme is determined by the number of painters we have got. If we have got a policy of not making anybody redundant and all the painters were already there in 1988 well then you have very little choice. There is a limit to the redeployment that can happen. We have been able to maintain a fairly tight control on the recurrent expenditure of the Government over the last four years by not recruiting anybody since August 1988 in the public sector. I have told the House before that in fact even though the restructuring is taking place, it is going to be many many years before we can actually get to the stage of saying "Well, look we now feel that we have to start taking people again into employment because we are now in a situation where we have no surplus workers". We have got surplus workers. They are quite often in the wrong places and we may have shortages in other places but it is not easy to convert people from one skill to the other. I have to say that, in the main, most of the time we have had a great deal of cooperation from the trade union movement and from the workforce in accepting the realities of the situation in Gibraltar and in adapting to change. But even with the best will in the world, with all the encouragement, resistance is inevitable. It is in human nature. So within those constraints, the policy of encouraging investment in the private sector has been what has given us the momentum of the last four years. The effect of borrowing money did not explain the growth between 1988 and 1991 because we borrowed the money in May 1991 and we have not started spending it until October/November. So the reality of it is that it is in 1992/93 in the estimates of this year and in the outturn of the last few months that the economy of Gibraltar is going to see the impact of the increase in borrowing and because that increase in borrowing has been bunched on a very short period of time, it is of course the case that we will not be able to continue spending and borrowing at the rate of the last nine months. But that has not been the rate of the last four years. We would not have been able to do that for four years. We were not borrowing £50m every twelve months and spending it, otherwise our debt would have increased by £200m in four years and it did not. I would have liked to do it but I was not able to. If Members look, in fact, at the Estimates, they will see that in 1991 the public debt, which is always shown as a footnote, was something like £33.5m. It is

on page 3 and it says 'Statement of Liabilities'. At the bottom Members will see 'Public Debt of Gibraltar - £33½m'. So if Members look at what the figure was in March 1988, they will see that between 1988 and 1991, which was three out of four years of our term of office, there was hardly any movement at all in the National Debt. So obviously that was not the explanation for the growth of the last four years because the growth did not occur in the last twelve months. The Leader of the Opposition, in his opening remarks and I might as well mention it here since I am on the subject of the public debt, made reference to the debt servicing cost quoting the OECD economic outlook of December 1991. I have to say, of course, that it is admirable of the Member opposite to try and acquire expertise in this area by reading the pertinent publications but since he fought an election in January by quoting page 129 of that publication and he is now quoting page 130, if he progresses to the book at the rate of one page every five months, it is going to take him a long time to go through it. Of course, he misquoted page 129 and I am afraid he has misquoted page 130. Maybe he needs even more than five months to go from one page to the next. The House will recall that, in fact, I believe it was Mr Vasquez who claimed to have some top expert advising him on this particular subject in a debate with my colleague on television, where he said that the net public debt was the relevant figure and not the gross public debt and that we were quoting the gross public debt and not the net public debt. Well, I answered that point in a subsequent television appearance during the election, Mr Speaker. I pointed out that the difference between the gross public debt and the net public debt was primarily attributable to Japan in the average for the OECD and if one looks at these two tables which he quoted during the election, it shows that in fact the gross public debt in the case of Japan was 72% of the GDP in 1988 and the net was 17%. The reason for that was that between the 72% and the 17% was the money held by the social insurance fund of Japan and nobody else in the world, other than Japan, counts the money in the social insurance fund as national debt, because it is the Government borrowing from itself, borrowing from the fund. If we were to count our Social Insurance Fund, which is privately invested, and deduct it from our national debt, which is what Japan does, then our ratio would come down substantially. But of course, we use the same criteria as everybody else does and that is the primary difference. If the Member looks on page 129, in his little book, he will find that the primary difference between the two averages, which is that the average in 1988 was 59% gross for the whole of the OECD and 32% net. But if he takes, for example, the average for the United Kingdom, he will find that the difference between the gross and the net is very little. The big element in the OECD is Japan. Why am I referring him

to those figures and to 1988? Take the figures in page 130 and compare them with the comments of the Auditor on page 14 of the Audited Accounts for 1989/90. On page 14 the Auditor does say that the debt servicing ratio, which was interest to a number of items of revenue, was 6.41%. Of course, in that same paragraph the Auditor said that in 1990 our debt to GDP ratio was 18%. The Member does not obviously think that that is any more a relevant statistic. Having found that the statistics that he was using in the election campaign compared to GDP, is no longer helping him to prove the case, he has now forgotten page 129 and moved to page 130. I am afraid he has got it wrong in page 130 as well because if he looks at the top of his little table he will see in very small print that it says that the ratios given there; which he quoted, are as a percentage of total expenditures and the ratios quoted by the Principal Auditor have nothing to do with total expenditures. They have to do with income tax, import duty and rates.

HON P R CARUANA:

Will the Honourable the Chief Minister give way? If he looks at the footnote in even smaller print at the bottom of page 130, he will see that total expenditures are defined as current receipts minus net lending, which if he had been listening to me more carefully he would have noticed I also pointed out to him.

HON CHIEF MINISTER:

Mr Speaker, but the Honourable Member produced an estimate of what our debt servicing ratio is by comparison with what the Principal Auditor says in his report. He said we were going up to 14%. That is the figure that he quoted.

HON P R CARUANA:

If he will give way again briefly. I did two separate exercises. I measured the debt servicing costs in relation to table 38 on page 130 and then as a quite separate exercise, I measured it on the basis of debt service to key revenue ratio, which is what the Auditor used in the last set of accounts and I produced the answers on both different basis. Why the Honourable the Chief Minister now feels the need to confuse the two calculations is beyond my comprehension. Perhaps he would like to explain it.

HON CHIEF MINISTER:

Mr Speaker, it is quite obvious to me that the only reason why the Member was producing this figure and the Member was quoting this, is exactly the same reason as they were using in the election campaign. They are trying to demonstrate to people that whatever it is we are doing in the management of the economy compares unfavourably with other Governments in other countries. Otherwise what is the purpose of it? What does he think that the

electorate, the Members sitting in this Chambers, the people glued to the radio want to find out what is the debt servicing ratio of the OECD? Most people in Gibraltar do not even know what the OECD is. Therefore what is the political message?

HON P R CARUANA:

If the Honourable the Chief Minister can justify the public debt of Gibraltar by reference to statistics in the OECD but by one reference to one criteria of the OECD and there is a second criteria used by the OECD that produces a slightly less favourable result, he accuses me of quoting irrelevant statistics.

HON CHIEF MINISTER:

No, Mr Speaker. We have not justified the level of debt in Gibraltar by reference to the OECD except to refute the allegations of the Member opposite based out of malice or ignorance - I am still undecided which it is - that we are being, if you like, insufficiently prudent in our borrowing policies. Although at the same time he wants us to keep down unemployment and he wants a successful economy and one cannot be achieved without the other. The reality of it is that he knows that. He knows that it would not be possible to have spend £3m on the school without borrowing the £3m and when my colleague, the Minister for Housing said "Does it mean, if you have to chose between borrowing money and supporting the 50/50 co-ownership scheme, you would not have borrowed?" He said "Yes" and then he said, "No. I have not said I would not have done the 50/50, I said I might or I might not". Well, one thing is clear. He might or he might not have done the industrial park and he might or he might not have done the 50/50 and he might or he might not have refurbished the Bayside Comprehensive and he might or he might not have done South Barracks. But one thing is certain. He would not have done any of them without borrowing. That is certain. Therefore, the borrowing was done, not because we wanted to be as good as the highest borrower in the world. There is no competition in that field. The borrowing was done because we wanted to have homes for our people and jobs for our school leavers and decent schools in which they could be educated and we are not rich enough to do it without borrowing. We moved in that situation, I would remind the Member opposite, from a position criticised by me when I was sitting over there, which we considered, in the GSLP, was in fact not sufficiently prudential. That was to borrow to balance the annual budget. If the Member goes back to 1987/88, he will find that after the Loans Empowering Ordinance of 1984, for the first time there appeared, as recurrent revenue, the proceeds of borrowing. I criticised that because I thought that was ridiculous because if we accept philosophically that the more we borrow the better off we are, then obviously the answer must be to borrow up to our ears and then we are very rich. We have always

argued that it is one thing to borrow to build a school and it is another thing to borrow to pay the school teachers. To borrow to build the school, you can say this is an asset that will serve us for twenty years and it will be paid not by one generation of taxpayers, not by one generation of workers, it will be paid over their lives. So we have borrowed fourteen year money from the money market in London. We are committed, through our fiscal and economic policies, to make sure that the amount of £50m will be there in fourteen years time to redeem that debt. I will explain to the Member opposite how that will be done when he moves his censure motion. Not now because I do not want to discourage him from proceeding with it. I do not get many enjoyable moments in the hectic life I lead and I am not going to let him deprive me of that little pleasure. The Member also wanted to know how we calculated the GDP figures. Well, the answer is we use this publication which is the source and methods used by the United Kingdom for producing their national accounts. This is the 1992 edition which means that it is based on the 1984 edition and in subsequent revisions that have been introduced in the light of experience in the UK. This in turn draws from two other publications, one by the United Nations in 1968 and the other by the European Community Statistical Office in 1980. The UN one is the system of national accounts. The EEC one is the European system of intergrated economic accounts. All of these publications are in fact readily available from the HMSO, Mr Speaker, and in the light of the deficit we have in this year's accounts I am sure the Member opposite will not expect me to provide him with free copies. It makes exciting bedtime reading for somebody who has a brain like mine, but I do not know if it will appeal to him. The system, let me say, has not been changed in the time that we have been in office although, as I explained - I think, before the Member was here in the House we had a visit from Harry Fell, a number of years ago. He was the man involved in the actual setting up of the Statistical Office in Gibraltar. He was the man who initiated the census of population in Gibraltar. He was the man who was, in fact, in the United Nations in 1968 drawing up its national accounts. He is now retired but he has had a very long connection with Gibraltar and when he came to advise us on the 1991 census, we asked him to look at the way we were compiling the information because the statistics we produce for GDP are not 100% accurate. Let us be clear. They never are anywhere in the world. But the degree of accuracy is estimated by a grading being given by the people in the Statistical Office. So if they think it is, give or take a 5% margin of error, it gets an 'A' and if it is 75% accurate it gets a 'B' and so on. Obviously, as I explained at the beginning, the money that we spend and the money that the MOD spend we give an 'A' too because we know that that is true. When we are relying on estimates produced from a variety of sources then

we are not sure of the degree of accuracy and therefore our economy is moving from a public to a market private orientated economy and that reduces the accuracy of the statistics. I have to point out that it reduces it on the basis that they are likely to be underestimating the economy. That is to say, if there is an unrecorded black economy, then the more the size of the private sector is the more likely that is to exist. In a situation where everybody works for the state, you do not have a private sector, you do not have a black economy. Therefore although we think that the percentage of reliability has been reduced, it has been reduced, not by exaggerating the level of economic activity, but if anything by understating it. Therefore, we have looked at ways of improving on that. As my colleague mentioned, the recording of information from the Employment and Training Unit now gives us a fourth input. For example, if we take employment levels which are a good measure of economic activity, we have had employment surveys which Members have got and I am quoting today. We have had social insurance records and we have had PAYE records and the three never matched. Therefore, the Statistical Office used to produce national income accounts based, if you like, on averaging the three sources, assuming that the truth was somewhere in between the three. That is how it has always been done. It has never been done any different. We are hoping that the fourth element, which is the recording of everybody in employment irrespective of whether they need a work permit or they do not need a work permit or they need a contract or they do not need a contract, will give us more accurate figures. This was particularly important to do because from January this year Spanish and Portuguese workers do not need work permits and therefore we suddenly had a huge drop in the recorded contracts of employment and work permits when they were freed from that requirement under Community law. Since we could not say that we are going to require exclusively Portuguese and Spanish workers to be recorded, because that would have been challengeable under Community law, we effectively had to put the machinery in place which requires all of us to be recorded. When we see that working through the system, we may then be able to produce, we hope, more accurate statistics or at least that should support the accuracy of what we have got. If we find that the Employment Survey shows that there are 14,700 people in employment in 1991 and if we find that in fact there are something like 14,600 or 14,800 recorded through the Employment and Training Unit, then that in fact will corroborate that that figure was quite an accurate one. So, we hope that the GDP figures will be of increasing reliability, but all I can tell the Member opposite is that the methodology is exactly the same as it is everywhere else. However, we are using the 1992 edition which is the most up-to-date one and on top of that we have used the services and the advice of the man who

is one of the top authorities on the subject because he was here recently in connection with the census that was carried out last year. The collection of data, hopefully, will either confirm the accuracy of what we have got or produce more accurate results. Obviously, it is important for us, as well as for Members opposite because we are using this as a measurement of our performance and the target that we set is on the assumption that the 14,000 jobs require that kind of increase in GDP. That is to say, the economy of Gibraltar has to be able to be producing that kind of level and we believe that if the GDP does not reach the 450, then employment will fall below 14,000 jobs because you need to have an output per worker to maintain the level of input we require to consume all the things that we want to consume. There is no escaping. There is no way of squaring the circle. Either we do it or we will live less well off. Mr Speaker, I want to move now from the question of the economy and its performance to some of the other matters that have been raised by Members opposite. The Government, in bringing these Estimates, has produced a picture essentially for the next twelve months. The last speaker on the Opposition was saying that in my opening remarks I seem to be saying that we did not know how we were going to finance the Improvement and Development Fund in 1993/94. That is true. We do not even know at what level it will be. We present the Estimates for twelve months. But, in fact, what we do in this budget, which is what we did in 1988, is not to present the budget for more than one year but to give an order of magnitude of what we think needs to be done over the four year term of office. What I can say to Members opposite is that we do not expect the Improvement and Development Fund to be increasing. In 1988 I came to the House and I said, "We are going to be voting this year £8m in the Improvement and Development Fund and it is our intention, having increased from four to eight to double every year, and we think that maybe £50m is a maximum that we can spend in twelve months. But we think that there is such a backlog of work that needs to be done, in roads, in schools, in houses, that we are going to have to be doubling every year. Well, we have now peaked the £60m we have spent in the last twelve months, we will not see again for a very long time to come. We are going down from £60m to £40m over the next twelve months and the Improvement and Development Fund will be getting progressively smaller. We will go back to a level which is really a replacement fund rather than major new projects. So that is effectively what is going to happen and if you take the whole of the eight years, it means that what was happening in 1988 - which was really that the Government of Gibraltar was spending very little money other than in maintaining the stock of capital - is what we will go back to when we have completed the creation of a new stock of capital. That is the reason. The reason is that in a place the size of Gibraltar you obviously cannot continue reclamation ad infinitum, houses ad infinitum and so

on. Therefore, we see the next four years moving in that direction. I said it is not a matter of choice in the sense that it is not that we prefer that because, in fact, there is a price to be paid for that and the price is that maintaining employment and maintaining economic activity is more difficult. This is what we were saying in the election that their strategy was wrong. Borrowing more and spending more we believe is a good thing. But there is a limit to how long you can do it for and we have reached that limit now. It does mean that the level of public debt - which grew very rapidly in the last six months but unusually so because it was only concentrated in the six month period - is not going to be the norm. We are, of course, looking at the measures that we need to take to attract new businesses to Gibraltar. I am glad that the contribution from the Member opposite has been a helpful one, given that initially when we announced it we were condemned for it and he has been telling us that calling high net worth individuals, high net worth individuals, may be defeating the object of the exercise because we are giving away the secret of the game. He may be right and we have taken careful note of what he has told us and we will certainly see whether we need to change it, but I am glad that he is telling us that what we need to do is to change the label and not scrap the system. Before they seemed to be saying that we should scrap the system and I do not think that that is in anybody's interest and obviously if we can get...

HON P R CARUANA:

If the Honourable Chief Minister will give way to me yet again. I think in fairness to myself, I ought to point out that what I condemned originally was that the system should have been introduced by regulations. We have not yet expressed our views on the substance of the regulations, although we shall in a motion in the next meeting of the House. What we condemned was the fact that they were introduced by regulations.

HON CHIEF MINISTER:

Mr Speaker, they condemned the fact that it has been done by regulations. But, of course, they did not say anything about it in the election campaign and the intention to do it by regulations had already been made public before the election. When you go to an election, if you think that what the party that is in Government has said it is going to do if it gets back into office, you say in your manifesto, "If I get elected I will not do it." We announced we were going to do it in December, before we went to an election in January. They went to an election and they never mentioned it at all. Then when we publish it, because the Chronicle picked it up and carried it in its front page; the next day the Members of the Opposition reacted. I think we are facing two sets of opposition and I think the Chronicle is sometimes more effective than they are.

HON P R CARUANA:

Mr Speaker, presumably because they print it, they get their copy of the Gazette before I do, otherwise my reaction may have been before them as well.

HON CHIEF MINISTER:

But, Mr Speaker, the intention was known.

HON P R CARUANA:

And my manifesto criticised the Government for the excessive use of regulations. It was not as if my manifesto in the election was silent on the subject.

HON CHIEF MINISTER:

Mr Speaker, they criticised the excessive use of regulations admittedly but then by definition they must accept that their criticism fell on totally deaf ears given the response they got from the people of Gibraltar. But that is not the only thing they criticised of course. They seem to have forgotten that. They also said how discriminatory it was. What about the local poor high net worth individual. They seem to have got away with paying little tax as far as I can tell for a very long time. They seem to have forgotten that there were questions in this House from Members opposite saying, "Are we going to give the same incentives to local businessmen?" And we said, "Look the incentives have nothing to do with nationality". We have been asked, "Are you going to give development aid to the existing hotels?" And we said, "No the existing hotels got them when they built their hotels". That is when they got them. All of them got them when they build their hotels. Now what is the purpose of those questions, Mr Speaker? This is not a question being put by a lawyer on behalf of his customers. This is a question being put by a politician who presumably is trying to influence public opinion. Therefore, the political point he must be making is that we are in love with foreigners and therefore we produce all these rules and regulations in order to let everybody come here and not pay taxes and we hate ourselves so much that we impose taxes on ourselves rather than on the foreigners because we pay the same taxes on our pay. What I have explained before is that it would be extremely foolish of the Government to actually anticipate the yield of a new measure and reduce the revenue it is already getting in the hope that there will be enough coming in. In fact we have had very little response from the new systems that we have done. So that justifies the cautiousness with which we have approached this. We have done what experts have advised us to do on the basis that they claim that if we did it, from their knowledge of competing centres, we would be in a very competitive position to attract new individuals to Gibraltar. I wish we were in the happy

position of Jersey. Jersey only allows three millionaires a year to go there and they are required to have a minimum income of £1m on which they pay £200,000 tax and they have a waiting list. Now if I had a waiting list then I would be saying to people you have to have £1m to come to Gibraltar. I cannot say it to Community nationals for a start which they can because, under Community law we cannot put any conditions, but obviously Jersey that, in this year's budget, have £47m surplus, has that kind of surplus because they attract very wealthy people and because they attract very wealthy people they are able to reduce taxes on the local people. But what no Government can do is say, "I am going to reduce the taxes first and then sit back and hope the wealthy people come, and if they do not come, then I will have to go back and raise the taxes again that I reduced." So it is not a wise move to take for granted that the business is going to arrive and I have to say, regrettably, that the business has been very slow in arriving and, therefore, I am grateful to the Member opposite for saying that perhaps the way that we have presented it is not attractive enough. We will take into account his views and happily, since it is done by regulation, we will be able to do it very quickly. Mr Speaker, other Members, in dealing with some of the specifics, will be able to get replies, I think, when we come to the items in question. Certainly things like the question of the legal aid fees, which have been mentioned, frankly, we will look at the arguments that have been put but obviously if we are paying one quarter of what the lawyers get in UK under the legal aid, then the £8,000 must be worth £32,000 by UK standards. If we simply increase the fees and get £8,000 we will only be able to help a quarter of the victims although of course the lawyers will be better off as a result. I am happy to learn that we are only paying a quarter of what they are paying the UK because that means that the £8,000 is covering the needs of many more people than a similar sum would do in the UK. All that I can tell the House is that, as I mentioned at the beginning, and the Member said he accepted and was aware of, the figure there is not a figure that requires to be voted and that therefore cannot be exceeded. It is a demand-driven amount. Whether we are depriving people of the right to pursue their grievances in law because of limited incomes, is something that we certainly have to be conscious of. If it is suggested that this is happening we will take a look at it. The other point that I want to deal with before I wind up is this question of the amount of money being spent in tourism advertising, which is now in fact shown in the Head - 'Secretariat'. The Member says that the AACR was spending £1m on advertising.

HON M A FEETHAM:

£600,00 which today would be £1m.

HON CHIEF MINISTER:

According to the Estimates of 1987/88 approved by the House the tourism budget for advertising was £155,000.

They also had additionally international marketing in the main office in Gibraltar, which was not simply advertising as we found out afterwards when we got in. When we came into office in 1988 we found that out of the so called marketing and advertising budget something like one third actually went into advertisements and two thirds was the cost of promotions and trips, tour operators in the UK and trade fairs and all the rest of it. In fact, there will not be an advertising budget as such and there will not be advertising agents engaged by the Government to carry out an advertising campaign. The results that the Member has been referring to over the last eighteen months in tourism happened with an advertising budget, with advertising agents and with the system that was there already, which we have now got serious reservations over the effectiveness. I can tell you that we have spent a lot of effort in analysing the correlation and there were established procedures, like there are still in many areas of the Government. We have not yet cleaned out the stables entirely. There were established procedures and until something gets into the limelight you do not even know that it is happening, Mr Speaker. The Member opposite said "What happened with this brochure in London that the GIB stopped sending out?" He knows what happened. I have explained it. What happened is that some decision at some remote time in the past had been taken that only Gibraltar only brochures could go out and somebody said, "Is this a Gibraltar only brochure?". The conclusion was "Not it is not". Well then the rule book says you do not do it. They were told this in January this year. They did not have to wait three months, they certainly did not bring it to my attention. When it was brought to my attention and somebody showed me the brochure, I thought well this is crazy as far as I am concerned this is a Gibraltar brochure. So whoever took that decision will reverse it and treat this as a Gibraltar brochure and the rule has not got changed, it is just that we have said to people, "Look, use your commonsense in applying the rule", which sometimes it is difficult in a system which is part of the problem of bureaucratic state run enterprises. It is a difficult thing to change the methodology. It is not something that I am happy to admit. I wish it was possible to do it differently. The reality of it is that we have had to learn, in office since being elected in 1988, that there is a penalty that is paid in output, in efficiency and consequently in the standard of living of all of us by bureaucratic red tape. Bureaucratic red tape makes us all poor. There is no escaping it because the people who are engaged in the red tape are not engaged in productive work. They are not adding to the GDP and we have seen the commitment, the release of energy, the initiative that have been brought about when you can actually persuade people to overcome their fear of change, their fear of new things. They then go into something with enthusiasm

and dedication. We still expect them to be well paid. We still expect them to have security of employment. But at the end of the day the methodology, the freedom that comes with giving them more leeway produces more wealth. This is a reality. As Socialists we will have to carry out some fundamental revisions of some ideas that we had before. That is the honest truth. Therefore, in this area I can tell the House that we discovered that in the past there had been advertisements in national papers in the UK costing several thousand pounds and all that it had produced was half a dozen enquiries and we do not even know if any of those people who enquired actually came to Gibraltar for a holiday. It would have been cheaper to pay them to come and we would have had more people in our hotels than spend the money on the adverts. As a result of that because we tend to have, if you like, a radical approach to these things, we say "Look the fact that something has been done the same way since the time of Queen Victoria does not mean we have to keep on doing it for ever." Anything that anybody comes up with whether it is a Member of the Opposition or a member of the public or an expert - sometimes the experts do not always get it right - which we think makes commonsense we are happy to say "Yes, you are right and we were going about it the wrong way and we will do it the way you suggest." I commend to Members opposite that we should indeed conduct for the benefit of the people of Gibraltar, the affairs of this House on that basis and then at the end of the four years we will fight each other in an election campaign. Alternatively, if the Members choose, we can have an election campaign lasting four years for either system. But I think it is better for the people of Gibraltar that constructive criticism should be the order of the day. I commend the Bill to the House.

Mr Speaker then put the question and on a vote being taken the following Hon Members vote 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 P J Brooke
The Hon P S Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

MR SPEAKER:

We will now recess until tomorrow morning at 10.30 am.

The House recessed at 7.05 pm.

THURSDAY 28 MAY 1992

The House resumed at 10.45 am.

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, firstly the Supplementary Appropriation (1991/92) Bill, 1992 and secondly the Appropriation (1992/93) Bill, 1992.

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

THE SUPPLEMENTARY APPROPRIATION (1991/92) BILL, 1992

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

Schedule

Part 1 - Consolidated Fund

Head 17 was agreed to.

Part 2 - Improvement and Development Fund

Head 104 was agreed to.

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

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

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

THE SUPPLEMENTARY APPROPRIATION (1992/93) BILL, 1992

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

Schedule - Consolidated Fund

Head 1 - Audit

Personal Emoluments

HON LT-COL E M BRITTO:

Mr Chairman, I raised this point yesterday. It is immaterial whether I bring it up under 'Personal Emoluments' or 'Other Charges' but the combined effect of the estimate is £173,100. I drew the comparison with actual expenditure for 1991 which was £177,000 and I invited comments from the Chief Minister on the value of using private accountancy firms.

HON CHIEF MINISTER:

The primary objective of contracting out the work of the Audit was not to produce a reduction in the cost of the auditing function although of course that is welcomed. The primary function was that we were not happy with the results that we were getting on the basis of the details - not on what appears on the audited accounts that come to the House because that is not changed whoever does it-which are clearly more than, internally for the Government, appears in those accounts and the level of detailed information that was available to us did not seem to us to be the kind of information we wanted to be able to improve from one year to the other the value for money that we were getting in the different departmental expenditures. We thought that bringing in commercial accountants who would look at their auditing functions from the experience of auditing businesses and who would be able to give us information that we were not getting because one of the shortcomings of the Government system, as we see it, is that the people who work in the Audit are people who have sometime or another worked in some department or other and in their career in the Civil Service at one stage passed through the Audit or finished in the Audit. That makes them very good at identifying everything in terms of auditing it from the point of view, not of economic efficiency, of complying with regulations. So there is a tendency for somebody to say "Well, right you have spent £1m on an air conditioning unit. Where is the minute approving it?" Nobody says "Well, wait a minute why are we spending £1m on an air conditioning unit?" because the approach tends to be, it is wrong if there is no minute and it is right if there is a minute. Therefore the work of the auditing was very thorough work but it was work that simply questioned why there was an overspending of £5 in a Head of Expenditure of £1m when the House had authorised £1m and not £1m and £5. Nobody was saying, from the point of view of use of money like a businessman would, "Is it a sensible

thing to be spending money in this way?" So this is the primary reason for wanting to move in that direction. In fact, the initiative came from the people in the Audit themselves. There were a number of people who wanted out and therefore it was a good opportunity to move in that direction. Therefore we were able to re-deploy the members employed in that department to do other government work in other departments and supplement their work with private sector auditing firms. We went out to contract by inviting all the local firms to submit prices. We did not pick the cheapest because we thought it would be better since this was an innovative thing to spread the work. We gave work to almost all the big accounting firms in Gibraltar, even though some were more expensive than others, so that we would try them out for a few years and judge the quality rather than the cost. We retained within the direct employment of the Government things like auditing the Income Tax Department because we thought it would be risky for a private firm to be auditing the Income Tax Department because by auditing the Income Tax Department they would discover what other private firms were paying in tax which we thought was wrong. Not that they would be auditing the taxpayers files, but by auditing the Department, they would be having access to the taxpayers files. So we retained areas of the Treasury and the Income Tax and things that are commercially sensitive. Therefore, effectively if you look at that, the six people, including the Principal Auditor, are actually auditing what we consider to be commercially sensitive areas. Everything else whether it is the Police or the Fire Brigade and all those things which are really service functions are being audited by different commercial firms and that is covered by the £90,000 we are putting in this year's Estimates. The reason why the outturn was less was because we had put in a figure at the beginning of the year of £100,000 not knowing how much it was going to cost us until we sorted out the bits and decided who was going to do what. In fact, we have spent £75,000. We are happy with some people and less happy with others. Some of the ones that we are happy with are more expensive than the ones that we are not happy with and therefore we expect that it will cost a bit more this year than last year. But the bottom line figure is quite encouraging because the total cost for the next twelve months is going to be £4,000 less than it was two years ago. If we had been able to keep the running of all Government departments to below the 1991 figure we would be congratulating ourselves. This is the exception rather than the rule so the cost has been quite well contained.

HON P R CARUANA:

Mr Chairman, what the Chief Minister has said basically boils down to this. That the private auditor through his commercial experience is able to be more informative to the Government than is the civil servant type of

auditor. Will he nevertheless, for the peace of mind of Members on this side of the House, confirm that that is not to say that the private auditor is not also performing the function of the civil servant type auditor of making sure that the minute does exist and the authority does exist?

HON CHIEF MINISTER:

That is being done anyway and that is in fact what will be reflected in the Principal Auditor's report. The report that the Members have for 1991 continues to show the same format, the same comments, the same information that has always been shown. So the audit report of the public accounts of Gibraltar will not be altered in any way. The internal function and the recommendations that come to the Government contain additional information, which did not exist before, which is advice on management rather than simply saying that this has been properly documented and that there are receipts for all. That takes place anyway but if that was all that was needed, I do not think we would require as much money as we are providing. We are getting, in our judgement, better value for money because it is helping us to formulate policies more intelligently. We have been given advice by auditors which was not the norm before because it was not then the role. The private auditor has incorporated the role of checking that there are receipts, that everything is properly documented and that the proper authority exists. For example, we have just voted a Supplementary Appropriation Bill which technically is incorrect. Why? Because we are required by the Public Finance (Control and Audit) Ordinance to bring the supplementary appropriation to the House before the 31 March and we have overran the date. I can tell the House that when we got elected in 1988 we had to bring to the House legislation to approve expenditure in 1985/86 which had not been approved and which was discovered three years later by the auditor and there was nothing we could do. The money had gone. So we came here and made it legal. We were concerned to stop that happening. I think that we can congratulate ourselves that this year we have only had one instance. We have made sure that we have brought it at the first possible opportunity to the House and really it is an instance, as the Leader of the Opposition recognised earlier, where it is a paper exercise because the £200,000 we have just voted we have paid to ourselves. It is rates on public buildings and it is just because we have got more public buildings now than we anticipated at the beginning of the year. Things like the Sergeant's Mess are now Government property and therefore instead of the MOD paying rates, we do. So the answer is that if during the course of the audit we have missed out approving in the House expenditure in any of the Heads of Expenditure, that will still be picked up by the contracted auditor and that will still be reflected in the Auditor's Report.

HON P R CARUANA:

Mr Chairman, I would be glad, in relation to the Supplementary Appropriation Bill, to say to the Honourable the Chief Minister what he said to the AACR on the occasion to which he has referred which was perhaps, "Since you spent the money we shall abstain and let you vote in favour." If you recall, that is what he said. But he resisted that temptation then and I have resisted that temptation now.

HON CHIEF MINISTER:

Well that is something that the Member is doing about the entire expenditure so I do not think that it would be a novelty in his case.

HON LT-COL E M BRITTO:

I would like to make an additional point on what we have been discussing. First of all I am glad to hear what the Chief Minister has said on the Income Tax Department and on the keeping of the private accountancy firms because I remember making precisely that point last year. I know that it is not strictly correct to refer to a Head going forward but the principle is the same. I did point out that the Accountant General's Department has reduced its estimate for contracted accountancy services. I assume this is for the same reason, as the Chief Minister has already said, as last year when they budgetted for more than they found that they really needed.

HON CHIEF MINISTER:

Well I think we can deal with that when we come to that Head.

HON LT-COL E M BRITTO:

I am saying that the principle is the same but the question I really want to ask is that the Chief Minister is telling us that we are getting value for money in our audit. Can I ask the Chief Minister whether he is talking about value for money in political terms and does the Principal Auditor agree with him that in accountancy terms we are also getting value for money?

HON CHIEF MINISTER:

I cannot answer for the Principal Auditor. The Principal Auditor like all of us is a human being and he may well feel that he is better equipped to do the auditing than anybody else in Gibraltar. That is a matter to which he is entitled to. Since the Honourable Member seems to have this fibre optic that goes throughout the Civil Service, he may be well acting on inside information on which I am not yet aware because he gets the information before I do.

HON LT-COL E M BRITTO:

Not on this occasion.

HON CHIEF MINISTER:

The position as far as we are concerned is that in our role, as we see it, of controlling the use of public funds, we need information to enable us to take decisions. As far as we are concerned the traditional way in which this was done was what we used to rely on before. We feel that we are able to do a better job because we are getting the same information that we were getting before plus additional information that we were not getting before, which is, as I said, a reflection of what would be normal. If the Honourable Member has an auditor looking at his business, he would expect that the auditor would tell him, not just whether he is in the red or in the black, but also perhaps where he has gone wrong and why he is in the red and maybe point out that too much money seems to have been spent on electricity or whatever. The traditional auditing function is still there and will continue. But of course there are people within the civil service who feel that in fact more emphasis should be placed on that than on getting value for money. Our own reaction, frankly, tends to be that the important thing is the results that we are producing for the people of Gibraltar for the money that we are spending in their name. Therefore we want efficient structures at work and if you have sometimes a very cumbersome structure it may cost you a pound to save a penny so we take a political position on that. The machinery that we now have, we are convinced, enables us to give people in Gibraltar better return on the money that all of us are contributing as taxpayers. That is our judgement.

HON P R CARUANA:

Mr Chairman, I think that the point that my colleague was trying to make was this. The function of the Principal Auditor, in fact, ultimately is political and not to be measured in terms of value for money because the only function that the Principal Auditor serves in constitutional, legal terms is to make sure that the public finances are being spent according to law and no other purpose. If the Chief Minister wishes to get some additional value for Government statistical purposes, well that is all very well but it is not for that reason that we can suffer any reduction in the quality of the cover in relation to the principle purposes of auditing public accounts which is that the public finances should be looked over by persons other than those who spend it.

HON CHIEF MINISTER:

Yes. That creates no problems because I have already

pointed out in a number of occasions to the Member opposite that in fact we want to make sure that, consistently, we are behaving as the law provides and we have no problem with that because we have got a majority in the House and if the law does not provide we make the law provide. So the moment the Auditor or the Honourable Member or anybody else tells us "Look what you are doing is in conflict with the law", it does not mean we have to stop doing it. It just means that we have to change the law, which is not a very difficult thing to do.

Head 1 - Audit was agreed to.

Head 2 - Education and Sport

(1) Education - Personal Emoluments was agreed to.

Other Charges

HON L H FRANCIS:

Mr Chairman, looking down at Item 3 - 'Electricity and Water', could I ask the Honourable Member opposite if he could explain the wide variation between the Approved Estimate 1991/92 of £85,000 and the Forecast Outturn of 1991/92 and again the variation in relation to 1992/93?

HON J L MOSS:

Mr Chairman, almost certainly due to the fact that the fuel cost adjustment was higher this year than expected and that fuel is going down so therefore even though we do expect consumption to be along similar lines, we should have a lower charge for electricity.

HON L H FRANCIS:

The variation is quite high in spite of any fuel cost adjustment. It is a variation of almost £50,000, maybe a little bit less.

HON J L MOSS:

£41,000

HON L H FRANCIS:

£41,000 is quite a variation. It is 48% variation I am being told on this side of the House. Is it solely due to fuel cost adjustment?

HON J L MOSS:

No. I did not say it was solely due to fuel cost adjustment but I would imagine that the bulk of it is due to that.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

One further contemplation, Mr Chairman. There was a problem during the year of water leakage because of damage to the mains on the premises and those leakages have been stopped. The circumstances are being investigated with a view to stopping future occurrences.

HON J L MOSS:

I was obviously aware of that, Mr Chairman, but there have been leakages in other years as well. Perhaps not as bad as the one we had this year which is why I did not think it was worthy of mentioning.

HON L H FRANCIS:

Mr Chairman, moving on to Item 8, 'College of Further Education', can the Honourable Minister say where the savings are to be made in relation to that sort of expenditure?

HON J L MOSS:

As I indicated yesterday - I cannot remember whether it was in my own contribution or during the Honourable Mr Francis's contribution - there is actually a substantial amount of assistance coming this way nowadays from the Training and Employment Board as a result of the fact that many of the courses that the College is now operating are run as courses for the Employment and Training Board. This means that there is less need for the College, for example, to spend money on computer hardware and on other materials associated with the courses that I am talking about.

HON L H FRANCIS:

Mr Chairman, moving on to Item 9, there is also a big decrease in the Forecast Outturn on cleaning and industrial services of £11,900, can the Minister say how these savings are being achieved?

HON J L MOSS:

I would not say that they are major savings, Mr Chairman. £11,000 on a budget of over £.75m, we are talking about 1%. I do not think that that is a significant variation.

HON L H FRANCIS:

But at a time when costs are rising from inflation, Mr Chairman, it is a significant saving, which perhaps could be put to good use in other areas of the education budget. I think it is a point worth making and worthwhile asking particularly in the light of the concern and the certain action being taken in the education service at the moment.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Just one point of clarification that I would like to make, Mr Chairman, is that there has been a switch of staff. Previously some school technicians were treated as industrial staff and therefore included in this subhead. They are now treated as permanently established and if the Honourable Member looks at the establishment page he will see the number of school technicians has gone up from three to eight, purely due to this change in treatment.

HON L H FRANCIS:

Mr Chairman, moving on to Item 18 - 'Intensive Language Courses', can the Minister give an explanation why there is such a fluctuating level? Has there been problems with the courses?

HON J L MOSS:

Yes, Mr Chairman. Basically, the projections that were made last year were over ambitious. The College of Further Education was not able to attract as many students as it was hoping to. I am not sure whether the marketing or the promotion disposes of part of the reason but certainly we did become aware during the course of last summer that the competition in the Campo Area had considerably increased and that in fact some of this competition was coming from Gibraltarian teachers who were choosing to teach in the Campo rather than in Gibraltar.

HON L H FRANCIS:

I take then that some provision has been made to counter such competition since there is an increased estimate again this year, you are having to attract more students.

HON J L MOSS:

There will not be any public execution of the teachers concerned but we are hoping to better the quality of our promotion in Spain and some contacts have already been established to that effect.

HON L H FRANCIS:

I hope that there will not be any private executions. Lastly, can the Minister please tell me where the provision is being made for the access funds to be put in place. Is it being made under this Head?

HON J L MOSS:

No. Mr Chairman. In fact you will not find provisions in these Estimates but if you look at Subhead 6, which

is 'Scholarships' that will include all spending for scholarships. There may be a point during the year when we would have to seek some supplementary funding for the access funds but obviously the money is provided from this particular subhead and it is highly possible that there will be savings in other areas of the scholarship fund which could mean that we will not need to seek the supplementary. I am talking, for example, of the poll tax subsidy etc etc. There are indications that that may be phased out during the year.

HON LT-COL E M BRITTO:

Mr Chairman, I asked the Minister yesterday whether he would indicate whether students who can show that they have suffered hardship in the two year period; whatever it is, between the removal of the UK access funds and the introduction of the Gibraltar access funds, would be looked at with sympathy by the Department.

HON J L MOSS:

Mr Chairman, we tend to look with sympathy at cases where the student is suffering hardship there and then. I do not think the Department should get into historical analysis of whether somebody suffered hardship two years ago or for that matter twelve years ago.

HON LT-COL E M BRITTO:

For the record, Mr Chairman, I disagree with the Minister. The whole reason why the Government is introducing access funds is obviously because students have been able to show that they have been suffering hardship. I mean to say that what has happened in the past two years does not matter now, to my mind is being a bit harsh. I think that at least in individual cases, some consideration should be given.

HON J L MOSS:

Mr Chairman, I am afraid that even though the Honourable Member is fully entitled to disagree with my way of thinking, the purpose of the Department of Education's maintenance grant to students is to further their studies. It should not be considered as some kind of wage which if it is ever or when it is increased becomes retrospective or anything like that. The reason why we have introduced the access funds is not because the students have proved to us that they are suffering from hardship. It is because we have looked at the way that things have happened. We have tried to get our students to apply to the access funds in UK. When we have found out that that was impossible we decided to create our own separate access fund to help students but not because students have been dropping out in the last two years for reasons of hardship. If they have not been dropping out for reasons of hardship, then one would assume that tightening the belt for better or worse, they have survived. I do not think that it is correct to go back into history and see how individual students have tackled

the affairs in the last two or three years or in the last twenty as I have said before.

HON P R CARUANA:

Although there is an increase in the provision for in-service education since the actual expenditure for 1991, is the Honourable Minister for Education satisfied that given the need to prepared the teaching profession for the National Curriculum, that he has available to him as much resources as he needs for that job?

HON J L MOSS:

Yes.

Other Charges was agreed to.

(2) Sport - Personal Emoluments was agreed to.

Other Charges

HON LT-COL EM BRITTO:

An observation for the Minister, Mr Chairman. The last item under 'Other Charges' which is not numbered, ie 'Insurance Premia', I noticed that there was an estimated expenditure for last year which was not mentioned and there is no provision for this year. Can I ask the Minister first of all the reason why and secondly whether that implies that there is no insurance coverage for persons using Victoria Stadium and other Government sporting facilities?

HON MISS M I MONTEGRIFFO:

No, Mr Chairman. The insurance that was put down for the stadium, I think, is going to be taken over now by another Government Department.

HON P R CARUANA:

Is the Minister able to say whether the extent of the insurance enjoyed by the Victoria Stadium is comprehensive in the sense that it covers the Government for, for example, claims should there be injuries of the sort that unfortunately do happen from time to time in sport stadiums around the world and is the Government satisfied that it is adequately insured in relation to Victoria Stadium which is perhaps the area where there is most accumulation of public in any Government building in Gibraltar?

HON MISS M I MONTEGRIFFO:

Yes, Mr Chairman. The sort of insurance that we are looking for the Stadium is one which is the same in other sporting facilities.

Head 2 - Education and Sport was agreed to.

Head 3 - Electricity Undertaking

Personal Emoluments was agreed to.

Other Charges

HON P R CARUANA:

Mr Chairman, is the Honourable the Minister for Government Services able to say what the estimated cost of purchase of electricity will be for the current year?

HON J C PEREZ:

Mr Chairman, that is something which the Honourable Member has already indicated he will raise at the time of his motion in his contribution tomorrow and he shall get a reply at the time that he raises it.

Head 3 - Electricity Undertaking was agreed to.

Head 4 - Environmental Health was agreed to.

Head 5 - Fire Service was agreed to.

Head 6 - Governor's Office was agreed to.

Head 7 - House of Assembly

Personal Emoluments

HON P R CARUANA:

Mr Chairman, in my address on the Second Reading of the Bill, I invited the Chief Minister to explain to me how he felt that this House would be able to carry out its work with a reduction in emoluments. I anticipated the possibility that the reason in the fall on the forecast outturn to this year's estimates might be due to the fact that he is not expecting a general election this year, but, in any case, Mr Chairman, will the Chief Minister make the resources available to enable at least Hansard to be produced more quickly and for the volume of laws to be kept up to date. I do not think that it would require an awful lot of resources, perhaps making an audio typist or two available to the department on a supply basis after each sitting so that the Hansard can be produced as a specific project rather than in the ordinary course of the Department's work?

HON CHIEF MINISTER:

Mr Chairman, I did not answer the Member in the general principles of the Bill because I thought this was the appropriate time to give him the answer and to give me the time to get somebody to check out the details. In

fact, he is comparing the outturn for this year with the estimate for the next year. He will see that one of the differences is the amount in minor works which was a token vote in Subhead 11 of £100. There is again a token vote of £100 this year. We have actually spent £53,900 and we shall be spending a substantial amount in the forthcoming year which will be reallocated from the block vote in the Head on Reallocations. On Personal Emoluments, which is the other difference in expenditure, we had Mr Collado here to help in the compilation of the register and the election and therefore the money for him at HEO level appeared during the course of the year because it was a temporary secondment. It was not provided for initially. If one looks at the approved estimates, the Member will see that it was £41,000 and therefore we are making under the 'Personal Emoluments' the same provision for staffing now as we were making in last year's budget and if during the course of the year there is unprovided reason for having to move in additional staff, like now, then the persons concerned will still get paid at the end of the month, even though there is no provision here because we will be able to make the adjustment when the final outturn comes. The money for the civil servant in question, if it is not appearing in this particular head, it is appearing in another head. So it is not additional funds required in the total budget, it is simply that if the person is allocated to do work here, the cost disappears from somewhere else. I have to say that from my twenty years of experience in this House, I can tell the Member opposite that the service that we are getting now is very good compared to the delays that we experienced in the past. But of course we believe in getting the information out as quickly as possible and it is a matter of judgement as to how much resources we devote to it. We will look at the points that the Honourable Member has made but I have to tell him that judging it by the kind of standards that Members of the House have achieved in terms of the service they have had, the service compares favourably. We will nevertheless certainly take a look at his preoccupations. I think that the question of the laws that he has mentioned, I think, he was already raised during Question Time. We will see how quickly we can move into updating these laws against the background that the Attorney General said at the time that he was already looking at a computer based system which would be able to update laws by having them on a loose leaf form and when an amendment is to be done you get your computer memory and you delete and add something else and you do a hard copy, instead of having to go round pasting things. I can assure the Member opposite that my office is not more particularly well pasted anymore than these books are because it is quite a tedious job and you need a certain amount of expertise to make sure that you are pasting the thing in the right place otherwise you may finish with the thing all pasted up with amendments, but all in the wrong places. I have taken note of his concern about the service he is getting in this House. All I can tell him is that having experienced the service of the House

for twenty years, the service that he is getting is a good one but if we can see ways of improving it we will.

HON F VASQUEZ:

Mr Chairman, I am not very clear about one aspect of the Chief Minister's reply and that is this. My colleague's question was directed at the production of Hansard more promptly and the question of money being spent on the updating of the laws in the House of Assembly and the Chief Minister referred my colleague to Item 11 under Other Charges which is a provision for minor works and repairs. Is the Chief Minister saying that money for minor works and repairs could be expended on these sort of items?

HON CHIEF MINISTER:

No. No. What I am saying is that the main difference between the outturn for this year of the total cost of the House of Assembly from £474,000 to £395,000; if we look at the special expenditure, was the production of the Register of Electors and the holding of the general election and if we look at the minor works and at the service of one Assistant HEO. All of these were related to expenditure which is provided after the beginning of the financial year. If you remove those items, then the vote is not down, it is up. That is what I am saying.

Head 7 - House of Assembly was agreed to.

Head 8 - Housing

Personal Emoluments was agreed to.

Other Charges

HON P R CARUANA:

Mr Chairman, will the Honourable Minister for Housing explain. I know that there is further provision under the Improvement and Development Fund, but we will come to that when we come to that - why the continuing fall in expenditure on housing maintenance? I know obviously that there are

MR CHAIRMAN:

Could you call the number and then everyone is immediately tuned in.

HON P R CARUANA:

No.6. Obviously there are projects that started which are finished, but does it suggest that the Government is coming towards the end of its refurbishment programme?

HON J L BALDACHINO:

Mr Chairman, maybe I can explain it. In the past everything used to go under that Head, in other words, 'Housing Maintenance'. As we are now doing bigger

refurbishment projects therefore that is reduced because it is covered under the '101 Improvement and Development Fund' which also covers the wages of the personnel working in those projects. That covers smaller jobs and day to day maintenance of housing units. The other goes into bigger projects. It will also refurbish and carry out the repairs. Some of them will be covered under that Head, so that Head is reduced and the other one increased. That is the reason why. It is not that we are reducing housing maintenance. As a matter of fact it is that we are doing bigger refurbishment jobs. So that one is reduced and the other one is increased.

HON P R CARUANA:

So what I think the Honourable Minister is saying is that there is no reduction in the money that his department is spending on housing maintenance of the ongoing type of the sort that people write letters to the Chronicle complaining that they had difficulty in getting done.

HON J L BALDACHINO:

That is correct, Mr Chairman. If I may add, the letters in the press that he is referring to will be covered once the building is refurbished. It has to do with drainage which will have to be covered when the building is refurbished and painted. That is the programme that we are carrying out in Laguna and if the Honourable Member cares to walk in that area - I do not know if he does - he will see that we have already done four blocks. Unfortunately we cannot do them all at once and it is an ongoing programme.

Head 8 - Housing was agreed to.

Head 9 - Justice and Law Department

(1) Supreme Court

Personal Emoluments was agreed to.

Other Charges

HON F VASQUEZ:

Mr Chairman, as you will see, this year in Item 9 the Forecast Outturn is £13,100 and I have no doubt the Honourable Member on the other side will be able to confirm this. I suspect that this is an item referring to the refurbishment of the Magistrates' Court that was carried out this year. I would ask this question. Will the Honourable Member opposite either confirm or give me some reassurance that Government will consider the suggestion that I made yesterday in my submission? That is that the Magistrates Court could be turned over to the use of the Supreme Court to provide a second court for the second Supreme Court judge. Are there are any plans at all to consider that alteration?

HON CHIEF MINISTER:

Mr Chairman, if the Member is looking at the minor works of £13,100, the answer is that that is the Supreme Court. The minor works on the Magistrates' Court is on the following page Subhead 9 - £24,300.

HON F VASQUEZ:

I apologise, Mr Chairman. The question nevertheless stands. Will the Honourable Member on the other side consider the suggestion that was made yesterday that the Supreme Court be allocated an additional court room to give the second Supreme Court judge a court room of his own to increase his productivity basically?

HON CHIEF MINISTER:

I have one fairly simple yardstick by which I measure productivity and that is whether it costs me money or it saves me money. If the Honourable Member can show me how I can save money I will be very happy to look at it.

HON P R CARUANA:

Mr Chairman, my sense of humour has not yet failed me to the point where I cannot detect an element of tongue in cheek in there. I do not suppose the Chief Minister is saying that he requires value for money from the administration of justice as well. I mean, you will understand that that is not an acceptable answer but I take it in the sense that humour was intended.

HON CHIEF MINISTER:

I do not know how else I can judge the productivity of the judges. Is it by how many people they get locked up? Is it how many they convict or is it how much it costs? Since the Member asked me to look at it by reference to productivity, I suppose that is the incentive he was offering me, that he would increase the productivity. I can only imagine that it is because it becomes more cost effective. We are certainly not providing any additional funds beyond what we have got here and we have had no representations along the lines that he suggested but we will take a look at it.

HON P R CARUANA:

Mr Chairman, the most cost effective thing that the Honourable Member can do in relation to the administration of justice, of course, is to abolish the administration of justice altogether. That is certainly the most cost effective thing that you can do. What the question was clearly intended to comment on was this. If you have two judges, because you have workload for two judges, but you only have one room, you lose part of the benefit of having two judges because if you only have one court

room and two judges cannot conduct two different courts in the same court room, unless you give them each their own court room, you are only getting very limited use out of the second judge and that has nothing to do with value for money. I think it is a very legitimate point made from experience on this side.

HON CHIEF MINISTER:

Well, we will have to see then if the second judge is not fully employed whether we keep the second judge and I would certainly take seriously the Honourable Member's suggestion about doing away with the administration of justice altogether as a most logical solution to the problem.

HON F VASQUEZ:

The point that I tried to make yesterday in my submission is that, in fact, by providing a further court room it increases the productivity in terms of the amount of work that the second judge was doing. Although in terms of direct benefits, none can be perceived, in terms of indirect benefit and the amount of work the local jurisdiction can do in international as well as local terms, there is actually an increase in productivity in the Bar generally and commensurately in terms of the multiplier effect, I think it is bringing money into Gibraltar. There is a further contribution of the Judiciary into the local economy.

HON CHIEF MINISTER:

I think, what we are looking at - which may help the situation - is in fact whether there is a need for everything that now goes to the Magistrates' Court and the Supreme Court to go there and clog up the system. One of the things that we have been asking the Law Draftsman and the Attorney-General to look at for us is the creation of a small claims court so as to remove some of the things and therefore allow the Supreme Court and the Magistrates' Court to concentrate on the things they need to concentrate on and the things that do not require that level of expertise or whatever, could be dealt with more expeditiously and also perhaps less expensively for the litigants. So that may help.

HON F VASQUEZ:

I do not want to labour the point, Mr Chairman, because I do not want to be accused of getting on a hobby-horse or pushing a vested interest. But the fact is that the clogging up of the Court's work is not in terms of minor claims. In fact, the court room is taken up one day a month by these types of small claims in the Court of First Instance. What is clogging up the court room are most substantial commercial litigation, claims and

landlord and tenant claims etc, which are really of a nature which cannot be dealt with by a small claims court and which really are crying out for a separate court room to enable the second judge to do a full time job dealing with this backlog.

HON CHIEF MINISTER:

We will look at the problems that have been highlighted by the Member opposite but we will not look at it exclusively on the basis of saying we need to provide a certain court but perhaps what we need to do is to get somebody to give me a detailed account of the nature of the workload that they have and the difficulties that they have and we will see how we can address it.

Other Charges was agreed to.

(2) The Magistrates' and Coroner's Court was agreed to.

(3) Law Officers

Personal Emoluments

HON P R CARUANA:

Mr Chairman, could the Honourable Member opposite explain the reduction in the estimated salaries vote at the Law Officers? Is it explained by the fact that there is now one fewer member of that department and does that signify reduction in the staff or some reorganisation in the department?

HON CHIEF MINISTER:

Yes. If the Member looks on page 43, he will find that the Law Draftsman is no longer shown under his Head. It is shown under the Secretariat Head.

HON P R CARUANA:

Yes I see it is not under this Head of Expenditure at all.

Personal Emoluments was agreed to.

Other Charges

HON F VASQUEZ::

One question, Mr Chairman, I can see that under Other Charges Item 5 - 'Legal Action Expenses' and further down Special Expenditure - 'External Legal Advice' we seem to have two items of expenditure there referring to legal action and legal advice, can the Honourable Member opposite explain to me whether both those refer to the European Court case or there has been a separate legal action?

HON CHIEF MINISTER:

No. Special expenditure which is subhead 80 is in fact the European Court case predominantly. That is to say, there are also instances of fees we have paid to the same firms of legal advisers in Brussels on other aspects of Community Law besides the Court case but it is all to do with the EEC either the case or other Directives. This is why we are treating it as special expenditure. The other is a normal legal action where we have contracted lawyers in Gibraltar for particular cases or whatever rather than using the resources of the Department because we felt the Department was already fully loaded.

HON F VASQUEZ:

Does the Chief Minister have any indication - I am not in any way questioning the wisdom of the expenditure - what the long term cost of the European Court case is going to be? I see £89,000 last year and provision for £100,000 this year. Any idea over what period of time that expenditure is expected to be incurred?

HON CHIEF MINISTER:

No, Regrettably that is one item of expenditure over which I have no control. The answer is that we have taken a policy decision that this is so important to us that effectively we have to meet the bill whatever the bill is.

Head 9 - Justice and Law was agreed to.

Head 10 - Labour and Social Security

Personal Emoluments was agreed to.

Other Charges

HON H CORBY:

Mr Chairman, Subhead 11. Can the Minister explain where the increase in child care is going to be spent?

HON R MOR:

No, Mr Chairman, it is just a normal estimated increase in expenditure which is expected during the year. It is just an estimate. It is very difficult to gauge how many children we are going to have at any particular time and how much money is going to be spent on that.

HON H CORBY:

'Training Courses' - No.14. There is a very substantial increase on that.

HON R MOR:

The explanation is, Mr Chairman, that we had some people lined up for training in the United Kingdom and the arrangement that existed was that the UK Government used to pay for the training. That stopped, we are required to foot the bill and this is the reason why 'Training Courses' has been increased.

HON F VASQUEZ:

Item 15 - 'Losses of Public Funds'. I see that there is a forecast outturn of £3,400. Could the Minister explain whether that is a burglary at the premises of the DLSS or is it an internal problem that has arisen?

HON R MOR:

It is a subhead which is very difficult to control. Normally it is just payments made in excess. It is internal losses.

HON F VASQUEZ:

Is there any suggestion that there is dishonesty on the part of any employee at the DLSS and are there any internal procedures to deal with this sort of matter?

HON R MOR:

No, Mr Chairman. When there is any reason to suspect that, the Police are called in and they investigate. I have no knowledge that that is happening.

HON CHIEF MINISTER:

Sometimes even if the person who has been overpaid is known, they usually are people who are not particularly well off and who may have started employment and they got paid for a couple of days. Strictly speaking it is better to write it off than to chase them and try and get the money back.

Head 10 - Labour and Social Security was agreed to.

Head 11 - Personnel

Personal Emoluments was agreed to.

Other Charges

HON LT-COL E M BRITTO:

Mr Chairman, if it is established Government policy not to recruit, why do we need an Item 7 for 'Recruitment Expenses'?

HON J C PEREZ:

Mr Chairman, because unfortunately the post of Attorney-General has not been able to be done away with yet and we are recruiting Attorney-Generals and other officers from outside Gibraltar.

Head 11 - Personnel was agreed to.

Head 12 - Police

Personal Emoluments was agreed to.

Other Charges

HON P R CARUANA:

Mr Chairman, although we welcome the increased vote on the Police; in order that the resources generally be increased, there is one very small item there which I raised; it is No.20 'Immigration/Repatriation', not because the sum of money involved is significant but because it shows a rising trend over the years. Can the Honourable Members opposite explain in what circumstances these repatriations occur?

HON CHIEF MINISTER:

This is really a situation where somebody is illegally in Gibraltar and we cannot chase up the bondholder that is supposed to repatriate the person or the person does not have a bondholder and does not have the money. At the end of the day, it is better to repatriate them than to keep them here indefinitely illegally and to have to feed them and look after them because we cannot let people starve. Most of the cases are either people who appear somehow from across the frontier and we cannot send them back because they will not take them back or people who have landed here from a ship. They constitute the two biggest elements.

HON P CUMMING:

Mr Chairman, No. 16. May I ask why the money for the ambulance service has gone down?

HON CHIEF MINISTER:

This of course does not include the cost of manning the ambulance. Clearly that is covered by Personal Emoluments. These are the amounts that the Police say they require in order to run the ambulance mechanically and in terms of fuel. There has been no reduction imposed by the Council of Ministers, it is the amount that they have asked for.

HON J C PEREZ:

Could it well be, Mr Chairman, that because there is a new ambulance coming, they do not expect to spend so much in maintenance in the coming year.

HON F VASQUEZ:

Mr Chairman, under Item 5, 'Electricity and Water', we have a similar sort of variation as to the one raised by my colleague Mr Francis earlier. We have an approved estimate of £10,000 and a forecast outturn of £17,500, so it is a 75% increase. Has there been a water leak at the Police Station as well?

HON CHIEF MINISTER:

It certainly does not mean that we are submitting people to electrical shocks or anything like that.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, if you look at the actual expenditure of 1990/91, it was clear that 1991/92 estimate was grossly under-provided for.

HON F VASQUEZ:

One other matter, Mr Chairman, 'Subsistence of Prisoners' - No.6. There was an approved estimate of £2,100, again it seems to be extremely conservative. Is there any reason why that should have been underestimated by 100%? Has there been an increase in the number of prisoners?

HON J C PEREZ:

That is basically the people that are detained in the Police Station not at the Prison and ever since a particular establishment near the Police Station closed there has been a change of contract as to the provision of food for the prisoners held in the cells. The President of the Chamber of Commerce may have something to do with it.

HON F VASQUEZ:

My final question, Mr Chairman, under this heading. No.18 - 'Contributions at Interpol'. I see there was an estimate voted last year of £7,000 that has not been paid this year. Is there any reason why we are again estimated to spend that contribution and why was it not paid this year?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

It is simply one of phasing, Mr Chairman. If you look at the payment that was made in 1991, it was only £3,500 and it was estimated that we would probably have to pay two payments in 1991/92 which means that the bill was not rendered to us. We still anticipate that we will have to make two of these payments next year.

HON F VASQUEZ:

That is a supposition, Mr Chairman. It might not be an accurate one. The point is will the Honourable Member opposite undertake to find out and let me know so that we are aware of the situation?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Very happy to do that, Mr Chairman.

Head 12 - Police was agreed to.

Head 13 - Post Office - Savings Bank and Philatelic Bureau

(1) Post Office and Savings Bank

Personal Emoluments was agreed to.

Other Charges

HON P R CARUANA:

Mr Chairman, I think this is the best example of the point that is now being raised two or three times in relation to the consumption of electricity and water in Government departments. I think the point is best illustrated by Item 12, Mr Chairman. Not by looking at the estimated figure but by looking at the actual consumption of the Post Office for 1990/91 which is £5,000. In 1991/92 they consumed £12,200 (forecast outturn) and now you estimate something for the current year in the more usual order of £6,000. That suggests, does it not, that there was an extraordinary consumption of electricity and water during 1991/92? It is a pattern that repeats itself more than once in relation to many of these Heads and therefore it cannot be that there has been a leak. One does not want to become fastidious about this but there cannot be leaks in all the departments and I therefore ask the question outright. When Government has contracts for refurbishment of particular Government departments, is it, for example, that they take on board the increased consumption of electricity and water resulting from the contraction works? There must be an explanation.

HON J C PEREZ:

Mr Chairman, regrettably for the Honourable Member the explanation is the same one. In the whole of the area of the Post Office Parcel Post in Landport Ditch there was a very big leak. A lot of water was being lost there and that is the result why this year there has been an increase in the water consumption. As a result of moving to Lyonnaise, the company; more commercially minded, is putting a lot of effort to stop the leaks which it might not have taken the case before when the water ran on the bill of the public at large. But certainly there has been a greater effort on the part of the company since commercialisation to stop water leaks and they have been successful at it, let me say.

HON P R CARUANA:

Mr Chairman, that being so, can I make two points? The first is that, given Government's concern to save public monies, they deploy some of their surplus labour force on improving the state of plumbing in Government buildings generally, since it is now the third building to have had a leak. Secondly on the question of losses of water, if there are losses of water, are they probably attributable to the department consuming the supply or is it something which ought to be attributable to the public utility?

HON J C PEREZ:

It very much depends where the leak takes place; whether the leak is beyond the meter or before the meter. In these circumstances it has not been beyond the meter, it has been before the meter. If not the loss in other circumstances would have appeared under the Public Works Department and now would be incurred by Lyonnaise des Eaux. But certainly there has been an effort to stop leakages. In fact, I said as a result of the move even before the move took place, it was something that was being addressed and it is something that is now being looked at in connection with the GSL area. The amount of water that is being used there is astronomical in relation to the operation that there is today and you compare the operation today and the operation that was there before and the amounts of water being consumed are the same. So we told the companies in the area concerned that there must be massive leaks and the company is now looking at the possibility of fixing.

HON P CUMMING:

Mr Chairman, leaks before the meter are obviously underground and masses of water may be lost before they are discovered but "beyond the meter." Surely the Post Office has not lost £6,000 worth of water which is visible.

HON J C PEREZ:

It depends where the meter is. The area concerned is the Landport Ditch area and it is very, very possible that one meter supplies the whole area and that the whole of the water consumption in the area is charged to the Post Office because they are all Government departments.

HON L H FRANCIS:

Mr Chairman, a small question on Item 9 - 'Contribution to the International Bureau'. Could the Minister comment on the wide variation from £14,000 to £24,000 actual expenditure whereas previously it was only £116?

HON J C PEREZ:

Again it is the same thing. It is a two year payment because the year before that we had not made a payment for the International Bureau.

Other Charges was agreed to.

(2) Philatelic Bureau was agreed to.

Head 13 - Post Office - Savings Bank and Philatelic Bureau was agreed to.

Head 14 - Prison was agreed to.

Head 15 - Support Services

Personal Emoluments was agreed to.

Other Charges

HON LT-COL E M BRITTO:

Mr Chairman, I made the general point yesterday on the principles of the Bill about the increase in the cost of collection and disposal of rubbish which I point out.....

MR CHAIRMAN:

What item are you referring to? You have to refer to an item otherwise it becomes irrelevant. I cannot allow you. You cannot go back to the principle. You must look at an item and tell me the number of the item.

HON LT-COL E M BRITTO:

Mr Chairman, Item No.10. The cost of collecting rubbish has gone up by 85% and on Item No.15, Mr Chairman, the cost of disposal of refuse has gone up by 98% I would appreciate some comment from the Minister in connection specifically with the fact that both the collection and the disposal system have been privatised during this period and whether there is any connection with this increase?

HON J C PEREZ:

Mr Chairman, in 'Collection of Refuse' there has been an increase in personnel as a result of the new areas in the reclamation. That is to say, that there will not be a need to increase personnel further as a result of the new areas coming into stream for refuse collection. Also when they were previously in Government, the pensions of those people and the administrative costs and the social insurance of the workers in the area were not shown as an expense here. Therefore they are shown as an expense here because it is a contract with the company and all issues arising out of the employment of those people are shown as a cost here rather than separately as was the case in Government departments. As far as Item 15 is concerned, this is the first payment as a result of our obligations under the contract with Baltica. Again the real running cost in the £897,000 forecast outturn or indeed in the £627,000, was not shown previously, in that again the pensions and the

administrative costs of those people were not shown in that vote and that again forms part of the cost that the company itself is incurring in employing people directly. Other than that we had issues such as major repairs every two or three years from the Improvement and Development Fund of about £250,000 to £300,000 which do not appear anymore because that is a contractual obligation of the company. So, in fact, the first two or three years of the contract, would probably cost us less net than it was costing us up to now if we took everything into account. As the years progress that balance might be shifted and it would probably start costing us more in the future but one has to understand there is a capital cost in the figure being paid to the company because we are not providing the incinerator ourselves. The incinerator is scheduled to have a twenty year life.

HON P R CARUANA:

Mr Chairman, will the Honourable Minister explain the formula for the payments by Government to the company for the disposal of refuse?

HON J C PEREZ:

Mr Chairman, I can let the Honourable Member have the information if he wants to. It is a rather complicated algebra question which I am sure he will enjoy looking at as night time reading; as the Honourable the Chief Minister likes to call it. It has been gone into some depth and it is related to the charges of water and electricity from the plant as well. It is all connected. There is no secrecy surrounding that. You should welcome that I am giving you the information.

HON P R CARUANA:

You have not given me the information yet. You offered to give it to me.

Head 15 - Support Services was agreed to.

Head 16 - Secretariat

Personal Emoluments

HON P R CARUANA:

Mr Chairman, now that we know that the Law Draftsman is in the Secretariat, presumably, the Law Draftsman no longer appears under the Head of the Attorney-General's Chambers. Will the Honourable the Chief Minister say that the Law Draftsman is under the Head Secretariat, and if so, what is the reason for that?

HON CHIEF MINISTER:

The reason is that we chose to put it there, like the reason for everybody else that is moved from every other Head to every other Head and it is shown under 'Other Officers - Senior' where the Member will see that there

is a senior officer that was not there before and a personal secretary that was not there before. We felt that it would be better to have it in the Secretariat building since obviously the policy decisions on the laws are taken politically not technically by the Attorney-General or anybody else. We decide what are the policies that we want translated into law. We find that it is more practical to have law drafting done directly with us. Of course, 75% of the work involves giving effect to Community law where there is a very big political input from me directly linked to my discussions with Mr Garel Jones who is responsible for Gibraltar before the European Community.

HON P R CARUANA:

Mr Chairman, does that formally signify that law drafting no longer falls officially under the ambit of the Attorney-General's listed responsibilities?

HON CHIEF MINISTER:

As far as I am concerned, law drafting or anything else falls under the ambit of the Government of Gibraltar who employs the Law Draftsman as much as the Government of Gibraltar employs the Attorney-General. We can have one Civil Servant under one Head and another Civil Servant under the other Head and it does not alter who is in charge. We know who is in charge!

HON F VASQUEZ:

We now know that there is a senior officer appearing under the Secretariat. It is in fact the Law Draftsman who has been transferred. Could the Honourable Member opposite say what the salary of that senior officer is and how it compares to the salary previously enjoyed by that individual?

HON CHIEF MINISTER:

If the Member looks at the back he will find what the salary is. The Estimates shows the salary of senior officers. The same as every other senior officer. The same as it was before. It is the same as every other senior officer and in the same place. I know he was not here but everything else is in the same place.

HON F VASQUEZ:

Mr Chairman, under Scale 11 at page 101, we have 'Senior Officer' and there is a range there from £23,000 to £33,000 so that does not really answer my question. I would like to know what salary is being paid to this particular senior officer.

HON CHIEF MINISTER:

Everybody is in the salary scale in the Government and the Honourable Member is not entitled to ask in which

point each person is in that scale. I am sorry, why? Why this person as opposed to the other 2,500 civil servants?

Personal Emoluments was agreed to.

Other Charges

HON P CUMMING:

Mr Chairman, under Item 8, how come we are paying so much more money for information and getting so much less?

HON CHIEF MINISTER:

Yes, I think he has got a good point there! We need to provide even less.

HON P CARUANA:

Or more information!

HON CHIEF MINISTER:

Yes, but given that we are all agreed that we are going through hard times, it is more logical to cut the money than give the information.

HON LT-COL E M BRITTO:

A little bit of information. Can I just ask under Item 6, what is meant by 'Communication Expenses'?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

It is simply a combination of postage and a substantial volume of telex, hire of telex and telex materials.

HON F VASQUEZ:

Mr Chairman, under Item 15, 'Tourist and Other Promotions' - obviously it was a matter that was dealt with yesterday in my address - I ask the Honourable Member opposite if he can specify how much of those £400,000 is allocated on an advertising campaign? Can he say what advertising company has been retained to carry out that advertising campaign?

HON CHIEF MINISTER:

You already have the answer. The answer is none. I gave him the answer already. We are looking at the advertising campaign and the use of advertising agents which have existed in the past; the result of whose performance the Honourable Member is very critical of. There was before an advertising agent in the United Kingdom and there was a newspaper advertising campaign and we have seen the results in the level of tourists arriving in Gibraltar in the last two years. Therefore,

in our judgement the money can be better spent in other ways and we will see whether the ways that we do it produce more tourists than the ways that we have done it in the past, which is really what is important - the results.

HON P R CARAUANA:

Will the Honourable Member then go on to say what those other ways are and does he mean the Gibraltar Information Bureau?

HON CHIEF MINISTER:

No. It means in fact that the Gibraltar Information Bureau, in close consultation with the industries committee that has been created last year, will be looking at incentives, promotions and things like that on the basis of clearly monitoring the cost and the return in terms of actually translating that into people coming for holidays in Gibraltar. Before there was a standard procedure which like in many other areas, as I have explained already to the House - we have not yet caught up with everything. We keep on catching up with new things every year where we suddenly ask, "Why are we doing it this way?" and the answer is, "Well, because it has always been done this way." Then you say "Well, right, has anybody sat down and actually found out what it is costing us to do this? If we are putting an advert in the Sunday papers, has anybody actually found out if anybody reads the adverts and if anybody comes as a result of the advert or are we just putting money down the drain?" We are doing the exercise this year in this area simply because we have reached this point now. It is not going to be the last place and it is not the first. We have been doing the same kind of exercise of questioning the way we do things in many, many other areas since 1988. Now partly in our concern for the decline that we have had in the last couple of years; which is a worldwide decline but that does not mean that because it is a worldwide decline we cannot say, "Well, that is the explanation" and we do nothing about it. Even if there is a worldwide decline we have to discover whether the way that we have been going about in the past encouraging people to take holidays in Gibraltar, is the most effective way to do it and by listening to the people who stand to gain by bringing tourists. Obviously there should be no conflict of interests. That does not mean that somebody cannot come along tomorrow and say we should spend £1m in advertising or in TV advertising in the UK. I mean, for example, we have had the view put to us by some people in the tourist industry in Gibraltar that Cyprus has done very well and that Cyprus has spent £.5m in TV advertising. This is quite true, Cyprus has got .75 million people. That means that per Cypriot they have paid 60p. If we spend 60p per Gibraltarian in bringing tourists we will not even get a one second exposure on television.

Television is an expensive medium and we are a small economy. There is a limit to the amount of money that we can spend and therefore what we are trying to do is make sure that the way we spend it produces the best possible results for the Gibraltar economy and for the people in the industry because there is no conflict of interest. What we want to do is to look after public money and be efficient in the way we spend it and the results we produce and therefore we have to re-examine the way we have been doing it in the past because we are not happy with the results.

HON F VASQUEZ:

Mr Chairman, what we are trying to gauge in this House is the sort of decisions that have been taken on the other side. Will the Honourable Member opposite please explain how much - because he has criticised the adequacy of the advertising carried out so far which has not yielded the required results - has been spent in the last year on advertising - not promotion - on advertising and who the advertising company carrying this out was.

HON CHIEF MINISTER:

Yes. Last year, Mr Chairman, the Government did not provide any funds. The money was spent by the Tourism Agency and the Honourable Member has already been given the information at Question Time by the Minister for Tourism on how much was spent on advertising. The firm was Weston Tomkins who were the advertising agents of the Government of Gibraltar and continued to be the advertising agents of the Gibraltar Tourism Agency when the Tourism Agency took the responsibility over from the Government. We have put the responsibility back on the Government now and we do not intend to do it in the same way that it was being done in the past.

HON F VASQUEZ:

We still do not know how much was allocated by the Gibraltar Tourism Agency. I appreciate it was not the Government - it was one of the Government Agencies - but how much was allocated by the Gibraltar Tourism Agency on advertising and until we know that amount it is impossible for us to gauge whether the correct decision was taken and whether it is pertinent for the Honourable Member opposite to say that it was not an efficient campaign. Can we please know how much was spent on the advertising campaign?

HON CHIEF MINISTER:

The Honourable Member has got three options either he votes against on the amount we want to spend in the next twelve months in promoting tourism and other features of the Gibraltar economy or he abstains or he votes in favour. Whatever the Tourism Agency was spending last year in advertising is irrelevant because we are not

going to do the same thing. It has nothing to do with it. I do not know how much they spent and I have not asked them and I am not interested and if I am not interested I do not see why I should get information for him.

HON P R CARUANA:

So the reply is not going to be given. I am grateful, Mr Chairman.

HON CHIEF MINISTER:

That is correct, yes.

HON P CUMMING:

Mr Chairman, it seems fair to assume that advertising encourages tourism, but to take the opposite view and say how ever much we advertise it does not help tourism, will have to be backed up by some research and I would ask whether any research has been done?

HON CHIEF MINISTER:

The research that has been done which I have already referred to, is that we actually started running checks in the last six months of the enquiries we were receiving in the London Office immediately after we put advertisements in the national press in the United Kingdom and monitoring the cost of adverts in the national papers with the numbers of callers we had. We then produced a breakdown from those numbers of callers as to how many of the callers called to say "Are there any jobs in Gibraltar?" and how many of them said, "Is tax very high if I retire there?" and how many said, "I would like to come for a holiday." The result was that in some cases we were spending £10,000 or £15,000 in an advert and actually getting half a dozen enquiries about a holiday and we do not even know if any of those six came. So I came to the conclusion that it would be cheaper to pay six people to come and get six tourists than to spend £15,000 and get six telephone calls, which is what appeared to have been happening. Having seen that - and this is with all the experts from the advertising agents and all the rest telling us what to do everytime we put an advert - the cost of the advert was increased 100% by the fee charged by the advertising agency for designing the advert, it seemed to me that we were not getting to the customer from a commonsense, practical point of view. Therefore, we said to the people in the industry, "Look we are going to put a pool of money, we are going to put it under the control of the Government, we are going to monitor it very closely and we are going to make sure that if we spend £1, it is getting to where we want it to get and we will be monitoring the results." I would have thought that what the Members opposite would want to know is, if they are going to be voting in favour of this - I do not know

because they have abstained on the lot of them. They will not even be voting in favour, in which case really it is neither here nor there - they would want to know what would be the success of this strategy in the future, not what went wrong with the ones in the past. I am convinced that the ones that were adopting in the past had a lot of shortcomings although it is the traditional way that it was always done.

HON F VASQUEZ:

Mr Chairman, we do not consider that it is nearly enough. The point that I am trying to find out exactly is what has been spent in advertising in the past. It is all very well for the Chief Minister to stand up in this House and say that we have had only got six enquiries, but until we know the nature of the advertising and how much was spent we cannot judge. For all we know it was an entry in the personal columns of the Evening Standard and it is hardly surprising how they got these six enquiries. We have to be able to try and judge what has been spent and gauge whether it is satisfactory and it is our view that not nearly enough has been spent or is going to be spent on advertising Gibraltar as a tourist destination.

HON CHIEF MINISTER:

The answer is that under the particular Item before the House, zero was spent. If he looks at the forecast outturn and at the approved estimate in Subhead 15, which is what we are talking about in this Committee. Item 15! Now he can also use Item 15 to ask questions about anything else he wants and the answer is those questions are irrelevant and will not be answered. The decision on the money we are asking the House to vote this year on tourist promotion is not conditioned in any way by what was being done in the past. Therefore the Member can either vote in favour, against or abstain, but he is not going to get any information which is irrelevant, because we consider it to be relevant and it has not been formulated as part of our strategy in this year. But I have already told him - so it is not that he does not know that - that it does not involve an advertising campaign and it does not involve advertising agents. He has already been told that.

HON P R CARUANA:

Mr Chairman, of course I do not accept the premise, not that I can do anything about it. I do not accept the premise in what the Chief Minister has just said, that we should only be interested in information that he considers to be relevant. In fact, the less relevant he considers it to be, the more interested I might be in having it.

MR CHAIRMAN:

On a point of order, the Chief Minister is absolutely right. Under this Item, we are looking at the figure of expenditure of £400,000 and I allowed the Honourable Gentleman because it is linked up with tourism which before, I do not think he could comment in the way he has done it now. But I think we have had the point discussed and ventilated as much, I think, as is possible and therefore I close now discussion with that Item and we must go now on to the next one.

HON P R CARUANA:

Mr Chairman, if you so rule, you know that I have no alternative but to bow to your ruling. But I think frankly I am the Leader of the Opposition in this House and I have not yet asked the question

MR CHAIRMAN:

As long as As long as

HON P R CARUANA:

..... and I wish to ask a question on this Item, but if you rule that I

MR CHAIRMAN:

Order. Order. When I speak you shut up! I refer now to the rule that I have just passed, which is that you can refer to the £400,000 of expenditure. On that I will allow you.

HON P R CARUANA:

I am grateful to you, Mr Chairman. It is on that that I was going to ask my question. The fact of the matter is that my colleague and the Honourable the Chief Minister says have been discussing Item 15 and the £400,000 on the assumption, which is not more than that, that the £400,000 has been spent on tourism, and the Honourable the Chief Minister says that anything else other than tourism is irrelevant to Head 15 and it is not, because Head 15 is 'Tourist and Other Promotions! So how much is being spent on tourism, how much is being spent on other promotions and what are those other promotions?

HON CHIEF MINISTER:

Yes, the breakdown of the figure, which I have not been asked by anybody else to provide before and I have said throughout it is of tourism and other promotions, is that we are contributing £150,000 to the Gibraltar International Business Development Board and we are spending directly ourselves £250,000 on tourist promotion. This is in keeping with the policy on which we were elected; which was included in our manifesto and which

is not of course the policy of the Member opposite but the one that matters is ours because that is the one that has got the support of the majority of the people, which was to coordinate the expenditure on promotion because we felt that there was a certain duplication of effort which was not being put together. You may be going somewhere to promote the finance centre but if at the same time you can sell stamps and sell coins and talk about shipping and promote holidays in Gibraltar, then the net additional cost of doing that is less than if you make four trips, one for each subject. So that is one of the areas where we said during the election campaign that we will involve, for example, the people in Rock '92 and the people in the finance centre. We have got limited resources. We have got to put them together and try and make the maximum use of them. That is why the two items are together but the breakdown of the two is £150,000 which would be given to the Business Development Board and £250,000 which will be channelled through the Gibraltar Information Bureau.

HON F VASQUEZ:

I am grateful to the Chief Minister. I would like to move from Item 15 back to Item No.10. I just query the fact that the Approved Estimate for 'Printing and Stationery' was £65,000 last year, Mr Chairman, and the overspend is of some £63,000. It is 100% over the estimate. Could the Honourable Member opposite explain that very substantial expenditure on printing and stationery?

HON CHIEF MINISTER:

Yes, this is in fact the order for the European Community passports which we paid in this financial year and it is intended to last us for five or six years. We have ordered a large enough stock because it was cheaper to order a big amount than a small amount. That is the only reason why it is there. We could have shown it as extraordinary expenditure but since we had sufficient money available for viring from another subhead, we put it in there.

HON F VASQUEZ:

I assume, Mr Chairman, that the cost of these passports is passed on to the ultimate consumer in the fees that one receives for this, is that right?

HON CHIEF MINISTER:

The fees are in fact determined by the UK and we will follow the UK cost to the customer.

Head 16 - Secretariat was agreed to.

Head 17 - Trade and Industry

(1) Development

Personal Emoluments was agreed to.

Other Charges

HON P R CARUANA:

Mr Chairman, it has become the Government's practice since last year's Estimates to include rates under this Head and presumably there is a corresponding figure under the revenue side under 'Internal Revenue - Rates'. I am referring to Item 3, Mr Chairman. I ask myself the extent to which this item constitutes either revenue or expenditure. In other words why are we voting to authorise the Honourable Minister for Trade and Industry to pay about £2.1m to the Honourable the Financial and Development Secretary when that is not an expenditure of the Government of Gibraltar. It is neither an expenditure nor a receipt. It is nothing more than a paper entry. The effect that it has is that it boosts the budget by that amount, completely artificially and it involves neither a revenue nor an expenditure.

HON CHIEF MINISTER:

Yes, I agree entirely. This is one of the items we have not got yet round to eliminating but we are working on it.

HON P R CARUANA:

You have introduced it yourselves have you not?

HON CHIEF MINISTER:

No. No. It was always there.

HON P R CARUANA:

Under this Head?

HON CHIEF MINISTER:

No. It was previously called Crown Lands. I am glad we are beginning to convert him to the right philosophy.

HON P R CARUANA:

Item 5, Mr Chairman. Could the Honourable Member opposite explain the Item - 'Unoccupied Crown Lands'? Is this referring to the land bank by any chance?

HON M A FEETHAM:

No. There are spaces that form part of the Government's overall property stock and land stock that needs to be cleaned out. There are derelict areas and we always put a nominal sum there for the removal of eyesores on these particular areas as they are indentified.

Other Charges was agreed to.

Infrastructure Planning and Building Control

Personal Emoluments was agreed to.

Other Charges was agreed to.

Special Expenditure

HON LT-COL E M BRITTO:

Item 80, Mr Chairman. After the traditional hesitancy of the Government to produce a city plan. It was eventually produced. Can we have some indication on what is intended with this new Estimate of Expenditure?

HON M A FEETHAM:

Mr Chairman, as I have already made known to the House, we have got a computerised system where we are updating land data and property data on all the changes that are taking place in Gibraltar on individual properties and overall. This needs to be kept up to date and this expenditure will go towards precisely that.

HON LT-COL E M BRITTO:

So it is not a city plan in the tradition way?

HON M A FEETHAM:

No. It is the existing city plan being updated so that eventually the problems that we have had in the past are not likely to materialise.

HON F VASQUEZ:

Mr Chairman, under Special Expenditure, Item 81, could the Honourable Member opposite explain why the House voted £10,000 last year? It was not spent and we are voting again?

HON M A FEETHAM:

Well, basically we did not spend it and we put it down then in case we need to take particular action on a private property that needs to be demolished and we have to step in to do that ourselves. Emergency works and things like that.

Special Expenditure was agreed to.

(3) Planning and Engineering control

Personal Emoluments was agreed to.

Other Charges

HON L H FRANCIS:

In Item 2, 'General Office Expenses', there is fall of £17,000. Is this part of the department being shifted round or privatised?

HON CHIEF MINISTER:

The Member will see that in the ones that we have already voted in infrastructure and planning control and so on, 'General Office Expenses' appears for the first time. It was all shown before as a cost of one part of the department and we felt that each function of the department should share part of the general office expenses because they were all making use of it. So we introduced it under each one.

HON F VASQUEZ:

Item 7, under 'Other Charges' - 'Highways'. I remember that in answer to one question; I cannot remember what number it was, the Honourable Juan Carlos Perez referred to a new resurfacing system which was a cold system which we are going to employ in certain busy parts of the highways. I notice that the vote is not going up by very much. Is it the intention of the Government to actually do something about resurfacing our highways and employ this new system that we have got to do something about that?

HON J C PEREZ:

Yes, Mr Chairman, you can see that reflected in the Improvement and Development Vote. What we want to do is test the equipment first and hire a plant from across the border and see whether it works before we actually decide to invest money in buying it. We want to do that pretty quickly to do the area around the sundial.

Other Charges was agreed to.

(4) Port

Personal Emoluments was agreed to.

Other Charges

HON H CORBY:

Can I go to 'Maintenance of launches' - Item No.5? I think that there are only three people here, Mr Speaker, the Chief Minister and myself who have seen the same launches since we were young. Might it not be investing on maintenance of launches and throwing money away on repairs to those launches which are very, very old.

HON CHIEF MINISTER:

This is the maintenance, the upkeep of launches that is carried on by the Department itself. In fact, we did look at replacing the launches a year ago and frankly we could not afford it. The Department asked for it and we had to turn it down because it run into three figures and it was just not on. So instead we contracted out the work of a major refurbishment of the launches because the engines were in a very good shape and it was the hull that needed to be done. We have bought a second hand one from the private sector, which was shown in the Improvement and Development Fund.

HON L H FRANCIS:

Mr Chairman, Item 16 - 'Minor Works and Repairs'. There was a token amount in the Approved Estimates 1991/92 of £100 and a forecast outturn of £16,300. What was this for?

HON J C PEREZ:

Let me explain to the Honourable Members that this is not the first time it appears like that. Every other Head has a token vote and then what is actually used during the year is then reallocated. This is because the system before was one where you did not know what you were voting and when we came into office we changed it so that the forecast outturn is one where you see the expenditure on repairs to the building or doors or wires. It is minor maintenance that should be the £16,000.

HON M A FEETHAM:

There is some expenditure here because the adjoining building from the MOD was handed back to us and we put some of the workshops in the building adjoining the Port Office.

Head 17 - Trade and Industry was agreed to.

Head 18 - Finance and Revenue Collection Services

(1) Financial and Development Secretary's Office

Personal Emoluments was agreed to.

Other Charges

HON P R CARUANA:

Mr Chairman, just so that we can piece together all the various promotional heads from the various places where they appear, on Items 9 and 10, would the Honourable Chief Minister or perhaps the Financial and Development Secretary explain those two items 'Representation

Overseas' and 'Promotions and Conference'? Is it other information offices other than the ones in London for example? Is it all part of the marketing effort or is it a specific aspect of it?

HON CHIEF MINISTER:

The vote for Item 9 - 'Representation Overseas' was the one that we introduced the first time for the first office which was the Washington Office. If the Member looks back he will find that that subhead appears for the first time in the 1988/89 Estimates of Expenditure and we have kept the cost of Washington Office as a cost to the Government because the Washington Office is the only one where the actual person running it is on a contract with us because that is how we started doing it in 1988/89 and that person is registered with the United States Government as a foreign agent because that is the United States law. Therefore, taking it away would have made life difficult for him. Subsequently, we have entered into commercial arrangements with companies where basically they provide us with the facility in their existing organisation at very little cost to us. The 'Promotions and Conferences' is really what pays for our participations in things like the conference on the high net worth individuals which I attended in the UK and that kind of thing.

HON F VASQUEZ:

On a point of clarification, Mr Chairman, is the Chief Minister saying that Item 9 in effect covers all the expense of the GIB offices that have been started or only Washington?

HON CHIEF MINISTER:

No. It covers the expenses primarily of the contract of Perry Stieglitz who is the man we appointed there in 1988 and that is because that is how we did it in 1988 when we first thought of the idea. He had to register as a foreign agent with the United States State Department and given the complications of bureaucracy if we now tried to change his contract and do something different they may lock him up because they may think that he is a Gibraltarian spy in Washington. I would not like that to happen to him after all the good work that he is doing for us. So we have kept the system as it was in his case but we have not done it for anybody else like that.

HON F VASQUEZ:

Yes, but, Mr Chairman, the Chief Minister explained that the other GIB offices had made arrangements which were much cheaper whereby they take representations in an already existing office. My question is, are those albeit cheaper expenses included in this item of expenditure?

HON CHIEF MINISTER:

No. For example, if we have got a promotion that is organised by our office in Geneva, the cost of the promotion comes out of Subhead 10. The office in Geneva may charge to that particular promotion some costs which they have been doing in terms of preparatory work ie of advertising in the local press or bringing around people to encourage them to come and that kind of thing. But the ongoing cost of the office in Geneva called the Gibraltar Swiss Agency, is being met by private investors in Switzerland who have got investments in Gibraltar and who are interested in helping us develop more business because it is good for them. Therefore they are making that contribution.

Other Charges was agreed to.

(2) Accountant General's Department

Personal Emoluments was agreed to.

Other Charges

HON LT-COL E M BRITTO:

Mr Chairman, this brings me to the point that I touched on briefly before-Item No. 17- and really the question is not too important on its own but it was more relevant in connection with what I was saying before that is why I wanted to link it to the previous question. What I am really asking the Chief Minister to confirm is that the reduction is due more to a realisation that the original figure was too high rather than to a change of policy?

HON CHIEF MINISTER:

Yes, the policy is still the same but when we put the £10,000 in last year's Estimates we did not really know whether that would be enough or not. Since we have actually done the things we wanted to do where we have been mainly using accounting firms to look at the accounting procedures or to look at the controls. For example, recently we have been talking to them about doing an exercise for us in looking at our stores organisation. Last year it was a review of the paying system. Since the workload of last year only cost us £6,500 we felt that this year we did not need to put in as much as £10,000.

Other Charges was agreed to.

(3) Income Tax Office was agreed to.

(4) Companies Registry was agreed to.

(5) Customs

Personal Emoluments was agreed to.

Other Charges

HON P R CARUANA:

Only in relation to 'Electricity and Water' - Item No.4, Mr Chairman, to comment that there appears to have been a leak there as well.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

In relation to that particular case, Mr Chairman, I recollect that the Customs had a special bobby down at the border that was exceptional which is now being removed which incurred electricity and water charges. I am quite happy to give the Honourable Member opposite details so that he can check that with me.

HON P R CARUANA:

I am obliged.

HON F VASQUEZ:

Mr Chairman, Item 15, there is a new entry there for the Co-operation Council and I will be interested to know.....

HON CHIEF MINISTER:

This is a European Community body and our Customs put the case to the Government for belonging to it as members and we support the idea first because we believe in demonstrating our commitment to the international coordination of the fight against drugs and secondly because there are not many bodies where we can actually get in without being boycotted or vetoed, so anywhere we can we feel we should.

HON LT-COL E M BRITTO:

Mr Chairman, coming back to Item 4 - 'Electricity and Water' and the general principle of what we have been saying of the losses concerned if one added up the cost of all the various leaks throughout the Estimates, the amount would tend to be considerable and I would ask the Chief Minister whether he agrees that this is an item that would fall very much within the province of a Parliamentary Accounts Committee in one exercise.

HON J C PEREZ:

Mr Chairman, there have been on two or three Heads, explanations given as to why the disparity. On the other ten Heads the situation is normal, I do not see what the Honourable Member is saying about a general situation. On this particular Head it is not leaks. The Honourable

the Financial and Development Secretary has given an explanation already. The argument that the Honourable Member is making is not valid.

HON LT-COL E M BRITTO:

I think that the Minister misses the point, Mr Chairman. I strictly - to keep within the rules - referred this to Item 4 but I am talking in terms of the general principle of the losses to Government. It is very well to say it is due to a leak but as I think my colleague pointed out, in a small area like the Parcel Post Office, to say that £10,000 of water had leaked and nobody had really noticed to put a stop to it before that amount of wastage was reached which is considerable; is to put it mildly, stretching our powers of acceptance. I was just trying to make the point for the Chief Minister that it is very much calling for further investigation outside the immediate province of this Committee but more in line with the Parliamentary Accounts Committee.

HON M A FEETHAM:

Mr Chairman, on this particular estimate on Customs, let me just make it quite clear. He made a point but the realities are that as far as this particular increase is concerned the bulk of it is because Customs have got more buildings. You will see now that at the frontier they have taken over the building that used to be the DOE building in recent times, for Customs there and also we have had to put, as you know, part of the Consumer Protection Office at Waterport, so basically it is due to the increased number of buildings now under the control of Customs.

HON P R CARUANA:

Mr Chairman, in fairness to the Financial and Development Secretary, I think that the Honourable Minister for Government Services is making excessively scientific use of his answer. I do not hold him to the scientific accuracy of his answer because that is not

Interruption

HON P R CARUANA:

What the Honourable Member is saying is that for him to stand up and say that in the case of this department, it is not a leak on the basis of the rather nebulous answer given by the Financial and Development Secretary stretching his memory further than I would expect him to, is not fair. As to what the Honourable the Minister for Trade and Industry has said, the fact that there are more Customs buildings cannot be the explanation because now for this year's Estimate, we are down again. The complaint is that last year's forecast outturn is extraordinary. Now we are down again for this year and that is the pattern in all the cases.

HON J C PEREZ:

If the Honourable Member would care to listen to what is being said in the House, Mr Chairman, he would have heard that the Financial and Development Secretary has said that there was a building which was being used at the frontier which has now been vacated and that was producing expenditure on water and electricity. He has now the details which have been taken out by our civil servant behind us and he can probably give you more details at this stage.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

A difficulty, Mr Chairman, is that there are a number of contributory factors to this. Part of the problem was that this building at the border because of its sizing had to use fresh water for its services for which we were paying excessive sums quite frankly. Fresh water for its flushing.

HON P R CARUANA:

That used to be illegal.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

The Honourable Member may well be right. This problem has now been corrected. It is now, in fact, getting a salt water supply. That is one of the reasons why the estimate has gone down in the subsequent year.

HON P R CARUANA:

I am grateful for the answer.

MR CHAIRMAN:

Any other comment?

HON LT-COL E M BRITTO:

Well, Mr Chairman, what is interesting is that I asked the original.....

MR CHAIRMAN:

What you are saying is out of order, actually.

HON LT-COL E M BRITTO:

I have not been answered. What I was going to say was that my original question has not been answered.

MR CHAIRMAN:

That is right. I am telling you that your original question was out of order. You have a motion on that, and therefore, you are anticipating. You want them to give you an answer on something that you are going to discuss. It is anticipation. I allowed it to see what the Government reaction would be. If they had agreed I would not have bothered but it is obvious that they do not want to answer you so therefore we have to apply the rules.

HON CHIEF MINISTER:

Well, of course, Mr Chairman, the point made by the Member will have to be developed by him when he makes his case for a Public Accounts Committee. Presumably the sole reason for the Public Accounts Committee is not just to go round looking for leaking water pipes. If that is all that is required to keep him happy and provided it means that we may be able to save money from having somebody else checking the water leaks, I am quite happy to have him on our unpaid water checker list and he can go round checking for water leaks and then he does not need to proceed with the motion.

MR CHAIRMAN:

Any other questions?

Head 18 - Finance and Revenue Collection Services was agreed to.

Head 19 - Reallocations and Subventions

HON P CUMMING:

Mr Chairman, I should like to ask why no figure has been included for the Health Authority this year and can we have a figure?

HON MISS M I MONTEGRIFFO:

Mr Chairman, I would originally have given an explanation during my contribution in the budget debate but seeing that the Opposition has presented a motion, Mr Chairman, this is a matter that we will be dealing with when it is debated.

HON LT-COL E M BRITTO:

Mr Chairman, on Item 1 - 'Grants in Aid', I have not actually added up the whole of the breakdown in subnote 8, but it adds up obviously more than £23,500 which is the forecast outturn. Do I take it that the explanation

is similar to what we have had before that some grants have not yet been paid but will be paid or is the explanation that some grants that were going to be paid and now included in the analysis below are not going to be paid?

HON CHIEF MINISTER:

The answer is that the grants that are fixed are paid and the ones that are not fixed are covered by a provision to deal with the ones that come up during the year. In the figure that we have provided we have not required to pay out more than £23,500 to meet the requests in this financial year. If it arrives after the 31st March then under the requirements of the Public Finance (Control and Audit) Ordinance, to which we have referred already in the Bill that we have already passed for supplementary funding in the House, we cannot vote money after the 31st March in respect of payments taking place before the 31st March. So it would then count as part of the expenditure for 1992/93.

Head 19 - Reallocation and Subventions was agreed to.

Part 2 - Improvement and Development Fund

Head 101 - Housing

HON P R CARUANA:

Mr Chairman, Heads 2 and 3 'Refurbishment of Government Houses and Painting of Government Houses'. Will the Honourable Minister for Housing say which particular housing estates are targetted within that vote?

HON J L BALDACHINO:

I explained this during the budget speech, Mr Chairman. They are all targetted. In other words it is a continuation programme which we started in 1988. What we did in 1988, which I have explained, was that as not to concentrate on just one estate and therefore we would then get complaints from other estates on why one particular estate. We started in different estates on different blocks. Therefore there have been blocks refurbished and painted in Laguna, Humphreys, Moorish Castle and the new one that is going to be started this year is Varyl Begg Estate. Varyl Begg Estate did not start because there was a development and construction on the surrounding areas and therefore we thought that it would be a waste of money to refurbish and paint at that stage.

HON M RAMAGGE:

On Item 5, will the Minister say whether the balconies remedial works apply only to Macmillan House or to someone else?

HON J L BALDACHINO:

We are looking at other balconies which need to be refurbished. We are looking at balconies which are prefabricated, in other words, to see if the cost would be less than if we were to do the new balconies. So we are at that stage. We are looking at other buildings which require remedial works on the balconies and not just particularly at Macmillan.

HON M RAMAGGE:

So the total estimate of the cost of the project, the £418,000, does not apply only to Macmillan House?

HON J L BALDACHINO:

That is correct, Mr Chairman.

Head 101 - Housing was agreed to.

Head 102 - Schools and Sporting Facilities

HON L H FRANCIS:

Mr Chairman, under the Item for 'Improvement for Sporting Facilities' 1992/93, I am not sure whether the Honourable Minister for Sports explained this during her contribution, but I was just going to ask on what facilities the £25,000 are to be spent?

HON MISS M I MONTEGRIFFO:

Yes, Mr Chairman. My recollection is right, I think I did explain it during my budget speech. It is works that we plan to do to the east stands at the Victoria Stadium.

Head 102 - Schools and Sporting Facilities was agreed to.

Head 103 - Tourist Development was agreed to.

Head 104 - Support Services

HON LT-COL E M BRITTO:

Mr Chairman, I identified Item 5 during the previous stage of the discussion on the Bill and I asked for an indication of what the £150,000 subsidy to GBC in equipment was. What sort of equipment are we talking about?

HON J C PEREZ:

The main equipment there would be a new television transmitter and other ancillary spare parts. That would

be the bulk of it. Part of it is the balance that was still owed to them as part the restructure in terms of equipment that they had to buy for the recorders. Of the £100,000, about £92,000 or £93,000 would be the transmitter.

HON LT-COL E M BRITTO:

Is the Minister satisfied, Mr Chairman, that it is not more GBC equipment that is in need of bringing up to date and in need of replacement at the risk that if it is not done, the working efficiency of GBC is likely to suffer?

HON J C PEREZ:

Mr Chairman, the Minister is not satisfied with the equipment in GBC and with equipment in many other places. This is what we can afford.

HON P R CARUANA:

Mr Chairman, in relation to Item 6 - 'Government Offices' 1992/93, presumably that includes, amongst other things perhaps, privately owned offices rented by Government departments?

HON J C PEREZ:

No. Mr Chairman, that is works of refurbishment to Government buildings. The ultimate aim is to vacate Treasury Building completely which is earmarked for demolition at one stage or another and a scheme to widen the road which is there. I am not saying that that is going to happen immediately but the taking of people out of Treasury Building and reallocating them in the area of Town Range where the Attorney General's Office and the Chief Minister's Office is now situated, continues and there is refurbishment work to those buildings to allow us to do this.

HON P R CARUANA:

Mr Chairman, on Item 8, for my benefit, the footnote says 'Reserved' in relation to this year's vote and it says 'Revote' in relation to the 1991/92 figure. Does that mean that we propose to spend both this year or what is the effect of the term 'Reserved' in that context?

HON J C PEREZ:

Let me explain that the revote part of it is that part of that expenditure is already committed in that the orders have been placed and the money has not been paid to the provider of the goods yet. Part of that is to pay for those goods. The reserve part of it is that we are not clear in our own mind yet whether the items that have been put forward this year for purchase are actually needed and we have a reserve qualification because it needs to come to the approval of the Council of Ministers if that money is going to be spent. It

could be that next year we find that we have not spent all of it or none of it. Proposals have been put to purchase equipment, we need to scrutinise it further and that is why it is reserved. It will need the approval of Council of Ministers before any of it is spent.

HON P R CARUANA:

So, in fact, that footnote 'Reserved' is completely unparliamentary, in the sense that it does not affect the approval of this House. What you are saying is the Council of Ministers has not approved the sum but the House approves it so that if the Council of Ministers subsequently approves it they do not have to come back to this House.

HON CHIEF MINISTER:

Let me tell the Member that that is one innovation that I did not introduce. It was there in 1972 when I got elected. Just in case!

HON LT-COL E M BRITTO:

Mr Chairman, on Item 13, I take it that in view of the answer the Chief Minister gave to my colleague earlier on that should read 'Refurbishment of Port Launches'.

HON J C PEREZ:

The Chief Minister did say that we had purchased a second-hand launch from the private sector.

HON LT-COL E M BRITTO:

On Item 14, Mr Chairman, I take it that it is not entirely the fenders for the port launches that we are spending £24,000 on.

HON M A FEETHAM:

No this is for the commercial use of the Port.

HON LT-COL E M BRITTO:

I am being a bit fastidious, Mr Chairman.

Head 104 - Support Services was agreed to.

Head 105 - Water Services and Waste Disposal was agreed to.

Head 106 - Electricity and Public Lighting

HON L H FRANCIS:

Mr Chairman, in 'North Face Floodlighting - Control Units', I take there has been a fair amount of expenditure in relation to the whole system of the floodlighting.

Is the Government satisfied that this has been made as vandal proof as possible because they do seem to be a bit vulnerable?

HON J C PEREZ:

I have made the same point to the City Electrical Engineer. Indeed the lighting of the north face by the Moorish Castle had to be given up because of vandalism from youth using what is commonly known as the jungle. The placement of the floodlights on this occasion in the area of Devil's Tower Road are better to protect from a Police point of view but the point has already been made that some wire netting in front of the floodlights might be a good thing to protect them better.

HON LT-COL E M BRITTO:

Would not, Mr Chairman, raising the level of the floodlights above ground level as well as protecting them in the way the Minister has indicated also.....

HON J C PEREZ:

They are raised.

Head 106 - Electricity and Public Lighting was agreed to.

Head 107 - Industry and Development

HON P R CARUANA:

Mr Chairman, Item 7 - 'Land Reclamation' has an estimate of £3.36m. Will the Honourable Minister explain what land reclamation that refers to during the current year? Is it further reclamation or further infrastructural work of existing works??

HON M A FEETHAM:

It is the tying up of the infrastructural contract and some provisioning costs as a result of that and a small amount, part of it goes towards further reclamations that may be identified on the ongoing reclamation programme of the Government.

HON P R CARUANA:

Mr Chairman, on Item 8 - 'Eastside Development', we have there a project estimated to £41m of which Government hopes to spend £1m this year presumably on investigative work or preparatory works. Is the Minister able to say whether the £41m is a project that Government expects to undertake itself or is it a project that is floating in the hope of passing it on to the private sector or will this be the Improvement and Development Fund over the next two or three years?

HON CHIEF MINISTER:

We have a certain amount of difficulty with this project because of the location of the project.

HON P R CARUANA:

I think I know what the Chief Minister thinks. The question is not designed to touch upon those sensitive subjects. It is designed simply to establish whether this is a project that Government thinks would be imminent otherwise.

HON M A FEETHAM:

My personal forecast is that the development is likely to be 70/30 in favour of it going ahead at this point in time and that the initial sum that we have there showing is in fact in respect of some costs that need to be paid that are already being expended. Whether it goes ahead or not, that amount will have to be met. We will expect to be making a statement in the near future.

HON P R CARUANA:

One gets information about Government's proposal in relation to tunnels on that part and road access. Is it the Government's position that that aspect of the project will only proceed if the principal reclamation proceeded or will Government proceed with the tunnels and the improved access roads anyway?

HON M A FEETHAM:

The project envisaged that the tunnel will go ahead anyway and it is really a matter of all the interested parties involved in the project being able to proceed as envisaged. As you know there are a number of complicated factors involved. When you talk about the Government, it does not necessarily follow that it is the Government.

HON P R CARUANA:

To the extent that there are public funds involved in that project, are they included in this vote for this year?

HON CHIEF MINISTER:

The amount that we are asking the House to vote is the amount that, as my colleague has explained, has already been expended in the work that has already been done with feasibility studies, technical studies, hydrographic studies in the laboratories in the UK and which has to be met. If we do not proceed and the project nevertheless proceeds under the aegis of somebody else in order to overcome the technicalities then that is still something that will need to be met. But it may well mean that that is as far as we are committed directly.

HON L H FRANCIS:

Mr Chairman, I do not know whether to ask this one under No.24 or under No.2, but I will ask it anyway. As part of the resurfacing programme or as part of the Queensway works, is it envisaged resurfacing during the course of the next year?

HON M A FEETHAM:

The problem there is - I have already tried to explain during the Question and Answer session - that we have to allow a certain amount of time for the infrastructure we have put under ground to settle and identify areas that need to be looked at again. So normally, we are advised that it is about a year the most you need to be able to locate any settlements. You will have noticed, irrespective of that, that we have done quite a fair amount of the areas along Queensway anyway and we will do substantial patching up of areas for another six to seven months and then we will do the whole road again.

HON LT-COL E M BRITTO:

Mr Chairman, on Item 10, I take it that as it is already covered under Item 19, this does not refer to the area of Camp Bay and if it does not, can we have an indication whether it is rock safety against rock falling general or any particular area, like for example, Sandy Bay?

HON M A FEETHAM:

No. Item 10 is wherever it may arise and requires urgent attention and of course the other one is part of the ODA project that you can see we have virtually finished at Camp Bay as a result of the rock falls.

HON LT-COL E M BRITTO:

Is it implicit in the Minister's answer, Mr Chairman, that it is not an identified project that it is provision....

HON M A FEETHAM:

That is right. We use it as and when we need to.

HON F VASQUEZ:

Mr Chairman, on Item 23 - 'Queensway and North Gate Road Alignment'. Is that referring to Ragged Staff Gates?

HON M A FEETHAM:

As a result of having taken on now what used to be the interior Dockyard Road, which is now part of the public highway and as a result of the Queensway development, we need to do a re-alignment and a continuation of the Queensway and this is cost referring to that.

HON F VASQUEZ:

It is not then referring to any tampering with Ragged Staff Gates?

HON M A FEETHAM:

No. I can assure you and guarantee that the arches will stay there for the moment at least anyway!

HON P R CARUANA:

Long may they do so.

Head 107 - Industry and Development was agreed to.

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

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

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

THIRD READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to report that the Supplementary Appropriation (1991/92) Bill, 1992 and the Appropriation (1992/93) Bill, 1992 have been considered in Committee and agreed to without amendments 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 Supplementary Appropriation (1991/92) Bill, 1992 and the Appropriation (1992/93) Bill, 1992, 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 P J Brooke
The Hon P S Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

HON P R CARUANA:

Mr Speaker, the Opposition has abstained at this stage. We feel that whilst a censure motion standing in my name remains undebated in this House, it would be inconsistent to support this Bill given that what lies at the root of the motion is not unconnected to the subject matter of the Bill. I would have liked to have explained the reason for the voting in slightly more detail but I suspect that I shall fall foul of Mr Speaker's anticipation ruling and therefore I think that the Honourable Members will have to read between the lines.

MR SPEAKER:

I must recall what I explained at the beginning that the Honourable Leader of the Opposition could if he had wanted withdraw the motion and he would have had the opportunity for going this way. I must point that out because I must not give the impression that the reason for abstaining is in any way because of the ruling that I have passed.

HON P R CARUANA:

Let me put Mr Speaker's mind at rest. The reason for abstaining has got nothing to do with the anticipation ruling.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that this House do now adjourn to Monday 29th June, 1992, at 2.30 pm.

Mr Speaker put the question which was resolved in the affirmative and the House adjourned to Monday 29th June, 1992, at 2.30 pm.

The adjournment of the House to Monday 29th June, 1992, at 2.30 pm was taken at 1.15 pm on Thursday the 28th May, 1992.

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

30TH APRIL 1992

VOL II

MONDAY THE 29TH JUNE, 1992

The House resumed at 2.30 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 L Baldachino - Minister for Housing
The Hon J C Perez - Minister for Government Services
The Hon R Mor - Minister for Labour and Social Security
The Hon M A Feetham - Minister for Trade and Industry
The Hon Miss M I Montegriffo - Minister for Medical
Services and Sport
The Hon J L Moss - Minister for Education, Culture and
Youth Affairs
The Hon J E Pilcher - Minister for Tourism
The Hon P S Dean - Acting Attorney-General
The Hon P J Brooke - Financial and Development Secretary

OPPOSITION:

The Hon P R Caruana - Leader of the Opposition
The Hon F Vasquez
The Hon H Corby
The Hon Lt-Col E M Britto OBE, ED
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge

IN ATTENDANCE:

C M Coom Esq - Clerk of the House of Assembly

COMMUNICATIONS FROM THE CHAIR

MR SPEAKER:

Following the comments made at the time of the Estimates regarding the Hansard, I would like to draw the attention of Honourable Members to the Hansard of the Ceremonial Opening of the House which is now in front of you. This means that there are no Hansards outstanding except, of course, for the current session. The Hansard of the Questions and Answers of this session held on the 30th April, 1992, will be available to Honourable Members within the next two weeks. I therefore think that Honourable Members can see that we are making some progress there. May I also add that if at any time any Member feels that he needs some information from a Hansard that has not been published, the Clerk will only be too willing to help. In fact, he has always done that in the past.

HON CHIEF MINISTER:

Mr Speaker, before we start on the formal agenda, I should like to use this opportunity to record in the House the feelings of all of Mr Caruana's colleagues on both sides for the sad loss. It is not an easy thing to talk about but all I can say is that we are a small community and that the children of any one of us is the same as the children of all of us and that is what makes Gibraltar such a great place to live in and it is a very sad thing.

HON P R CARUANA:

Mr Speaker, I am most grateful to the Chief Minister for his comforting words as indeed I am to all the Members of this House that expressed their condolences upon the death of my young late son by their presence at the funeral. The extent of the support and the numerous offers of condolences, visits and letters that myself and my wife have had as a result precisely of what the Honourable the Chief Minister has said; the fact that we live in a small community has proved the mainstay which has allowed my wife and I to traverse at least the most difficult period following our loss. I think that it is something that in this community we should treasure, as the Chief Minister has intimated, that above all else we are a community and whatever differences we might have, be it in the business world or be it in politics or be it in any other sphere of life, that the human relationships that bind us as a community transcends all else.

MR SPEAKER:

The Chair of course associates itself with all the words expressed in this House and I think that in saying so Gibraltar as a whole associates itself with the words as well.

DOCUMENTS LAID

THE HON MINISTER FOR TOURISM:

Sir, I beg to move under standing order 7(3) to suspend standing order 7(1) in order to lay on the table the following documents:

- (1) The Tourism Survey Report, 1991.
- (2) The Hotel Occupancy Report, 1991.
- (3) The Air Traffic Survey Report, 1991.

Ordered to lie.

MOTIONS

HON CHIEF MINISTER:

Sir, I beg to move that this House resolves that the following Members should be nominated to the Permanent Select Committee on Members' Interests:

The Hon J Bossano
The Hon J Pilcher
The Hon P R Caruana
The Hon Lt-Col E M Britto OBE ED

Mr Speaker, I commend the motion to the House.

HON P R CARUANA:

Mr Speaker, I would like to comment on the motion. We on this side of the House support it.

Mr Speaker then proposed the question in the terms of the motion moved by the Chief Minister which was resolved in the affirmative.

BILLS

FIRST AND SECOND READINGS

THE SAVINGS BANK (AMENDMENT) ORDINANCE, 1992

HON CHIEF MINISTER:

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

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

SECOND READING .

HON CHIEF MINISTER:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, in bringing the Bill to the House myself, I want to draw attention, to one of its most important features because it epitomises part of the problem that we are facing in the context of European Community legislation, quite frankly, because of the negligence on the part of the British Government to do its job properly in the past. The UK, as the Member State responsible for our external affairs, since 1973 is supposed to have been ensuring that Community legislation took account of Gibraltar. We have discovered, in the last three or four months, as a result of a lot of, frankly, time on my part, reading every Directive since 1973, that there are many, many pieces of legislation which leave us out by failing to mention

us. For example, if one goes back to 1977, we have Directive 780 of 1977, which describes what a credit institution is in the European Community which is the definition that we are including in our new Banking Ordinance which is also in the Agenda for this House. It says a credit institution means "an undertaking whose business is to receive deposits from the public." The Post Office Savings Bank is an institution that receives deposits from the public. But it then goes on to say in Article 2 that Article 1, which is what defines a credit institution, shall not apply to the following:-

The central banks of Member States, Post Office Giro Institutions and then, it says, in Belgium, Communal Savings Bank, in Denmark, it defines it and so on and in the United Kingdom, the National Savings Bank. Of course, in that long list Gibraltar does not appear. So if Article 2 does not exclude us, Article 1 includes us and if Article 1 includes us, it means that since 1977 we have been operating the Savings Bank illegally by taking deposits without a licence because we were not listed as one of the institutions that did not require a licence. This was discovered by us a few months ago, not by Her Majesty's Government and given the difficulties that would surround going back to the European Community and getting them now to change a law of 1977 - given that there are now people in the Community that were not there in 1977 - we would have difficulty in being persuaded that this is not some plot designed to do something in relation to them and us. We took the decision of having to effectively make our Savings Bank comply with the rules that apply to credit institutions in the Community because once we have established that, technically, it needs a licence because it has not been left out but with the law as it stood, it was not eligible for a licence. For example, a credit institution under Community law from the 1st January, 1993, requires ECU 5m of free capital. Our Ordinance has nothing like that. We could have gone down the other route and said to the UK "Look this is your fault, you forgot to name us there. Can you go back now and change the law?" We believe that would have been a very long drawn process which might or might not have finished up in success. Well, what do we do with the Savings Bank in between? If we carry on operating an unlicensed bank technically, it could be challenged. Somebody, theoretically, would have been able to go to the Financial Services Commission and say "Look, there is somebody in Main Street taking deposits without a licence." That is one of the most important elements in the Bill and I thought the House should get a full explanation for what is a peculiar change in the Ordinance making it a credit institution. That is why we need to make it a credit institution. We have no choice really. It is either that or we close it. The other element is that, again, in the context of the European Community and in the context of the ability to operate as a credit institution; like anybody

else can after January 1993, subject to us finalising the discussions we are having with the UK Government on how this is going to operate in the single market, it means that under Community law, in theory, our bank will be able to have a branch wherever it wants. It would not be appropriate to have it called the Government Savings Bank because you may call it the Government Savings Bank here because there is only one Government, but the Government of where if we were to operate outside Gibraltar? So we thought it would be better to call it the Gibraltar Savings Bank and, in any case, again, rather strangely we find that in all the audited accounts of the Government of Gibraltar it has always appeared as the Gibraltar Savings Bank even though there is no such organisation until we change the law today. Apart from that we have got an amendment to Section 11C. If Members look at the original Ordinance they will see that it does not alter what Section 11C does but the way that it is drafted now is somewhat confusing because in fact the power of discretion on the part of the Financial and Development Secretary to make advances to the Consolidated Fund, the Improvement Fund or the Gibraltar Investment Fund, is really intended to operate from the bank's own money not from customers' money. This, in fact, makes that clear. I think it was reasonably clear in the previous one. There is in fact no change in the wording. The section is exactly the same as it was already in the existing Ordinance but I think that by moving the new paragraph (a) from where it was to where it is now we are making clear that in fact the advances are at the discretion of the Financial and Development Secretary because he may need a temporary advance to the Consolidated Fund or the Improvement and Development Fund and so on, whereas the next paragraph deals with the investments of the bank and it was never the intention that he should either advance or invest. The distribution of the investment is one thing and the advances would be using a power that, in fact, already exists in the Public Finance (Control and Audit) Ordinance. That is that the reserves of any special fund can be used to make temporary advances to any other special fund. The Savings Bank is a special fund. Although there is nothing in this Ordinance, I would like to mention as well that it is our intention to remove the Savings Bank from the list of special funds backdated to the 1st April this year, which can be done by regulation because we believe that it is wrong for the Savings Bank to be a special fund. We have a situation where it is listed as if it was something that belonged to the Government and we believe it gives a misleading appearance of strength if you like if it is included on the balance sheet of the Government because it means that if somebody deposits £20m tomorrow in the Savings Bank and the Savings Bank is treated like any other

special fund and put in the balance sheet of the Government, it looks as if the Government has got £20m. Well, that is nonsense because that person might have put the money on one week's notice and it means that a week later you have not got the money. So it will be included as it has been up till now in the audited accounts of the Government and of course the accounts of the Savings Bank are published. We are removing it from the special fund list and it will not be included in the summary of the special funds and it will not appear therefore as an asset in that list, which it has done until now. If Members look at the assets and liabilities in the Estimates of Expenditure that we brought to the earlier part of the House, the Savings Bank will have been there and has always been there. I think, really that I have covered the main points on the general principles of the Bill, Mr Speaker, and of course I will deal with any particular points either now or at the Committee Stage if Members want to raise anything. 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 P R CARUANA:

Mr Speaker, before I comment on the general principles, and I have a few, I would just like to take this opportunity to place on the record following remarks I have made and have been made from this side recently about the state generally of the printed laws of Gibraltar. On occasions where substantial amendments are being made to an Ordinance the Government always has available to it the helpful possibility of bringing a consolidating new Ordinance which reads in the complete form rather than making lengthy amendments to an Ordinance and the amending Ordinance is in relation to the whole principal Ordinance quite long. I know that there are disadvantages in that. For example, it becomes more difficult for people to see what changes are being introduced but all that could be dealt within the explanatory memorandum and it seems that if the process of amending, reprinting and tidying up the laws of Gibraltar is something to which resources have to be devoted and it might take some time in the ordinary course of business, occasionally progress can be made piecemeal in this way. Mr Speaker, the Honourable the Chief Minister has outlined some and certainly the major points of principle that arise in this Ordinance. He has highlighted the proposal to change the name of the bank and has explained the reasons for it. But the following general principles are also dealt with in the Ordinance, some of which the Honourable the Chief Minister has not mentioned. First is that once this Bill is enacted the possibility exists - and I dare to profess will be used - that the director of the Savings Bank will no longer be as he is now, the Director of Postal Services or some other Civil Servant and that the director can be anybody

appointed by the Governor in the Gazette, which as we all know means the Government by regulation or by notice in the Gazette, so that the director of the Gibraltar Savings Bank, as it is now to be called, is an appointment which is in the writ of the Chief Minister. My remarks are not intended to be critical. It may well be that the future for the Gibraltar Savings Bank is going to be different to its role in the past. Whereas its role in the past was adequately satisfied by having an inexperienced banker at its head, its future role may call for somebody more experienced, but there are no criteria laid down in the Ordinance. There is no element of provision as to who this person is accountable to. This brings me to points that I will make later in relation to other provisions in the Ordinance, but I will just leave that point open until later on in my contribution, which is that the director is somebody that the Chief Minister appoints and that the section is completely silent as to his guidelines for direction. For example, there is no charter in the Savings Bank. There is no chain of accountability, so one has to presume that the Savings Bank, whatever commercial profile it may take, is something that is going to be close to the Government's chest, so to speak, subject only, as the Chief Minister has pointed out the need to publish its accounts in the Gazette. The other point of principle that is raised by this Bill of course is that the bank is hitherto to be constituted as a body corporate as opposed to an undefined statutory creature, whatever it is now. There is a section there upon which I will comment in a moment that makes it a company in effect - a body corporate. In my opinion - and it is one of the things that I am going to ask the Chief Minister in his reply to clarify for me - the proposed amendment to section 4 is an attempt to render the Gibraltar Savings Bank subject to the Banking Ordinance so that you would need to be a licensed institution but it is not clearly done, it says "Subject to" and it is done in a section that deals with the management and control by the director. It has already been mentioned by the Chief Minister that the concept of allowing a branch to be set up is not limited to Gibraltar. The Gibraltar Savings Bank could work as a deposit-taker anywhere in the world but presumably inside the European Community. There is a section which the Chief Minister had also touched upon but the interpretation given to it by the Chief Minister would be somewhat different to mine about the amendment to section 11C. In other words, what discretions had been removed from the Financial and Development Secretary and which have not? The other point of principle dealt with by this Bill is the question again - it is now a common feature in almost every substantive bit of legislation that the Members opposite bring to the House - of the reservation of wide powers to make regulations which, as this House now knows, for the number of recent times that I have repeated it, is

a device which in effect removes the legislative function of this House in matters of legislation; in matters of policy. There are other points of principle which I will deal with when I comment in more detail. Mr Speaker, the proposal to change the bank's name and other provisions of this Bill foretells a desire on the part of the Members opposite to perhaps deliver on their first manifesto promise in 1988 to set up a Gibraltar National Bank. It certainly has all the trappings of a commercial bank and not of a local savings institutions and if so, Mr Speaker, this organisation must be regulated. It must be established in accordance with its own constitution and it must have a charter and a rule book by which those that are involved with its management are bound. It is not enough, in our opinion, Mr Speaker, if the role of the Savings Bank is to be upgraded for the regime applicable to the old Savings Bank, simply to be extended to it because they would be markedly different creatures. Two important points arise, Mr Speaker. The first is that depositors must know the nature of the institution in which they are depositing their money. They must know the full extent of the discretion left in the management of that organisation as to where and how they invest that money. The second point that arises is, of course, Mr Speaker, that monies deposited in this bank and all interest payable on it is a charge on the Consolidated Fund. Therefore the depositors in this bank are in effect guaranteed by the taxpayer and therefore the taxpayer is entitled to know how and by whom the assets of this bank are being invested. In relation to the director, I have mentioned already, Mr Speaker, that this means somebody appointed from time to time by the Governor and that this in effect means whomever the Members opposite may from time to time decide. There is very little by way of guidelines as to the criteria that the director must employ and whilst in the context of a local savings bank, in effect taking peoples' money and placing it from deposits in another bank at a higher rate of interest, that might have been adequate. I think that if this organisation is to operate as some sort of commercial bank in the market place there has to be a set of guidelines of the kind that I have indicated. Another question raised, Mr Speaker, is this. If this bank does not have any form of hierarchical management structure or charter of its own, what guarantee can there be of independence from Government manipulation or interference - not this Government but any future Government - in the prudent management of the bank? At the moment what appears to be established by this Bill, subject to any further refinement of the regime that is established, is simply a commercial type bank controlled directly by the Members opposite that will conduct its business as the Members opposite wish. The only guidelines that are provided are - as I think he has to a large extent already done - that this bank will be subject in full to the Banking Ordinance but there is no regulatory mechanism in terms of the fitness of the persons in control. Therefore, Mr Speaker, the general comment that arises from that is that the whole Ordinance is deficient in its failure

to establish that mechanism that would prevent the prudent management of this bank as an ordinary bank being subjected to political control, interference and expediency. I hasten to add, that it is not that I refer to political manipulation from this Government but from any future Government that may be of a different nature from any other Government that follows it. Mr Speaker, before one of the amendments introduced in this Bill, this element of political buffer was in effect provided by the Honourable the Financial and Development Secretary who had wide statutory authority over the affairs of the bank but was, I suppose, not a political animal in the context of local politics. Mr Speaker, I have no problem whatsoever, in fact, I welcome these amendments which bring closer to home the regulatory mechanisms within our own community. What I think cannot be done is for the existing control and safeguard; however unsatisfactory or otherwise subject to criticism on other criteria there might be, to be removed and replaced with nothing at all because the result is that the unrivalled powers of the Government simply go on increasing, increasing and increasing and the safeguards, such as they might be, simply go decreasing, decreasing and decreasing. The results of that, Mr Speaker, are increasingly visible for all and particularly Members of this House to see. It results, as I say, Mr Speaker, although I have implied in an ultimately little by little, step by step in a dismantling and a removal of the system of checks and balances and really what we would end up with is an omnipotent executive without that mechanism of check and balance, of control that exists in other countries, in other systems where the executive is given wide powers. In a democracy that is. I have mentioned, Mr Speaker, that a proposed amendment to section 5 establishes the bank as a body corporate resident in Gibraltar, but, that section, I think, is particularly inadequate because it does not say what sort of body corporate. It does not say whether it is a body corporate, for example, to which the Companies Ordinance would apply. What laws will apply to it? Will there be a charter or will the contents of the Ordinance, such as they are, be the only charter that this bank will have to regulate its affairs and by which those that manage it will be bound? If it is a body corporate, is it a statutory corporation or is it a company owned by the Government as a shareholder? Who controls it? Will it have a board of directors or will it not have a board of directors? What details of this company will be open to public inspection in the terms of the details available in respect of other companies at the Companies Registry. Therefore, Mr Speaker, the regime for converting the Savings Bank into a body corporate is really dealt with too scantily and it does not actually create a sufficient corporate structure and entity in relation to the bank. I would welcome, Mr Speaker, the formal confirmation by the Chief Minister, that that is clearly the effect of the section. It would not be necessary for me to propose an amendment. The proposed

amendment to section 4, that is to say, the amendment introduced by clause 6, of the Bill has the effect; in his opinion, and that is the intention of the Members opposite, to render the Gibraltar Savings Bank subject, in full, to the regulatory regime of the Banking Ordinance. Mr Speaker, in relation also to the possibility that the proposed amendment to section 5 will be used to establish branches elsewhere and hopefully, if it is successful, collect deposits on a much larger scale than hitherto has been the case. It is to be remembered that in effect the Gibraltar taxpayer that is of limited resources will in effect be acting as the guarantor for all depositors in whatever branch of the Gibraltar Savings Bank, wherever that may be located and that these persons will be in the privileged position, by the standards of the Gibraltar market place, in effect, to enjoy 100% depositor protection scheme. Mr Speaker, I think that the proposed amendment to section 11C, whatever the Chief Minister may have said in his comments on it, by transferring the words "At the discretion of the Financial and Development Secretary" from the main introductory sentence to the whole of section 11(3) to 11C(a) in effect allows what is not presently allowed; namely, that whoever has the management of the bank, mainly the director, should be able to invest depositors' monies - because it is monies in the investment accounts of the bank - however that person pleases. This is because when it says "It shall be approved from time to time by the Governor" that means as shall be decided from time to time by the Government, which, for example, could mean in Government companies or even in Government special funds. Therefore, Mr Speaker, there is an element of removal of independent control which I would like replaced. The Financial and Development Secretary cannot do it or if we consider that it is appropriate in this day and age that it should be done by some other means, fine, but I think there ought to be some other means. The position now is, by implication and by the process of elimination, that the monies in the investment account may be invested on behalf of the Savings Bank in such securities to be employed at interest in such manner as should be approved from time to time by the Governor. That is to say, by the director as the Government may from time to time publish in the Gazette, presumably. It, perhaps, could be done in another way but it could certainly be done in that way. Therefore, what we have is a position where the Government appears to be keeping the control of the management of the policy of the Gibraltar Savings Bank whereas we on this side of the House would prefer to see the Government establish a board of directors, a charter, a structure that keeps the management of the Gibraltar Savings Bank outside the immediate realm of the political fray and the political arena as Government's do in all parts of the world. The Governor of the Bank of England is appointed by the Government and I am not saying that the Government cannot have ultimate control in the sense that it can appoint the director and make

nominations to the board, but that the regime should exist, especially if this is going to be a successful commercial operation, and it should be seen that the control should be provided not directly by politicians. As I say, Mr Speaker, it may well be that that is the intention of the Honourable Members opposite, but it is not mandatory and it is not obvious from this Bill. Section 14 extends the power to make regulations, in our opinion, in a way that is too general ie "to make provision for any other matter necessary to the operation or administration of this Ordinance". In effect almost anything and what it achieves is that with a little bit of imagination it should not be necessary for the Honourable Members opposite or their successors to trouble this House again with matters relating to the Savings Bank. I know that that is an objective that commends itself to the Honourable the Chief Minister. It does not commend itself to those of us in this House whose only role it is to participate in that sort of debate. Mr Speaker, there are one or two other very quick points of principle. There is, I think, embodied in an amendment proposed to section 14(2)(1) which adds a proviso which is already there in the subsequent subsection but that has been eliminated and tacked on to the previous subsection as a proviso. This in effect allows the bank to do what other commercial banks do and that is to say that when you have only got a small amount of money in a deceased person's account, you do not make the family go through the expense and the delay of getting a grant of probate or a grant of letter of administration. You simply pay the money out to the person that you think is entitled to it. That is all very well. That happens in the commercial field and there is no reason why it should not happen in the Gibraltar Savings Bank but read in conjunction with section 17 of the Principal Ordinance it is capable of operating considerable prejudice. What section 17 says is this. If a person or the bank pays out money to the wrong person and therefore you lose your money, you cannot sue the bank or the person, you can only sue the person to whom the bank has mistakenly paid the money. That is all very well but that person may have spent it and may otherwise be impecunious and the combination of those two could result in people being paid out money wrongly and then the right person not being able to recover that. As I say, it is not a new section. I do not know if there is any case of that having happened in the past. It may not have happened but certainly those two sections read together leave that possibility that people may be unable to recover from the bank if the bank had paid out mistakenly. The final point, Mr Speaker, is that there is the general Government tidying up policy of eliminating references to fines and quantum amounts and making it a reference to a scale attached to the Criminal Procedures Ordinance. I said this in the previous House. I will say it, hopefully only once in this House. We do not object to that tidying up procedure but we do object to the fact that the schedule containing the scale itself can be changed by regulation. I know that it appears to

be the case also in England. But there are many things that work differently in that jurisdiction. We think that the legislative process in Gibraltar is quick enough and given that the reason that the Chief Minister has always given for his liking for regulations; as opposed to legislation in this House, being that he often has to move quickly; changing the scale of fines, increasing everything by £5 or increasing everything by 10% cannot be urgent and therefore there cannot be that good reason for not wishing to allow the House to express a view as to whether increases in the general level of fines in Gibraltar are justified or are being excessively increased. Mr Speaker, those are the points of principle that arise as far as we are concerned. We have no conceptual objection to the Government upgrading the Gibraltar Savings Bank to a different sort of institution to that which it is today. Having said that, because we think it is being done in a defective manner, we do not feel able to support the principles of this Bill but we will be very happy to support any Bill which achieves the same result in a way which we consider it more comprehensive and takes more account of subjects and matters that arise from it. I am obliged, Mr Speaker.

MR SPEAKER:

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

HON CHIEF MINISTER:

Mr Speaker, I cannot reply to what the Leader of the Opposition is saying because the Leader of the Opposition is not talking about the Bill we have got before the House. He is talking about the Bill that he thought we had before the House when he wrote his speech because he has totally ignored all the explanations that I have given when I introduced the Bill. Therefore, all the remarks that he has made is as if I had not said one single word. He says that they will not support the Bill because they do not like the way we are upgrading the bank but that they are in principle not against upgrading it. I have just explained we are not upgrading the bank, we are allowing it to remain open. So what is he saying that, as far as he is concerned, a bank that is incapable of functioning because somebody forgot to mention it in 1977 should continue to take deposits without a licence, which is in fact a very serious thing because if anybody else was doing it, we would lock them up and we should not try and rectify the position? That is the principal objective of this Bill. That is why we have got the Bill here. In fact, we would not have brought the Bill otherwise because all the other things that the Member thinks I am going to be able to do as a result of this - I have news for him - we are already doing because we have already introduced all the amendments to do all those things years ago. We are already doing them! I am afraid he has arrived too late in the House. So the answer is that I cannot reply to what he has said because what he has said and what we are supposed to be looking at are totally two different things. I do not see how the Opposition, Mr Speaker,

can be there and say they will not vote in favour of something that rectifies what is an omission, which, obviously, has been missed. It has certainly been missed by us for five years and it has been missed by the Government of the AACR since we joined the Community in 1973 and it has been missed by every Principal Auditor, that technically the moment that you had in 1977 a law that says a credit institution is somebody that takes deposits from the public unless it is the National Savings Bank in UK or the Caja de Ahorros in Spain. Every country lists the exceptions.

HON P R CARUANA:

Mr Speaker, by way of clarification of what the Chief Minister said, it is a debating device which is becoming increasingly apparent. The Chief Minister says that nothing of what I said is relevant any longer in the context of his explanation because the whole Bill is to legitimise what is presently illegitimate. There is the meritorious aim and everything else that comes in with it becomes irrelevant. If the principal purpose of this Bill, as the Chief Minister has just said, is to legitimise what is illegitimate in terms of whether the bank needs a banking licence. To give the Gibraltar Savings Bank a banking licence, he does not have to do half of the things that he is doing here. He does not have to allow it to open branches in London and Paris. He does not have to remove the Director of Postal Services from being its director and reserve unto himself the power to appoint whoever he likes. There is a number of things. There is practically nothing in this Bill. All that he would have to do to legitimise it is give it a banking licence for which you needed no Ordinance at all. Therefore, with the greatest of respects to the Chief Minister, to try and dismiss everything that I have said on the pretext that how can I object to him legitimising what is illegitimate when in addition to doing that he does half a dozen other things which are not necessary to legitimise the illegitimate, I think, Mr Speaker, with the greatest of respect to the Honourable the Chief Minister, is less than clear debating tactic.

HON CHIEF MINISTER:

No. I am afraid the Member opposite is wrong, Mr Speaker. I have given way not so that he could exercise his right of reply because he has not got one. I have given him way in case I had got him wrong and in case he wanted to say that he supported the Bill on the basis that we need to make it legal. We would need to legalise the position of the Savings Bank because it is not an acceptable situation that a Government-owned institution should be breaking another law. It is nonsense for him to say that I need to bring an amendment here to allow the bank to open a branch in the Community because a bank, if it is a credit institution as defined by Community law, in that same Community law has that right.

What I cannot have is somebody saying in one law, Community institutions are allowed to open branches throughout the member States; the Gibraltar Savings Bank is a Community institution and the law that sets the Gibraltar Savings Bank up does not allow it to do what credit institutions can do. So we have had to remove certain incompatibilities between this law and the law on credit institutions. If you have, as there was in 1977, a Directive that says "All deposit-takers in the European Community are credit institutions, except the following" and article 2 of the Directive 780 of 1977, exempts the named institutions from the applicability of Community law. That means that what was done in 1977 and everything that has been done since 1977 up to the Second Banking Harmonisation Directive - which we are reflecting in our new Banking Ordinance - has to apply to the Gibraltar Savings Bank because nobody said in 1977 that it did not. But the Gibraltar Savings Bank, as it stands at the moment, is allowed to operate without complying with any of the requirements of Community Directives between 1977 and 1992. So we have got a law in Gibraltar that says that we can do certain things which Community law says we cannot do because Community law says that exception is made for the National Savings Bank and they forgot to mention us as having a National Savings Bank. This is not the only law, there are quite a number of laws where this has happened. We have discovered this in the last few months and we have brought a Bill to put it right and that is the explanation that I give. The Member opposite might have thought I was doing something different before he heard me stand up and explain it but this is the whole basis of having a Parliament so that people, before they jump the gun like he has already done on a number of other issues as we are discovering with his other motions, wait and hear the explanations and then make a judgement. They do not make a judgement first and they certainly do not make the judgement first, put on paper their reaction to that judgement, hear the explanation and even if they find that the explanation they are hearing has nothing to do with what they thought they were going to hear, they still proceed regardless, which is what the Member opposite seems to have done, as far as I could tell. He did not make one single reference to anything that I have said. He then went on to say that it was quite obvious that this was in order to remove the controls that the Financial and Development Secretary has over the Banks. The Financial and Development Secretary is a Member of the Government of Gibraltar and whatever attitudes the Honourable Member opposite may or may not have, I can tell him that, as far as we are concerned, the position that existed in 1969 in the Constitution of Gibraltar is not where we are today in 1992. In 1969, if there was a special role for the Financial and Development Secretary in part it had to be explained by the fact that Gibraltar was almost totally dependent in a closed frontier and on spending UK money. Today,

we make our own living in Gibraltar. We are now grown-up enough to take our own decisions and the civil servants that are employed by the people of Gibraltar through their elected Government, carry out the policies of the elected Government, not the policies of the Government in London. Therefore, there cannot be any conflict of interests between the Financial and Development Secretary and me because if there was, one of us would have to go and then there would not be conflict of interest anymore. I do not need to change the law to do that. There is no conflict of interests. This is not removing any powers from him. The Financial and Development Secretary in advising me in this area, as in advising me in any other area, uses his knowledge and his expertise to tell me what he thinks is in the best interest of the running of the public finances of Gibraltar or of the running of the Savings Bank. There is nothing here at all, I can assure the Member opposite that is intended to do any of the things that he has read into it. We are not going to change his investment policy, there is no indication that we will. We do not need any new powers to do it. We can do everything today because if we take section 11C where I gave an explanation with which the Member opposite does not agree, as it is at the moment, the Financial and Development Secretary has the discretion, according to him, to invest money in securities approved by the Governor and I am the Governor, according to him - and that is before I amend it - then the discretion that the Financial and Development Secretary can exercise is dependent on my approval. Now! As the law stands now before amending it! That is what he has just told the House. What is it that we have changed? We have said the discretion of the Financial and Development Secretary was always intended and is there and has never been used because we have never advanced any money. Let me say that when we brought it to the House at the time, in fact, we had a big hullabaloo also because Members opposite immediately saw some plot to syphon-off all the money from the Savings Bank to the Investment Fund and so on. I told them at the time that we were just creating the possibility of doing it which is, as I have already explained today, already included in the Public Finance (Control and Audit) Ordinance. I can tell the House today it has never been used and the fact that it is there does not mean it is going to be used. But it is logically that whether money is advanced to the Consolidated Fund or the Improvement and Development Fund, should be a matter for the discretion of the Financial and Development Secretary because he is the one who is, in fact, monitoring the expenditure in those two areas. If you have got a situation where you need some money in the Consolidated Fund it will be the Financial and Development Secretary who will decide if you need it. That is why he has got the power to do that at his discretion. If he were to run the investments in the fund; which he does not, it is done by the Crown Agents in London, those Crown Agents operate to a policy directive laid down by the Government of Gibraltar. I will give way to the Member opposite, if he wants.

HON P R CARUANA:

Mr Speaker, I take part of the point that the Chief Minister has said. But the Chief Minister appears to believe that he brings to the House a Bill which gives him the possibility of doing any number of things and because in his explanation he says that he only proposes to do it for reason (a) and that he has only done it for reason (b), the fact that he can also do (c), (d) and (e), we are supposed to ignore. Well I have got news for the Honourable the Chief Minister. We do look at legislation on a worst case scenario. We do assume the worst when looking at legislation, we do assume that legislation will fall into the hands of a Government that is perhaps less scrupulous than they are. We do, because that is what legislation must do. It must stand the test of whose ever hands it falls into the administration of because the public interests should be protected. Therefore, what this Chief Minister intends at the time that he brings the legislation to the House is not the only point. The point is what can the legislation lead to if it fell into somebody else's hands other than his own.

HON CHIEF MINISTER:

Yes, that may well be so, although I think that, frankly, there are more important things that we should be worrying about in this period of time rather than about whether we are substituted by a Government less scrupulous than ours because at the moment there seems to be no other Government in offing other than himself, unless he is already saying he is less scrupulous than us. I hope to be here quite a long time and presumably he will take over from me so it will be a long time before we have to worry about somebody less scrupulous turning up.

HON P R CARUANA:

That is an admission of the point at least.

HON CHIEF MINISTER:

The point is that I am not accepting that this increases the powers from the existing Ordinance. Therefore maybe he thinks the present Ordinance has got too many powers. Maybe! This Bill does not give the Government of Gibraltar new additional powers in the operation of the Savings Bank and it has not been brought to the House because there are things that we want to do that we cannot do already. The Member can believe me or not believe me but I am saying it publicly and on the record and I commend the Bill to the House.

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

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J L Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon P J Brooke
The Hon P S Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The Bill was read a second time.

HON CHIEF MINISTER:

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

This was agreed to.

THE NATURE PROTECTION (AMENDMENT) ORDINANCE, 1992

HON J E PILCHER:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Nature Protection Ordinance, 1991 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, there is very little to say. I think the Bill is self-explanatory. It is just various minor amendments to the main Ordinance to bring in further offences, in particular using methods of falling and trapping which had escaped the drafting in the initial stages. Also to bring it further in line with EEC law.

Section 2 and section 3(f) are for tying down the restrictions by adding the offence of 'knowingly causing or permitting' and rather than to clearly identify all the various areas. It would be virtually impossible to tie down every single way. It is an all embracing clause used, as I say, within the EEC and therefore it is an offence if somebody 'knowingly causes or permits to be caused'. Section 5(4) permits grounds for defence under the new paragraph, because we had left out of the main Ordinance that it is a defence for committing an offence if the person has the necessary licences or the necessary permission in relation to the main Ordinance. They are very simple amendments and I do not think, Mr Speaker, there will be any problem 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 L H FRANCIS:

Mr Speaker, this side of the House fully support all reasonably measures designed to protect and enhance Gibraltar's remaining flora and fauna. The measures proposed in this Bill, as the Honourable Minister said, is to tighten up the existing legislation, therefore, it is welcome. The Nature Protection Ordinance as a whole is pretty comprehensive. Perhaps there are two ways in which it could be made to be more effective which does not necessarily have to do with tightening it up. The first of these is that the public should be made, in general, more aware of what are the protected species and what the penalties under these laws are for infringing these limits. In the room outside before coming in we had a discussion about the hairy snail and whether it was a protected species or not. We have found out it is a protected species but we would not be able to tell a hairy snail from a grass snail even if it crawled in front of our noses. Perhaps seasonal notices in the press and pictures at the beaches and at the entrance of the Nature Reserve might help and enhance the law without necessarily any great deal of expenditure. The other area would be enforcement. We know the Police already have enough on their plate but if more use was made of section 21 of the Ordinance and more wildlife wardens were appointed, perhaps from the ambit of the Environmental Health Department or from voluntary bodies, such as GONHS or from the Tourist Agency staff themselves, that would also help make the law a lot more effective. Having the law on the statute books is all well and good and it is good that we have it on our statute books but it cannot be a dead law. People would have to be aware of it and it has to be enforced in order to be effective in its aims. Thank you, Mr Speaker.

MR SPEAKER:

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

HON J E PILCHER:

Mr Speaker, I think in the first aspect covered, perhaps the Honourable Member opposite has a point. Apart from the fact that my colleague the Minister for Housing is always worried about the hairy snail - I do not know whether that is any indication or not - but he always seems to be worried about that. I think there is a point to be made and we are trying to tackle it in the case of the Nature Reserve which I think is the start of bringing into fruition a law that is not a piece of dead legislation in the statute book. We are converting that into reality and the Nature Reserve today is a reality. We are working at an Information Centre within the Nature Reserve because we want the public at large to be aware of the dangers to nature of the destruction of its flora and fauna. I think, in the Nature Reserve, certainly, we have to be careful that at least, there, they are protected in a big way. This is happening already and as a consequence of this I have to advise the Member opposite that we are already in negotiation and discussion with GOHNS in order to try and get voluntary wardens at this stage. We are also looking at implementing through the Tourism Agency, wardens which already have a role within the Nature Reserve but whose role we could enhance because, obviously, at the end of the day, Mr Speaker, what I think the Honourable Members opposite have to understand, is that we want to implement the law. We want to enforce the law but we do not want the collar to cost more than the dog, so, Mr Speaker, it is something that we are taking care of. It is not, I assure the Member opposite, as far as I am concerned, a piece of legislation. It is something which I am very keen to see and there are meetings with the different bodies and I assure the Members opposite that nature and the environment at large is a thing quite close to my heart. I therefore, commend the Bill to the House.

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

HON J E PILCHER:

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 PORT (AMENDMENT) ORDINANCE, 1992

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. The Bill to amend the Port Ordinance is to bring the provision of the Port Ordinance, relating to the sale of a property in enforcement to the provisions of the Ordinance, in line with those in the Imports and Exports Ordinance. At present, if the Captain of the Port, because Port fees have not paid, arrests the ship and subsequently because of further non-payment sells the vessel, having taken from the proceeds of the sale the outstanding fees, he is required to search out the owner. The reality is that the owner is normally very difficult to find, otherwise he probably would not have so neglected the vessel that the Captain of the Port had to arrest it in the first place. The amendment puts the onus on the owner or his agent to claim the residue of the proceeds of the sale. The amendment to section 12 makes exactly the same provisions in respect of existing powers of the Captain of the Port to sell vessels, vehicles, trailers and containers or machinery or other articles abandoned in the Port. The provisions do not in any way change the powers of the Captain of the Port to arrest or sell either a vessel or a vehicle or any other thing. They simply bring into line the administrative arrangements with those already applying to sales of forfeited goods by the Collector of Customs. 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 F VASQUEZ:

Thank you, Mr Speaker. Although at first glance this Bill may appear to be innocuous, the fact is that the Opposition have taken the view that in its effect this Bill can be operated in a way that it is prejudicial and pernicious to owners of vessels in Gibraltar. The Honourable the Minister for Trade and Industry has indicated that the Bill does not in any way extend the provisions of the existing law and that they do not extend the powers of sale of the Captain of the Port etc. That is accepted. The Captain of the Port already has powers of sale etc. What it does change is the way in which the Captain of the Port can devolve himself of the assets following the sale of material that has come into his hands. What I would ask is the necessity of passing this Bill in the way that it has been framed. The pernicious words, Mr Speaker, and the ones to which the

Opposition take objection, are the ones that state that any person interested in the assets that have been sold must submit his claim within one month of the sale. What we want to know is how this is going to be operated because if that is taken at face value, the fact is that this Bill can be taken as operating a system which is essentially confiscatory because there are many circumstances in which the owner of the vessel can find that a vessel of his has ended up in Gibraltar outside his knowledge and unnoticed to him, the Captain of the Port has sold the vessel, obviously taken any money that is owed to Gibraltar out of the assets - well and good, no objection to that - but then after one month divested himself of the assets and presumably handed them over to the Government of Gibraltar. The fact is, Mr Speaker, that there are plenty of examples in which this can be in a way pernicious to owners. There are, for example, charter parties, where the owner of the vessel may not know where his vessel is located. Also you may be aware that in circumstances of private yachts there is a certain amount of piracy and private yachts are stolen. It is perfectly plausible that the owner of the vessel; unbeknown to him his vessel has been stolen and it ends up in Gibraltar. The fees disappear and the next thing he knows is that the Government of Gibraltar has sold his vessel and divested him of his property. We would recommend to the Government, Mr Speaker, that they look again at this Bill and institute some form of procedure whereby, in these circumstances, there is a procedure for the owner of the vessel to at least make some application to the Court or to the Captain of the Port to try and regain his property. I would ask the Minister to take into account, for example, by comparison the operation of the Companies Ordinance, where under the Companies Ordinance, a company that has not been operated can be struck off by the Register of Companies. In effect in law that makes the property of that Company bona vacantia. It actually becomes the property of the Government of Gibraltar. But what the Companies Ordinance says is that within a period of ten years after the striking-off of that company, the owners of the company can go along and make an application to bring that company back into being. That recognises the fact that there may be circumstances that somebody with an interest in the company has not found out until much later what has happened. There is no reason; and I appeal to the Minister to take into account, why this should not be the case in the case of certain boat owners who have found that their boats have disappeared and two years later realise that it has been sold in Gibraltar by the Captain of the Port. Why in those circumstances should the owner be deprived of the opportunity of making an application to the Captain of the Port to get at least the balance of the value of his assets back. We consider, Mr Speaker, that the way this Ordinance is phrased is unnecessarily pernicious and regrettably we will not be able to support this amendment.

HON P R CARUANA:

Mr Speaker, what my learned friend has said reflects the position of all Members on this side. I think that

there are two improvements that the Honourable Members opposite could make by way of amendment. They could include, as my learned friend Mr Vasquez has indicated, some mechanism to allow bona fide applicants, the opportunity to apply beyond the given deadline of one month or if that seems too fair to somebody who perhaps the Honourable Members feel is not deserving of such fairness; at least extend the period and make it longer than one month. But one month is an extraordinarily short period of time for somebody to lose what might be a lot of value because just think that a yacht might be worth £30,000 and it might be sold for a debt of £2,000 or £3,000 and the hapless owner, who does not even know what has happened, loses several thousand pounds with no statutory provision. I accept what the Minister has said as an aside that, in the great majority of cases, the owner is not in that position; is not deserving of that consideration; probably cannot be found; will never appear and probably owes the Government more than the boat is worth. You cannot prejudice bona fide minorities because of the majority. The law has always got to be flexible enough so as not to operate injustices on people who are not in the same situation.

HON CHIEF MINISTER:

We can do it by regulation. That will make it more flexible.

HON P R CARUANA:

This is why we think that legislation is better than regulation because if we had printed this by regulation, we would not have had the opportunity to make the perfectly sensible comment that we are now making about it.

MR SPEAKER:

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

HON M A FEETHAM:

Mr Speaker, I am assuming, as Members opposite in the legal profession know quite well, that by the time you actually get to the point where you are arresting and then going into the process of sale, there are an awful lot of procedures that have to be undertaken. There is an awful lot of searching that has to be undertaken by the agents and by legal professionals acting on behalf of clients and those suing and if by the time the sale has actually taken place, the rightful owner has not come up or there has not been enough investigation to be able to forewarn the owner that this is going to happen, then I would say that the fact that we are giving a person one month is, I think, valid. How long can you keep a situation like that going? The other point is that if there is somebody that has actually stolen a yacht and happens to cause a misdemeanour that requires

it to be sold and so on and so forth, presumably somewhere along the line that situation would become a police matter. That matter would have to be taken in accordance with the law and with the evidence that is provided. Somewhere along the line, presumably, if there is a point made to the Government that this has happened then the Government would take a view on that but there is no real evidence. When I made the points that have been made by the Members opposite, before bringing this Bill to the House, I was advised that there is no real evidence that these points are of any real cause. It is just a nuisance, after you have had to arrest and to dispose of the assets, to have to go round looking for the owner to give him the money when he is responsible for having created the problem in the first place. That is the view that we have taken, Mr Speaker.

HON F VASQUEZ:

I think the Honourable Member is giving way. I would like to make the point.....

HON M A FEETHAM:

I have not actually.

HON F VASQUEZ:

The fact is that the Honourable Member has referred to the procedure on arresting the vessel. The fact is, as I think the Honourable Member is aware, that that procedure is something which actually takes place against the vessel. The owner of the vessel need never be aware that his vessel has been arrested. It is as simple as that. The proceedings are served on the vessel and pinned on the mast so there are plenty of circumstances in which the owner may simply not be aware that this has happened and this side of the House accepts that in the vast majority of cases these simply are not the circumstances. But the fact is that a real injustice may be perpetrated by this Bill and for the sake of fairness some form of procedure should be enacted to allow the small cases where the rightful owner has been unfairly deprived of his property to escape that injustice.

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 P J Brooke
The Hon P S Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The Bill was read a second time.

HON M A FEETHAM:

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

This was agreed to.

THE BUSINESS TRADES AND PROFESSIONS REGISTRATION
(AMENDMENT) ORDINANCE, 1992

HON M A FEETHAM:

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

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

SECOND READING

HON M A FEETHAM:

Sir, I have the honour to move that the Bill be now read a second time. Sir, the Bill does nothing more than change the penalty. Level 4 is in fact £2,000 not £200 but the intention was to increase the penalty and it has been done in line with the changes which have been made to other substantial pieces of legislation. It is not an unreasonably high penalty remembering that the majority of potential offenders are companies and not individuals, and they are all people operating commercially and not individual citizens. 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 P R CARUANA:

Mr Speaker, this Bill gives me a convenient opportunity to express, on the record, what our objection is. I said before, as I did in the last House, that having put on record our objection to these scales being

changeable by regulations that I would not vote against all Bills. The rest in which we might agree with simply because one of the little things that we did was this. But we can vote against this Bill, Mr Speaker, of course, because that is all that it does. It would be completely inconsistent for the line that we have taken to do anything but vote against this Bill. It gives me the opportunity to highlight by reference to the various examples contained in this Bill. Here is a law in Gibraltar. The explanation that the Honourable the Minister has given as to why a 1,000% increase in the fine ordinarily could be done by the Government from now on by regulation is that the main offenders are companies. That may be so but some are not. What makes the Honourable Minister believe that the law intends to treat company offenders more harshly or less harshly or differently than human being offenders? From what jurisprudential.....

HON M A FEETHAM:

I am not a lawyer.

HON P R CARUANA:

.....does he take this principle that companies need to be treated one thousand times more harshly for what is failure to put in a bit of paper? If the failure to put in a bit of paper is an offence, it is just as serious whether it is committed by an individual or by a company. Not all companies are rich. Regrettably, many companies in Gibraltar are not and the assumption that they should be fined a thousand times more than individuals simply because they are companies is simply illogical. It highlights the very reason why we object to the levels of fines and penalties being set by regulation and not by legislation because the day after tomorrow or next Thursday or whenever it is that the Gazette gets published, we might all wake up and find that the Honourable Members opposite have scribbled a little note in the Gazette to the effect that from now on companies that do not send in their bits of paper to the Employment and Training Board are going to be fined £100,000. That is it. That is the law of the land. There is no appeal. There is no debate. Frankly, I think that this is not a bad example of why I think that there ought to be opportunities for debate. I am aware, Mr Speaker, that in England, in certain sorts of legislation, it is done in the same way. But in England, legislation takes much longer to get through the House of Commons and I would take the opportunity.....

INTERRUPTION

HON P R CARUANA:

Well, Mr Speaker, knows that we are considering this Bill for the first time today. It will probably go through its Committee and its Third Reading even later this evening, if the Opposition approves, or tomorrow and the little green bit of paper will become law of the land in twenty-four or forty-eight hours. Is that not quick enough? In England it may take months and months and months to get legislation into the House and therefore the parallel is not complete in that sense. Why cannot there be a little bit of public information in advance and even a little bit of debate about what the level of fines should be for breaches of law in Gibraltar. Can I, finally, take this opportunity to invite the Honourable the Minister or perhaps his colleague the Honourable the Chief Minister to explain whether they would consider the simple expedient of having the schedule to the Criminal Procedures Ordinance, in which all these things are contained, to be changed by amendment to the Ordinance rather than by regulation, given that they know full well that it can be done very quickly anyway?

HON CHIEF MINISTER:

Mr Speaker, the Member opposite certainly has spoken at considerably greater length than the three lines that there are in the Bill.

HON P R CARUANA:

Well, the Explanatory Memorandum is also longer than the Bill.

HON CHIEF MINISTER:

All that we are doing with this Bill is not introducing some great new principle. The great new principle, if it were indeed to be such, was already introduced some time ago. The level is intended to be by people who are deciding these levels (it is not a political decision) in what is considered to be commensurate with that level in our Ordinance. As I understand it, the process of standardisation is that there will be level 1 offences, level 2 offences, level 3 offences. I do not know by what criteria, because two of us trying to decide for a particular offence which was more serious and which was less serious might come up with two different opinions. It seems to me to be a question of judgement. So whose judgement is to count? But of course the judgement that counts, at the end of the day, is the judgement of the judge. I remember in the past, not just since being in Government but in Opposition, that we had a very serious problem in getting people to comply with labour legislation, in getting permits and in taking

out Social Insurance cards and the previous Government, in the early 1980's, prior to the opening of the frontier, was concerned about the black market in labour and the fact that people were being caught employing ostensible company directors with picks and shovels opening the streets up and being taken to court and being fined £5. So the Government came here and said we will raise the fine to £50 and they still got fined £5. We will raise it to £500; they still got fined £5. We will raise it to £5,000; they still got fined £5. So I regret to say that whatever level we put it at, there does not seem to be anything we can do but we expect that if we have got, if you like, a grading structure, then that will have some kind of message to send out about the seriousness with which the community represented through the majority in the House, considers that the offence compares to other offences. We are not sitting down deciding to make this one level 4 and the other one level 2. We are relying on the people in the Attorney-General's Chambers who are putting this together to go through all the legislation and come out with a structure which they consider to be reasonable. So there is no political input. The political input was that we accepted the policy recommended to us to replace a variety of individual fines at all sorts of levels by a structure which had different scales.

MR SPEAKER:

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

HON M A FEETHAM:

Mr Speaker, I have nothing further to add.

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

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J L Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon P J Brooke
The Hon P S Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

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 COMPANIES (AMENDMENT) ORDINANCE, 1992

HON M A FEETHAM:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the Companies Ordinance, 1992, 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 Bill is essentially a slimmer version of the Bill which was presented to the last House prior to its dissolution. While I say it is essentially a slimmer version, it also reflects the representation which were made by various interested parties on the contents of that Bill and so from the point of view of people operating the business of company formation, registration and management, it is probably an improved Bill. It is slimmer since it deals only with what are, for the most part, a tidying up process. I will detail to the House one or two exceptions from this general point of view. There are, I think, three kinds of tidying up. The first and least interesting of these is simply tidying up some earlier inconsistencies in the language of the Ordinance and correcting some printing errors. So most of clause 5 and all of clauses 9, 10, 11, 12, 16, 18 and 19, really do nothing more than putting some capital letters which were missing and which could affect the clarity of the language. The second kind of housekeeping is concerned with the Register of Companies and it is intended to produce a more efficient service to the users of the register and hopefully better compliance by those users. At the same time ensuring protection, of course, of third parties. As the Explanatory Memorandum says these provisions are based on those to be found in the United Kingdom legislation relating to the companies register, particularly the recognition that we no longer live in a paper world and that formation may now be transmitted in other forms. Clauses 39 and 41 are specifically concerned with this. Those who are familiar with the memorandum and articles of companies registered in Gibraltar will know that in general such companies are

authorised to do everything from digging drains to operating collective investment schemes. Setting out all of that takes up a lot of space and it is really only intended to give the company the widest possible power. The provision of clause 4 of the Bill recognises that the same thing can be more efficiently achieved by saying that the company may do all such things as are lawful to be done subject only to a specified restriction contained in the memorandum. The simplifying of company paperwork and therefore the simplification of the amount that needs to be recorded in the register is to be found in a number of other clauses, for example, 5(a), 6 and 17. At the same time, to improve the protection of third parties trading with Gibraltar companies, the Bill seeks to ensure better compliance with filing obligations and to make more efficient provisions relating to the striking-off of companies which are no longer fulfilling the statutory obligations and can, after due notice, be presumed to be dead. The third area of tidying up, which the Bill is concerned with, is that within the company. The Bill deals with the consequences of trading when a company is not in compliance with statutory requirements, for example, in relation to membership. It also sets out more clearly the distinction between protecting shareholder and creditor, for example, clause 15 and specifies the responsibilities of directors. There are two areas in which the Bill is substantially different from that presented to the earlier House. The first of this is in the introduction of a new section 45(a) which will bring into Gibraltar's company law the power now in the United Kingdom company law for a company to purchase its own shares, subject, of course, to appropriate safeguards on the exercise of this power. The second innovation is the repeal and replacement of section 104 of the Companies Ordinance which is found in clause 32. This again is a reflection of the provision in the United Kingdom legislation which will allow a company to avoid the necessity for an annual general meeting where by special resolution its members have resolved to do so. This operates only for a private company. The new section also spells out the obligation in terms of timing of the holding of meetings and reflects representations which were made by company managers in Gibraltar about the confusion which existed in our legislation between the obligations of timing for filing and obligations of timing for annual general meetings. These two matters are now clearly separated and are no longer interdependent. The House may wish to know what has happened to the parts of the original Bill which do not appear in this Bill. These provisions were to give effect to European Community requirements and can be dealt with under the provisions of section 115 of the Companies Ordinance which allows for such matters to be incorporated into the Companies Ordinance by regulation. The intention is that they will be dealt with in this way along with

other outstanding requirements of EEC legislation in relation to the company when one or two technical questions are being resolved with the Commission. I am hopeful that we will then produce a consolidated Ordinance which will be easy, both for practitioners and those seeking to do business in Gibraltar, to use. 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 F VASQUEZ:

Yes, Mr Speaker. Regrettably, despite the Honourable Member's opposite reassurances that the Bill is merely a slimmer and better Bill than the one the Government introduced to this House in December of last year, the Opposition feels unable to support the Bill for various reasons. Firstly we stress that it is not because the Opposition objects in principle to the matters with which the Bill purports to deal which we consider on the whole desirable. But, Mr Speaker, because the Bill, from our point of view, is drafted in a way which is ineffective and incomplete. It ignores important requirements of law which it still does not comply with and because, Mr Speaker, if enacted, it will contribute further to the hotchpotch, piecemeal approach to the important piece of legislation which is the Companies Ordinance and which is absolutely essential to Gibraltar's development as a viable Finance Centre and which is doing, as presently constituted and drafted, a disservice. Mr Speaker, it is essential to stress that the law relating to companies is of crucial importance to the establishment of a secure base for the economic activity of any party. Companies are the vehicle for the undertaking of almost every type of economic activity, be it industrial, manufacturing or the provision of services, as is more often the case in Gibraltar. They are the boiler house of the economic activity in any developed country, Mr Speaker. Therefore, the law setting up the rights and liabilities of companies and the supervision and management of their activities must be effective and clear. Now in December of last year, Mr Speaker, the Honourable the Financial and Development Secretary set out the history and the thinking behind the Companies (Amendment) (No.2) Ordinance, 1991, which he was presenting to this House at that time. He indicated that there had been a number of false starts in the reshaping and modernisation of our company law but that it was felt that the 1991 Bill had at last hit the right note by modernising our law without completely overhauling the existing legislation. It is regrettable

to have to note that that very Ordinance was itself another false start, Mr Speaker. The Bill before the House today is a very different animal from that moved by the Honourable the Financial and Development Secretary only six months ago, into this House. The first point to be made, Mr Speaker, is one to which the Honourable Member opposite alluded to towards the end of his introduction. It is that the Bill that we are considering today does not purport to implement the various requirements of a number of important easy Directives on company law. In his introduction to the 1991 Bill, the Financial and Development Secretary said with every justification, and I am quoting from Hansard, Mr Speaker. He said, "I emphasise, in presenting earlier company related matters to the House, that it is important if we are to be able to claim the benefits of the integrated European commercial market, that our companies formed here in Gibraltar should be seen and be demonstrably Euro-companies in every sense. They must be seen to meet the regulatory standards that the EEC sets and, therefore, be capable of taking part in cross-border formation and structuring within Europe." I agree wholeheartedly with the sentiments expressed in those words by the Honourable the Financial and Development Secretary. What he was saying in that introduction was how the proposed Ordinance sought to implement the second and fourth EEC Directives on company law. In view of these words therefore, we on this side of the House, Mr Speaker, are surprised to note that the Ordinance no longer purports to implement those important EEC Directives. Mr Speaker will be aware that the Government has made great play of its policy of confirming Gibraltar as a sophisticated, responsible, forward-looking member of the European Community. The Chief Minister insists, time and time again, speaking publicly that Gibraltar is the thirteenth Member State of the European Community. Something which I personally disagree, he knows well, and which we on this side of the House disagree and consider to be an inaccurate and slightly dangerous fallacy, Mr Speaker. He says that the GSLP have passed legislation such as the Gibraltar 1992 Company legislation specifically to put Gibraltar companies in an advantageous position to benefit from EEC Directives on the harmonisation of withholding such provisions within the EEC. Why then, Mr Speaker, is the Government undermining their entire strategy by failing to implement those Directives which are necessary to confirm Gibraltar companies as, in the words of the Financial and Development Secretary, demonstrably Euro-companies. By failing to put the necessary EEC legislation in place, we are inviting the retort from the other EEC jurisdictions that we are not complying with our EEC obligations and that therefore we are not a jurisdiction to which EEC fiscal Directives apply. Already, Mr Speaker, in relation to the 1992 Gibraltar Companies legislation we are seeing the tax authorities of a number of EEC countries refusing to accept Gibraltar 1992

Companies as falling within the Withholding Tax Directives. Spain, obviously, has to be expected. She has already given that indication. France, it is understood, has also made a similar direction and we still await a single EEC jurisdiction to accept that the Gibraltar 1992 Company is a properly constituted vehicle within the EEC law and that falls within those withholding tax harmonisation provisions. By failing to implement the relevant EEC Directives on company law and in particular the fourth directive on the provision of financial information of a company's affairs, we are giving our competitors ammunition with which to shoot us down, Mr Speaker. It is important to stress that we are very long overdue in the implementation of these Directives. The Honourable Minister for Trade and Industry, in his submissions earlier, indicated that they were merely waiting to clarify some matters with the Department of Trade and Industry and that this is all in the pipeline. Sir, I cannot understand how six months ago all that was in place and now six months later we seem to have taken a retrograde step. The fact is, that these EEC Directives have been in place for over ten years now. We are very long overdue, this is a central plank of Government's policy, Mr Speaker, that they are responsible members of the EEC, that they comply with all EEC Directives. Why have we taken over ten years to implement these important EEC Directives which are undermining, Mr Speaker, the efficacy and the acceptability of Gibraltar companies within the EEC. It is the view from this side of the House that the Government owes an explanation to this House and to the electorate in general why, having proposed and prepared the necessary legislation in December last year, they now come back to this House with a slimmer version of the Bill and actually have withdrawn the implementation of those important EEC Directives. That is not the only grounds on which we base our objections to this Bill. Apart from its omission viz a viz our EEC obligations, the Bill is, in the view of the Opposition, an inadequately drafted instrument and if I could start in this respect by referring to clause 20 which introduces a new development in that it authorises the company to purchase its own shares. Now again, as I have said earlier, in itself that is an end which is desirable. The fact is that the law has been amended in this way in the United Kingdom and this facility of a company being able to purchase its own shares is one that is necessary for the creation of open-ended investment companies and there are professionals in this jurisdiction that feel that that is a useful vehicle for the establishment of investment funds in Gibraltar. This power for a company to purchase its own shares was enacted under section 171 of the 1985 Companies Act in England. The important point, however is that the English Act sets out carefully the circumstances in which that power can be exercised in order to protect the interests of shareholders because by purchasing its own shares what effectively a company is doing is reducing its share

capital and that, if not done properly and in a responsible way, can be a mechanism which is exercised to the detriment of existing shareholders. If one looks at clause 45A, it stipulates that the company may exercise the power of purchase of its own shares in accordance with Schedule 11. So duly, Mr Speaker, I flicked to the back of the Ordinance to see what Schedule 11 says and of course there is no Schedule 11 to the Bill. We are here asked today, in this House, to approve the passage of a Bill which gives companies an important and new power which can be exercised in a way very prejudicial to existing shareholders which purports to set up the criteria under which those powers should be exercised. But we are not given the criteria. We are just told that there is a Schedule 11 which will protect the interests of shareholders but we are not told, at this stage, Mr Speaker, what the protections are. So how can Government bring this half-baked Bill which is incomplete and which still does not set out on what principles the companies are going to be allowed to exercise this new and, it has to be said, pernicious power to purchase its own shares. Without knowing the circumstances, Mr Speaker, and the principles which are to be applied in the protection of shareholders, we, on this side of the House cannot simply accept on the nod a piece of legislation which is incomplete. So, for that reason alone we feel unable to support the Bill. There are various other criticisms of the Bill, Mr Speaker. One comment I will make in passing is that the Bill as the Honourable Member opposite indicated, to a great extent, is a tidying up procedure and in fact it gives the Registrar of Companies a lot of new roles. Roles which previously have been exercised by the Court and roles which necessitate the exercise of the Registrar's discretion in various applications by members and directors to the Companies Registry. I have already indicated that in some ways that is something which is desirable because it takes out of the Court diary a lot of these straightforward applications which are not important matters of law. So at least we now have more time in the Court's diary. If this is enacted it will be slightly less busy and less clogged up than it is at present. But what does it do? It gives the power of determining these applications to the Registrar of the Supreme Court who already, Mr Speaker, is overburdened with a number of responsibilities, a whole series of responsibilities given to him under various other Ordinances. The fear, on this side of the House, Mr Speaker, is that the Registrar of Companies simply is not going to be able to deal with the significant volume of applications that are going to be made to him or her under this Ordinance. In my address at the time of the Appropriation Bill, I suggested to the Members on the other side to consider the appointment of a Master in the Supreme Court exactly to take this type of application. We could have a Master which would release a lot of the straightforward applications from the two judges that we have in the Courts. It will enable important cases to come to Court much quicker and much more effectively because the Court files would not be

so clogged and would enable the Master to deal with the straightforward applications. This is further emphasis and further ammunition, as it were, for that argument because what this Bill purports to do is to give the Registrar, who already is burdened with a number of responsibilities under a number of Ordinances, with further responsibilities which he or she simply may not have enough hours in the day to perform. We would ask the Honourable Members on the other side to consider, again, the appointment of a Master of the Supreme Court to take on exactly these types of straightforward applications which in England a Master deals within chambers. Mr Speaker, there are further defects in the Bill and they are defects of drafting and defects of shabby drafting and inadequate research of the matters at hand. If I could draw the Speaker's attention to clause 15 of the Bill, this clause introduces three new sections which, again, are taken from the English Act and which, again, I hasten to add and hasten to stress, in themselves are desirable. What they seek to do is, as has already been done in England under the relevant English sections, to reformulate the doctrine of ultra vires; the transactions entered into by companies in order to protect innocent third parties entering into contracts with that company. So to that extent those amendments to the Companies Ordinance are desirable. However, Mr Speaker, in England the sections were enacted in the 1989 Companies Act which amended the 1985 Companies Act and which repealed the old section 35 of the 1985 Companies Act. We still have the equivalent of section 35 of the 1985 Companies Act. It is section 20A. That is a section which brought into place section 19 of the European Communities Ordinance and that was the first attempt by legislators to give effect to the doctrine of the European idea of the doctrine of ultra vires as it applies to companies. What have we done in Gibraltar? In Gibraltar this Bill purports to implement those three new sections which were implemented in England under the 1989 Act but which in England were enacted in the placement of the existing section ie section 35. In Gibraltar we disenact them and we keep the old section. So that effectively in the Companies Ordinance we have two parts of the Ordinance doing exactly the same thing. We have section 20A of the Ordinance, which I have before me, Mr Speaker, and which has not been repealed by the Bill. Section 20A of the Ordinance is the local enactment of section 19(1) of the 1972 European Communities Act and the note in the schedule is headed "Power to contract not restricted by memorandum and articles." It is exactly what these three new sections are doing. What the three new sections do is that they expand the idea, they re-legislate, they develop the idea and they expand it. All very admirable but you cannot develop these Ordinances in this piecemeal way, Mr Speaker, by keeping still in force the old section and introducing three new sections which purports to do exactly the same thing in a more extensive way. All we are doing, Mr Speaker, is creating confusion. It is going to be almost impossible in the

future when difficulties arise under the Ordinance and lawyers and judges have to refer to the Ordinance to try and decide what the law says; to actually decide what on earth the Ordinance is purported to say when it is saying two different things in respect of the same ends in different sections of the Ordinance. So, I can only say, Mr Speaker, that clearly there has been an oversight by the draftsman who has kept in the old section which in England is repealed by the three sections which they have now brought in. The end result, Mr Speaker, is that we have a Companies Ordinance which is even less workable than it already is which would lead to further confusion and uncertainty in the implementation of the existing Ordinance. It is simply shabby and ill-researched drafting which is going to find its way into our laws and it is going to sit there until somebody comes along and tidies up the mess that has been created. Our objection to the Bill therefore, Mr Speaker, in a nutshell, is simply that the Ordinance represents everything that is wrong with our Ordinances generally in Gibraltar. It is enacted bit by bit in a piecemeal fashion and we are left with a shapeless and unworkable mess. I know it first hand. I am speaking from my own personal experience of the difficulties that we have in this area. As a lawyer, I get enquiries from lawyers outside Gibraltar who are thinking of bringing clients to work in Gibraltar and they ask to see our Companies Ordinance to see how our system of companies works. We have to explain that what we have is an Ordinance which was first enacted in Gibraltar before the war. It is based on a piece of legislation enacted in England in 1929. It has been amended countless times since. It has been reprinted in 1984. Since the reprinting in 1984, it has been amended. It has had sections repealed. It has had sections added to it. We have had to cross out. We have had to blot out. We have had to use tippex and we have had to use glue to try and make our Ordinance readable. We have to tell a lawyer over the fax or over the telephone that this is the state of our laws and if it is incomprehensible to us, Mr Speaker, imagine how incomprehensible it is to a professional seeking to bring work to Gibraltar. To pass this Bill, as presently drafted, will only compound that situation because what is going to have to happen is that there is going to have to be an amendment Bill to this amendment Ordinance to put right the mistakes that this Bill is making. I notify the other side that there are mistakes in this Ordinance and I pray to the Members opposite to take this away and research it and for God sake get it right and bring it back to the House. In the address of the Honourable Financial and Development Secretary made to this House in December of last year, the Financial and Development Secretary said - in fact it has been confirmed by the Honourable Minister for Trade and Industry - that the Government is considering the printing of a consolidating Ordinance. Mr Speaker, it is the view of those Members on this side of the House

that even that is not going far enough because we have got beyond the stage of simply drawing together all the multitude of amendments and repeals and all that and actually trying to tidy up what is fundamentally a law based on an outdated piece of legislation, namely the 1929 English Companies Acts. What we need and what this jurisdiction is crying out for, Mr Speaker, is a modern Companies Ordinance based on the English 1985 and 1989 Companies Act. All we are doing now is taking bits from here and bits from there and chucking them into the mess that we have for a Companies Ordinance and what we need is to reconstitute the Ordinance completely. We need to start from scratch and create an Ordinance, a modern Ordinance, an effective workable Ordinance based on the 1985 and 1989 models in England. Mr Speaker, I am not asking for the earth because, as the Honourable Minister opposite is aware, that has already been drafted for the Government. The Financial Services Institute has already prepared a draft of an Ordinance tailored for Gibraltar's needs based on the modern 1985 and 1989 Companies Act in England. The Minister may not be aware but the Financial and Development Secretary is nodding his head and I think he is aware. It is certainly a matter which is in the knowledge, as the Honourable Member opposite said this afternoon, the Financial and Development Secretary is a member of Government and so the Government is aware of draft legislation which will put our Ordinance to rights. That proposed legislation prepared by professionals and sitting before the Government has the effect of drawing in all the elements that all these amendments and supplementary Bills and Ordinances that have been passed. It draws all that together. It gives us the benefit of a proven model incorporating all the EEC Directives, which the Honourable Member opposite says is still awaiting clarification from the Department of Trade and Industry. All those are drawn together in the 1985 and the 1989 Acts in England and already Government has a model for the implementation of that in Gibraltar. One thing is clear, Mr Speaker, we in Gibraltar, trying to sell ourselves as a sophisticated jurisdiction, simply cannot push ahead and go it alone on the basis of our own peculiar, particular companies law. We cannot do it. It is too complicated, Mr Speaker, and it is too technical in today's day and age. We need to base ourselves on English law and rely on developments and court decisions made in England, otherwise we fall on the two local judges trying to determine complicated pieces of law with no guidance from English precedence and English laws, Mr Speaker. The time has come to call a halt to these shabby and unworkable amendments and to overhaul our laws completely to enable Gibraltar to go out and do business confidently on the basis of a well researched, workable, established and sophisticated body of law to find our Companies Ordinance. For those reasons, Mr Speaker, we on this side of this House, oppose this Bill.

MR SPEAKER:

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

HON CHIEF MINISTER:

I am not going to spend a lot of time because it is quite obvious to me, Mr Speaker, that we have got a very unhappy, dissatisfied, disgruntled, disenchanted Opposition that is going to vote against everything as a general rule with the occasional vote in favour. Let me say that the Honourable Member here may think he is an expert on legal drafting, in which case perhaps he should be aiming for the vacancies of legal draftsman when such vacancies come up instead of putting himself forward for election as a representative of the people of Gibraltar because, at the end of the day, if his principal argument is that the whole thing is very shoddily drafted, well that depends on whether he is a particularly good lawyer or a particularly lousy lawyer. But of course he may be a lousy lawyer and a very good Member of the House of Assembly and we are listening to him here as a Member of the Assembly elected by the people of Gibraltar basically to look at the law from the point of view of what are we doing for the benefit of Gibraltar and not for the benefit of lawyers who have ran out of tippex. Notwithstanding the containers of tippex and cellotape that they have had to use, I must say they have managed to register an awful lot of companies in the last three years. I can well understand how much hard worked they must be registering so many companies and having to use so much cellotape and so on at the same time. But of course, the Member at least ought to have the expertise in this particular area, which is obviously so important to him, to know that we have got a fundamental problem which is that like the explanation that I gave in respect to a credit institution, there is in the Company Law Directives in the European Community a definition of what a company is and that definition is again by reference to the national law of each member State. Again we have now stumbled on a situation where we have been told for years that we have got to comply with the requirement of Company Law Directives in bringing our company law into line with Community company law and nobody could guarantee us that when we do bring it into line it will finish happy in Community company law because the Community says "A company is, in Spain, an institution registered under such a law, in Greece an institution registered under such a law" and when it comes to the UK, it says "In the UK an institution registered or incorporated under the Companies Act 1985". It does not say "and in Gibraltar". Now what are we then in Gibraltar? There is a definition in the law and it is in the first law, well before we had any problems with anybody and we have discovered this, as I have mentioned earlier, recurring

in a number of different Directives. It is a matter that I went into in great length, I can assure the House, in my recent visit to the Cabinet Office where I had experts from every single department, all of whom had apparently missed this for years. Frankly, the Government of Gibraltar is not prepared to say "We are committed to complying with the implementation of Community law in Gibraltar" unless somebody can guarantee us that the end result of complying is that the rest of the Community accepts that, having complied, we are bona fide grade 1 Community products. There is that unanswered question and we are also in the regrettable position - which I will make clear again when we come to the Banking Ordinance - where the UK cannot seem to make up its mind what it is it wants us to do. If we look at the situation in the Ordinance today in relation to shares being redeemable; if the Member cares to look at the 1987 amendment to the Gibraltar Companies Ordinance, he will find that there was an amendment introduced there by the previous administration which was defended in the House as being the capacity created in the law then to redeem shares to be able to market UCITS and it was announced then, in October or November 1987, that we were the first people in Europe to change our law to be able to do UCITS. Now I can announce to the House that we are the last people in Europe and I do not know for how long we will be the last but I can tell you that that was done - it was introduced by the then Financial and Development Secretary - on the best advice of the best experts. People who cannot be said to be responsible for the shoddy drafting of today because the people who have been doing the shoddy drafting of today were not in employment in 1987. So there was somebody else doing the shoddy drafting then. But having done it, we supported it in the House. We had a lengthy paper circulated to explain to us what UCITS meant because nobody knew what they were talking about and we all voted in favour and we were all overjoyed to be the first people in the European Community to have these strange things called UCITS and we are still being asked today in 1992 when are we going to do it and we are still asking London "Look when are we going to do it?" And London says "I am still not happy with the way you have done it" and we keep on putting in everything they tell us, so it is very difficult to produce a final, total, comprehensive Community product because let me tell the House, that I think this makes a nonsense of the parliamentary process far more than anything I am doing by regulations. If we get advice, we put it into the law. We bring it here. We then listen to the Opposition comments, if they come up with something positive and constructive, which is not very frequent, we take it into account and then fine, we have decided what law we want in Gibraltar and we say "We are now good Europeans" and then somebody in London says "No, you are not good Europeans because in my judgement everything that you have done is silch so start from square one." Let me say that my first experience as an elected Member in this House and the first law that I ever voted on was the 1972 European Communities Ordinance and it left an indelible mark on me because it was the first time I stood up over there

to make my maiden speech on a piece of legislation and I said "Well, there are things here that I do not understand and there are things that if I understand them I do not agree with and I would like to suggest ways of improving this." The Attorney-General stood up and said "Look, I am afraid you cannot do anything about this, this has been agreed with the UK and all you can do is vote yes or no" and that was my introduction to parliamentary life. It has left an indelible mark on me in the last twenty years and I regret to say that I feel we still have a totally unsatisfactory situation from the point of view of the definition of our relationship between the Community and Gibraltar, the Community in London and London and us and we really have to bring this one to a head and get it out of the way once and for all, otherwise we are all wasting a lot of money, time and energy marketing something that when the crunch comes may not be there to market.

HON P R CARUANA:

Mr Speaker, obviously the situation that the Honourable the Chief Minister is outlining is very worrying in the sense that it is the same theme emerging in practically every area of legislation that we try to develop for our economic package so to speak. Really two comments come to mind, the first is that we have got to find the constructive, effective, proper way of bringing this issue to a head and certainly from these benches.....

MR SPEAKER:

Could I just remind the Honourable Member that you can speak on this Bill. You have not spoken yet, so if the Chief Minister has finished, then you can speak for as long as you like. It is up to you.

HON CHIEF MINISTER:

If I am assumed to have given way then it might be possible for me to comment if the Member wants to continue with what he was saying.

HON P R CARUANA:

Certainly we offer him any assistance in the sense of a common approach on this which is a crucial subject. We have seen it now and I know that we are going to see it again in relation to another Ordinance but one really finds it very difficult to resist the temptation to make this little quip and I do not do it with any ill-will because I see how important it is to our common effort that it really encapsulates, does it now, why we think it is both inaccurate and dangerous to market ourselves as a thirteenth member State of the European Community? This is precisely why we cannot market ourselves as the thirteenth Member State of the European Community. To do so encourages the very people whose help we now need in correcting this sort of dilemma not to do so and,

Mr Speaker, whilst I am all in favour of the Honourable the Chief Minister finding formulas to market ourselves and finding vehicles in which to package our common aspirations as citizens to be something that we are today not, I think it would be better, all things taken into account including the need for us to make progress on legislation of this kind, if we did not use rallying cries and then we cannot deliver. I wish to emphasise to him very strongly that that is not a quip. This is a manifestation of why we think it is not helpful to resort to that language.

HON CHIEF MINISTER:

I cannot, in fact, agree with the Leader of the Opposition and I am afraid he has got it totally wrong because I am referring to matters that go back well before we got elected and nobody was then calling themselves the thirteenth member State. So I am not saying this started in 1988, I am saying this started in 1973 and if in 1973 we were so docile and amenable to London's wishes, at least today we may not be making a great deal of progress but I have the satisfaction of getting it out of my system. For the previous fifteen years we made no progress and on top of that we said "Yes buana". So I think there is a fundamental point to be put on the record that this is not London reacting to me because I am going round saying we are the thirteenth member State. This is London continuing the way it was doing it before and we are getting cheesed off.

HON P R CARUANA:

By way of clarification, Mr Speaker, I must have sounded like that but I had not intended to suggest that we were now encountering these difficulties because of the thirteenth member State line. I was doing it in the reverse that this, which has been going on since 1973 and continues to go on in relation to UCITS since 1988, really shows why we are not a state in the context of the Treaty of Rome.

HON CHIEF MINISTER:

We are not a state in the context of the Treaty of Rome but we are certainly a member of the Community independent of the other twelve and if we are not one of the twelve and the twelve are members and we are a member which is not one of the twelve then we must be the thirteenth member even if we are not a state. In fact, we have been so recognised on a number of rare occasions. If the Members opposite look at the Financial Services Act of the United Kingdom in the context of UCITS they will find that there is a proviso there which says that for the purposes of that Act Gibraltar is considered to be another member State. That is very relevant to what we are talking about. If Members care to look at the Health Service Act 1972, they will find that there is a reciprocal health service agreement which says that

patients - the Honourable Mr Cummings will be able to confirm that because as an employee of the Health Service he was aware of this - in the United Kingdom and patients in Gibraltar are treated in each others health services as belonging to two different countries for Community purposes. Therefore we are a separate member State from the Member State, United Kingdom for health care and we are a separate member State from the member State, United Kingdom. Not only are we separate from them, we are a separate member State from them and we are not one of the other eleven.

HON P R CARUANA:

It is good to see that the previous administration were not asleep all the time, that at least on those two occasions they got their act together.

HON CHIEF MINISTER:

Well I said in 1972. I would remind the Member that that is when I joined the House and that was when it started happening.

HON P R CARUANA:

That explains it then.

HON CHIEF MINISTER:

The position, I think, is that the approach over the nineteen years that we have been in the Community has not followed a consistent, well thought out philosophy on the part of the United Kingdom. In many respects it seems that very very recently we have finally put some machinery in place for the right contact between people here and people there. The machinery over there was first of all a very large machinery intended for the application of Community law in the United Kingdom, occasionally remembering that something might affect Gibraltar and thinking of letting us know or putting something in. By its very nature a civil service the size of the UK means that people are constantly on the move, so the person that was dealing with Gibraltar was replaced by somebody that had to start learning all over again since there was not a proper method as now. As I have said, we have agreed some things already when I went over and we will see how they work by monitoring it on a six monthly basis. It meant that in some legislation we were treated in one way and in another legislation we were treated in another. It meant that in some of our own legislation we were reacting one way and in another legislation we were reacting in another. We got to the stage of saying "Well, look let us try and put this in order." Let me say that, technically, my position, which I put to the Cabinet Office in London, is that, I think, it could be argued that we have not yet implemented one single European Community Directive because every Directive, without exception, finishes with two articles. The penultimate article says that

the member State shall give effect to the Directive in its national laws which is presumably what we are doing here; having national laws. Whether that makes us a state or a nation or not a member or the thirteenth I am not very sure but that is what the Directive says we are supposed to be doing. Then the last article says that the Member State shall notify the Commission and provide the text of the national law. Well there is no evidence that that final article has yet been complied with since we joined in January 1973. The Member opposite is a lawyer and I am not, I am reading it as a layman. As a layman it seems to me that if those are instructions which have to be complied with then presumably until you have done the last instruction on that page the process is not complete. It may be a technicality but it is a technicality that the Member opposite must know that they are using today when they tell us the Banking legislation has to be approved by the Commission or the UCITS have to be approved by the Commission. As far as I am concerned, how can the Commission approve anything if they have never been told anything? How do the Commission know what we have implemented and what we have not implemented if there is no record of anybody ever having told them what has been implemented to date? I can tell the Member opposite that those questions I raised and I did not get answers to. So I am grateful for his comments that if we have to do battle on this one we can count on a joint effort, if I understood him right. Obviously, we have made the point very, very strongly in London and I am not repeating it here publicly for no reason at all, as the Member opposite may well imagine.

MR SPEAKER:

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

HON M A FEETHAM:

Mr Speaker, I have no further comments to make.

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 P J Brooke
The Hon P Dean

The following Hon Members abstained:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

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 AUDITORS (APPROVAL AND REGULATION) ORDINANCE, 1992

HON M A FEETHAM:

I have the honour to move that a Bill for an Ordinance to provide for the approval and regulation in Gibraltar of auditors 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. Sir, this Bill in effect adapts Gibraltar existing legislation on the regulations of auditors to give effect to the provisions of EEC rules relating to the licensing of auditors to carry out audits of a particular kind. Such auditor in this Bill called a 'Statutory Auditor' is one who meets the requirements of the EEC legislation for doing this particular kind of audit. This legislation is necessary, not only to comply with EEC rules on the qualifications and experience of auditors, but also to ensure that in Gibraltar we have given full effect to other EEC legislation relating, for example, to collective investments schemes in transferable securities and companies. As I have said, this legislation and the regulations which will be made under the Ordinance is built on our present system, Mr Speaker. For example, the provisions relating to the Board are precisely those on our existing Auditors Registration Ordinance. The regulations to which I have just referred have already been circulated to the professional bodies in Gibraltar and to individuals practising as auditors and their comments taken into account as far as it is possible whilst still being in compliance with the EEC requirements. In determining

the matter of qualifications and in appointing supervisory bodies to establish auditing standards, we will be using exactly the arrangements which operated under the Auditors Registration Ordinance, that is, using the UK professional bodies whose qualifications our auditors hold and which meet the requirements of the Directive for such supervisory bodies. In both the Bill and in the draft regulations provision is being made to protect, Mr Speaker, what are called grandfather rights. That is to ensure that people who are currently engaged as auditors and who by their experience are completely competent to carry out that task but who would not if they were to commence their professional career now have the right academic qualifications, have the right to have that practice protected, Mr Speaker. Such people have an opportunity to register under this Bill even if they have not under the Auditors Registration Ordinance. Similarly, people who are registered under that Ordinance are protected by the transitional provisions in clause 9 of the Bill. The Bill is, Mr Speaker, to the benefit of auditors, investors, shareholders, etc and to the good of the reputation of Gibraltar in financial circles. 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 P R CARUANA:

Mr Speaker, the Bill, as the Honourable Minister has said quite rightly, does two things but then it also does a third. It sets up the Board and it provides that all auditors need to be approved by the Board. I have no doubt that that is required by European Community law although I have to admit that I have not myself checked that point but I accept what the Minister says that that much is in order to comply with our obligations under European Community law. But it does a third thing, Mr Speaker. It does a third thing that the Honourable Members opposite know that we on this side feel very strongly about and that we will not give up the fight on behalf of this half of this legislature. We will not give up the fight in that respect and that is that having said in the Explanatory Memorandum and in his own address that the objects of this Bill is to provide in Gibraltar for the approval and regulation of auditors in compliance with the provisions of European Community law, I am sure that European Community law does not require the Members opposite to reserve to themselves to do by regulation the full extent of the powers that they reserve to themselves by regulation under section 7 of this Bill. Whereas I have no difficulty in approving those of the principles of this Bill that the Honourable Minister has outlined, we are unwilling in any Bill to approve of the giving of powers to the extent where all that this Bill does is set up a Board. 'There shall be a Board' and then say that the Governor may make

regulations to give effect to the provisions of section 3(4). The provisions of section 3(4) are that the Commissioner shall be the Chairman of the Board and shall have such powers acting alone of the Board as may be specified by regulation. Why cannot this House know what the arbitrary powers exercisable alone by a Commissioner are going to be? And that is not the only one. There is power by regulation to determine the circumstances in which the Board may approve a statutory auditor. No, I am sorry, if we are going to tell people in this Community whether they can or whether they cannot practice as auditors, in our opinion, it will be properly done, not by the Government publishing a decree, you can be an auditor because you qualify in this way and you cannot because you cannot. No, I think that things of that importance can properly be done by this legislature. To specify the category of audits which are required to be carried out by statutory auditor; to create offences in connection with the matters contained in this regulation and to establish the penalty for it. So all that, you Honourable Members across, for reasons which do not appear to me to be necessary, still less desirable, want to do by regulation. Well, I am not approving that. 'Generally, to make provision for the approval and regulation of auditors in Gibraltar.' This is a blank cheque. This House legislates this and you will decide who can be an auditor in Gibraltar and do what; who cannot; in what circumstances; how much they are going to pay you in fees; whether they have to have an office in Europort or otherwise they cannot be an auditor. I am sorry, it is completely improper, it is an outrageous user patient of the legislative function of this House and I know that I can do nothing about it except moan and groan. Your price for the privilege of doing what you like for the next four years by regulation is that you are going to have to be listening to me grumble about it for the next four years. It is not, in my opinion a proper way in which the Government can carry on. It is not, in my opinion, a proper use of regulations and it is, in my opinion, an improper use of regulation to the extent that they could actually result in unlawful regulations. Sooner or later somebody is going to invest the resources necessary to challenge the Government's interpretation of what regulations are for and perhaps after one of the motions that follows later on in this meeting, that step may have to be taken. We shall see. But still my objections - this is not a court of law - in this House are not legal; they are political ones. Sections in this Bill, as equivalent sections in other bills, render the House of Assembly irrelevant for all future matters relating to this Bill and this legislation and that is one Ordinance at a time, this House of Assembly is being cancelled and that is not something which as a responsible Opposition we can support. Again, the Honourable Minister commits the same little sin as I accuse the Chief Minister of committing and that is saying "Well, do not grumble, all we intend to do is this. We will be using, and I assure that we will be using, this Bill in the same way as the previous Ordinance." I am really not interested

although I am relieved to hear what he says. But that is not the criteria by which one tests legislation. My criteria is - never mind what he wants to do with it today, what might he want to do with it in six months time. In other words it is not what he intends to do with it, it is what he can do with it if he had the necessary intention. That is the criteria by which these bills and these powers are evaluated and I accept every word that he has said in good faith as what his intentions are today for the use of this Ordinance. Mr Speaker, for those reasons, which we regard as important to the Opposition, we will be voting against this Ordinance.

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 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 P J Brooke
The Hon P Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The Bill was read a second time.

HON M A FEETHAM:

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

This was agreed to.

The House recessed at 5.00 pm.

The House resumed at 5.30 pm.

THE EMPLOYMENT (AMENDMENT) ORDINANCE, 1992

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, speaking on the general principles of the Bill, let me say that what the Bill essentially sets out to achieve is to recognise that it is convenient under the present economic climate for employment and training to go together. It is, as I say, convenient in view of the difficulties which some people might have in obtaining employment and given that training and retraining now, more and more, forms a desirable component in the process of assisting in securing employment. The Bill therefore brings within the Employment Ordinance, the legislation dealing with obligations to provide training opportunities and the financing of such opportunities. With this in mind, Mr Speaker, the Bill proposes to incorporate into section 86 of the Employment Ordinance the basic training concepts which had been in the Industrial Training Ordinance but it goes further than that, it also extends this concept so that training is not confined to apprenticeships which was part of the philosophy of that Ordinance. In this case the training is extended to cover the whole field of employment and this is recognised by the enabling powers of paragraph (f) which allows for different provisions in respect of training of different kinds and of different categories of persons. The Bill also provides for the levy order which is made under the Industrial Training Ordinance to be made under the Employment Ordinance. In the same way that there was a requirement for a levy order to be laid before the House of Assembly under the Industrial Training Ordinance,

this same requirement has also been incorporated under the proposed changes to the Employment Ordinance. The Bill also makes provision for the collection of the levy as well as for the accounting for the payments made out of the levy form. The Bill also recognises an obligation that Gibraltar has under our terms of membership of the European Community and that is that we are to establish a competent authority to deal with the recognition of training standards. This competent authority would have to deal with the recognition of training standards in other member States for the purpose of comparison with recognised training standards in Gibraltar and for giving approval to training obtained in Gibraltar in order that it can be recognised in other member States. Obviously, there are areas of vocational training which are excluded from this provision and those are areas where already competent authorities have been appointed and, as an example, when you refer to doctors and accountants which have their own competent authorities. Mr Speaker, the Government must emphasise that whilst with the introduction of this Bill the Industrial Training Ordinance is being repealed, there is no presumption that there would not be apprenticeship training schemes in the future. I have to make it absolutely clear that if at any time in the future the employment market were to show that the demand for apprenticeship training existed for particular trades then such apprenticeships would be created. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON LT-COL E M BRITTO:

Mr Speaker, I feel almost tempted if I had a video recording of the proceedings to rewind back to the contribution on the previous Bill - the Auditor's Approval and Regulations - because most of what I will have to say will to a certain extent reflect what has already been said before specifically on that Bill and in the case of several other Bills today. Before I say that, to comment directly on what the Honourable Minister for Labour has been saying, when I read the Explanatory Memorandum, on the face of it, I felt exactly the same as I felt today when I was listening to the Minister just now. The aims and objects of the Bill are noteworthy and they, in themselves, are for the good but on the other hand the way the Bill has been drafted and the way the Government is attempting to carry out the objects of the Bill is in a way in which, on this side of the House, once again with regret, Mr Speaker, we find ourselves unable to give outright approval and support. Once again, Mr Speaker, we come back to the problem that we are having with the way this Government is doing things continuously by regulation as opposed to by bringing in legislation to this House. To avoid the repetition

of what has been said several times today already, we just cannot support a Bill which goes to such an extent in meeting its objectives by relegating everything to subsequent regulation instead of by legislation in this House. Let me stress, Mr Speaker, that we are not against regulations per se. Regulations for a purpose for which they are normally meant; for administrative detail are alright in themselves but to introduce regulations as this Bill attempts to do, Mr Speaker, and as it does in clause 3(f)(ii) to impose levies on employers or certain sections of employers - something which before, as the Minister himself has said, came before this House - is now going to be done by regulation. A form of taxation by regulation, in principle, we cannot accept on this side of the House. Similarly, in clause 3(f)(iv) we have the introduction of regulations which allows the terms of another Ordinance to be interpreted or changed by regulations brought in under the terms of this Ordinance. Once again, Mr Speaker, this is something that we cannot support in principle on this side of the House. A final point, Mr Speaker, why we are not able to give outright support to this otherwise noteworthy aims of this Bill, is in the application of clause 4 where we are now having a nameless and anonymous person nominated to take over what was previously the obligations of the Industrial Training Board. A person who in the previous Ordinance was named as the Director of Labour and Social Security. It is likely that whoever is named, if this Bill becomes law, will have responsibilities of a fairly substantial nature especially in the field of finance because he will be responsible for a fair amount of money and we, on this side of the House, feel, Mr Speaker, that this should be by legislation. It should be clear who the person is. Who is nominated; not obviously by name, but by the post as in the case of the Director of Labour and Social Security. In saying that, Mr Speaker, we appreciate the move away from the DLSS and towards the Employment and Training Board but that does not in any way preclude the naming of the person, even if that person were to be the Minister for Employment and Training. What we are against is the nameless ambiguity of just any person without there being recourse to debate in this House and to knowing who the responsibilities go to.

HON P R CARUANA:

Mr Speaker, could I commend to the Learned Attorney-General that he considers, when he is able to, the provisions of the proposed subsection (f)(iv) and advise the Government whether in his opinion any attempt to amend the application or to suspend the application of the Social Insurance Ordinance by regulations made under the Employment (Amendment) Ordinance, 1992, is capable of being legally valid and binding? Frankly, in my opinion, it cannot be. Under regulations made under this Ordinance, for example, notwithstanding what it says in the Social Insurance Ordinance, people undergoing such and such a training scheme shall not be bound to pay Social Insurance contributions. To seek

to suspend the application of one Ordinance by regulations made under another requires at the very least and even then it is of dubious validity, that the original Ordinance contains a provision allowing it to be amended by regulation. Therefore, I limit myself to say that if the Government wishes provisions that it makes under this Ordinance to be valid and binding and not subject to legal challenge, I would commend to the Learned Attorney-General that he addresses his mind to this problem. Of course, he may come to a different conclusion. He may come to a different legal opinion to mine and no doubt the Honourable Members opposite will prefer to take that one. It is a matter, in my opinion, manifestly ultra vires these regulations.

MR SPEAKER:

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

HON R MOR:

Mr Speaker, there are only two minor points which were raised by the Opposition which I would wish to clarify. The Honourable and Gallant Lt-Col Britto referred to section (f)(ii) and referred to the levy that we would be free to impose without bringing it to this House and that is not true at all. The Bill requires that this has to be laid in the House of Assembly when you introduce a levy ordinance.

HON LT-COL E M BRITTO:

After the event and not subject to debate.

HON R MOR:

On the other point which was raised, I am given to understand that section (f)(iv) has exactly the same provision here as was in the Industrial Training Ordinance and we have not introduced any new changes at all.

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 P J Brooke
The Hon P Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon B Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The Bill was read a second time.

HON R MOR:

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

This was agreed to.

THE BANKING ORDINANCE, 1992

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to licence and regulate banking and other categories of deposit-taking business in Gibraltar 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 the considerable development of our banking sector in the 1980s, we were fortunate in having up-to-date legislation introduced in 1982 which reflected the best standards of practice at that time. This has stood us in good stead. However banking is one of the areas at the forefront of Europe's strife towards a single and integrated market and we have seen a number of Directives formulated by the EEC that affect the area. Furthermore, the last decade has seen considerable development to the nature and style of banking services which has had a consequential impact on the techniques required of supervisors. The Government is determined to keep Gibraltar's legislation at the forefront of international standards. This objective is reflected in the Bill now before the House. By the nature of its subject, the Bill is very extensive and much of it is technical in nature. However, there are four main aspects to distinguish this Bill from the 1982 Ordinance. Firstly, it reflects the requirements of the EEC Second Banking Directive which we are required to implement by the 1 January 1993. In doing so we are preparing the way for the opening up of the EEC banking market so that banks domiciled originally in one member

State may enter into markets of other member States without hindrance. Secondly, and as a corollary to the opening up of the banking market, the EEC has recognised that it must provide for a style of supervision that cuts across international boundaries and looks at the banks activities regardless of where they are carried out. This is provided for in the EEC Directive on consolidated supervision; requirements of which are reflected in the Bill now before the House. An essential corollary of market integration has been the need to set minimum financial tests as to the viability of banking operations which would apply right across Europe. Under the Solvency Ratio Directive and the Own Funds Directive the minimum standards are defined in terms of the adequacy of the capital available to a bank and its risk as at ratio. Provisions in this respect are incorporated in the Bill. Finally, there is a need to underpin all these developments with legislation to reflect the changing demands being placed on our Financial Services Commission and local supervisory arrangements. A number of amendments are made in this respect to enhance the Commission's ability to respond to the changing demands placed upon it. As I have already commented, much of the Bill is technical and in any event provisions are very much interconnected. I will simply seek to draw out some of the principal features of the Bill which implement the four major areas of development to which I have referred. In the form of Clause 6 we provide for the unhindered access of branches of banks domiciled elsewhere in Europe into our Gibraltar banking sector. Furthermore, in the context of the integrated market a bank Licence is a bank licence and there is no longer room for the distinction hitherto between our Class A licence, which enables a bank to carry out both offshore and onshore business, and a B licence which enables only offshore business. It does not mean, however, that this offshore/onshore distinction cannot be preserved purely for fiscal reasons and this the Government intends to do for the time being at least. The EEC Directives have brought in a number of additional criteria to be exercised in determining applications for new licences and provisions for these criteria are set out in clauses 18 and 23. Principally, the new criteria deals with the background to the bank and the quality of experience of those involved. It has inevitably been applied in practice in the past but we are now required to spell them out in legislation. As to the requirements of consolidated supervision, the supervisory regime envisaged by the EEC Directive is based on the primary responsibility falling on the home supervisor in the country on which the bank has its headquarters. Clauses 60 and 61 provide for access to our system by supervisors from other jurisdictions in Europe. Conversely the Bill also provides for our own Financial Services Commission to carry out the consolidated supervision where the bank has its European headquarters in Gibraltar with branches elsewhere in Europe. In this context it is perhaps important for me to say a few words about the question of banking confidentiality. In the first place both

the Directives and our own legislation, as proposed, reflect the need for supervisors to treat information gained with sensitivity and to confine its use to banks supervision. Secondly, it is important to draw distinction between supervision of branches and subsidiaries. Branches are to be considered an integral part of the bank in question and the access to supervisors from the home country is to be complete. In practice it has always been the case. In the subsidiaries, however, the primary supervisory function will continue to rest with the host country. Access by supervisors of the parent banks of subsidiaries is provided for but only in conjunction with our own supervisors. In essence the access is purely to verify disclosures previously made by the institution itself, perhaps the parent body. The access of the foreign supervisor is also subject to prior notification having been given to the Gibraltar authorities. Adequate safeguards exist to restrict disclosures to those required for prudential control to protect against the identification of individuals and for all disclosures to be in a summarised or collective form. We are satisfied the form of implementation contained in the Bill is not undermining the principles of banking confidentiality. It is important to banking services generally, not just in Gibraltar. Turning to the question of capital adequacy, clause 23 provides for a bank to have a minimum capital of ECU 5m which at current rates of exchange is equivalent to about £3.5m. This compares with requirements contained in the 1982 legislation of £1m. Most of our banks already meet this criteria. However clause 15 provides for transitional arrangements for those banks which do not do so. Apart from the minimum levels of capital, the overall capital requirement placed upon a bank may be hired depending on the nature of the business that it undertakes. Administrative notices to be issued under powers contained in the Bill will provide for the introduction of a test of capital adequacy based on these asset ratios which reflect European standards. If I can turn now to those aspects of the Bill which reflect the supervisory needs of the Financial Services Commission, the style of modern supervision is very much based on the issuing of administrative rules for the guidance of banks for which we had no statutory provision in the past. Now the issuing of such rules are given statutory effect in clause 16. A further development of supervisory practice in recent years has been the emphasis on a close cooperation with bank auditors and the way forward is paved for such cooperation in clauses 46 and 48. The Financial Services Commissioner is convinced that his ability to work in conjunction with auditors is an essential element of his supervisory armoury. A problem in the past has been a rather unsatisfactory formulation in the 1982 legislation to enable our supervisory body to move against deposit-taking that is being undertaken outside the provisions of law. A more satisfactory formulation to enable prompt and effective action where this occurs is contained in clauses 8 and 9 of the Bill. Finally, in comparison with other

finance centres the immunity from civil action conferred on the Commissioner of Banking and his staff is relatively limited in the 1982 legislation to actions he may take in enforcement proceedings. It does not extend the day to day supervision of the many other functions of a supervisory nature provided for in legislation and which indeed are greatly extended as a result of EEC Directives. Clause 14 extends a more extensive protection from civil liability to the Commissioner and his staff subject of course to his acting in good faith. With that, Mr Speaker, I think I have covered the principle areas of development brought about by this legislation. Banking has been an area of relative success for our finance centre in the past and it is the intention of this Bill to reinforce our opportunities for the future. In doing so, however, I am very much aware of the context said earlier today in reference to the Companies (Amendment) Ordinance. With that 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 P R CARUANA:

Mr Speaker, Members opposite will be gratified to learn that we on this side have no difficulty in supporting this Bill. The point that immediately comes to mind when reading this Bill is that in relation to the subject matter about which I have gone all at length today, namely, the proper purpose of regulations in the statutory framework; this is a model piece of legislation. It is so because it has been drafted outside of Gibraltar by people who know what regulations are meant for and what they are not meant for. The Hon the Chief Minister is shaking his head. I do not mind sitting down to give him an immediate opportunity to correct me. My information is that this Bill has been drafted in the United Kingdom, sent to Gibraltar and tinkered around with here for local purposes.

HON CHIEF MINISTER:

Well, the Honourable Member has been misinformed. The Bill has been drafted in Gibraltar but as I will explain, they have sent people out here from the Bank of England. It was not the drafting, Mr Speaker, they sent out bankers not legal draftsmen.

HON P R CARUANA:

Mr Speaker, my information is from a source so close to the knuckle that I am surprised that it is mistaken

but as this is not the forum in which to clarify the position, I will not even try. The fact of the matter is, Mr Speaker, that a quick look at section 79 will show the sort of things for which regulations are used in this Ordinance. For prescribing forms, prescribing the procedure to be followed by the Commissioner, prescribing particulars for the purposes of a particular section, prescribing fees, prescribing amounts, prescribing the form of notices. If this Bill had been drafted by reference to the same policy criteria as has been used for several of the other Bills that we have seen today; the Employment Ordinance, the Companies (Amendment) Ordinance, the Auditors Registration Ordinance, the Bill could have been three pages long, and the rest of it would have been done by powers reserved to be made in regulations later. The result is a Bill which is comprehensive as to the regulatory regime, as to the policy of the law except for matters of administrative duty. No reservation of right to create offences and no reservation of rights to establish who can do what, when and why. The law does all that and the regulations are used for their proper purpose, namely, to deal with matters, administrative in nature, to the legislation. Mr Speaker, the Chief Minister has indicated in his contribution to an earlier Bill that he proposes to address us on the subject that I had made a note of when I first read this Bill. I will not try and preempt him but one of the issues that I was going to raise is whether, having passed this Ordinance, Gibraltar would be a relevant supervisory authority and a competent authority for home country supervision purposes which are the two concepts set out in this Bill. In other words, is it true that when we have done all this, banks incorporated and licensed in Gibraltar will be able to go to Paris, London and Madrid and open up their branches in the Strand or in the Paseo de la Castellana or in the Champs Elysee or wherever on the basis of a licence issued by the Gibraltar Banking Commissioner? Mr Speaker, I suspect that the answer to that is complicated and the same sort of problem as the Chief Minister has highlighted and as he has indicated that he intends to comment further in relation to this Ordinance, I leave it at that. I think that really it is another example of the same sort of problem. There is no point and I do not mean from the point of view of European Community legislation of being good or bad Europeans, I mean from the point of view of equipping ourselves with the necessary legal framework to market our products and to go and encourage banks to come to Gibraltar so that they can do business in Europe. All that will be of very limited, if of any use at all, if in practice it cannot be used for the purposes for which it was intended. I know that the solution to those problems do not lie in this House and when I make these comments it is not that I am castigating the Government or urging them to greater effort in the resolution of the problem but it

is something again which falls into that category of things that I think we have got to fight together because it goes to the very root of whether any of these things that we are doing as a legislature and as a community are capable of being translated into viable business. Mr Speaker, we do welcome the contents of this Bill in relation to the restrictions on the reporting rights and on the investigatory rights of other supervisory authorities within the European Community because, of course, confidence in the banking sector in an offshore centre is made of different stuff to confidence in a banking sector in the City of London. Nobody goes to the City of London hoping for confidentiality about their business but people do use offshore centres and confidentiality is much more likely to be, when they use an offshore centre, an important criteria in their choice of jurisdiction and, at the end of the day, public confidence in the confidentiality of a banking sector is a matter of perception rather than what the law actually says. In other words, it does not matter what the section says about whether or not and what kind of confidentiality exists. Our future customers either perceive that there is confidentiality in Gibraltar or they do not, in the same sort of way as the myth of Swiss banking confidentiality is beginning to be exploded by such high profile cases as Mark Rich and the Maxwells and all of these things where people are now realising that when the heat gets turned up in the Swiss banking kitchen, the Swiss Banking Commissioner actually cooperates with the American Banking Authorities and the English Banking Authorities and this liquidator and that liquidator and this receiver. There has been no change of law in that respect. What there is is a change in public perception as to the extent of the confidentiality. It is very important that we do not allow the market place to lose sight, in the application of these provisions, that in fact there is a high degree of confidentiality. Not the sort of confidentiality that is going to allow the jurisdiction to be abused but the sort of banking confidentiality to which even bona fide users of the banking system are entitled to expect. So we do welcome the provisions. Obviously, we accept that it is easier to protect those in the cases of subsidiaries than of branches because in the case of a branch the nosy supervisory authority, so to speak, has access to the information at head office. And even in relation to a subsidiary, the chances that a parent back home is going to resist its regulator on the grounds that it is a subsidiary, it is all pretty technical and the distinctions in practice are probably not particularly relevant anyway, but from the point of view of public perception, it is very important that we do make it clear that the confidentiality in our banking business is something that we value and that we will strive to preserve even within the framework of this legislation. Mr Speaker, I do not propose to go into the details. It is an extremely difficult Ordinance to read. It has nine pages of defined terms, so practically in every

clause and there are three or four defined terms in each line and it takes hours and hours and hours to read this Bill properly. We accept that it does very little more than comply with EEC Directives. It does do one or two other things in local terms which we support. There is, Mr Speaker, an amendment which the Honourable the Chief Minister is going to raise at Committee Stage but perhaps if he is intending to speak at this stage, he might welcome the opportunity of advance notice of the point. That is that on the third page of the letter of proposed amendments, there is a proposed amendment to clause 88 by omitting subclause (1) and substituting it for a new subclause (1), which, with the greatest of respect to the draftsman or draftswoman, as the case might be, I think it is neither good English, nor indeed does it make sense. I think the former objection would be less important if it were not for the latter objection. I just do not see that it reads or is capable of reading sensibly but I may be misreading it and my desire is that we should not legislate gibberish rather than any objection to what it says. I think, Mr Speaker, that it follows that (a) (b) and (c) must all be different items on the same list and they do not. They each do a quite different thing. For a start, I think, the first 'and' is in the wrong place. It should be at the top rather than at the beginning. Mr Speaker, this is not the correct forum, I just give the advance notice so that those responsible for the drafting can have a second look.

HON CHIEF MINISTER:

Mr Speaker, I will address first the generalised problem as it affects this Bill, to which I referred earlier, and then the points made by the Member opposite, that this is an admirable piece of classical legislation because of the limits that it puts on what regulations can be used for. I think I interpreted it correctly. I am sorry for the Leader of the Opposition because he gets it wrong all the time. He is wrong in that and I will show him where he is wrong and it is unfortunate that the Bill that he likes so much may never see the light of day because apparently the experts in Britain that produced it have now changed their minds. So once that he was going to vote in favour of something when he has voted against everything, this one seems to be at risk. Let me tell the House that in fact I got a letter on the 22 May from the Minister in UK, asking me not to proceed with the Bill. I have refused. The position is that we think that simply because they are now having further thoughts, we just cannot scrap two years of work. In this Bill we incorporated everything that we have been told was required by Community Law. They then offered technical assistance if we wanted to take it. I said "OK, provided we are clear that they are not all coming out here to tell us what we have to do and we have to do it. They are coming out to help us because they know more than we do." Fine! They sent some people out from the Bank of England who went through

everything that was being done and improved on it. They then suggested some things which are, strictly speaking, not required by Community Law, but which they said would be prudential to include because it would improve the quality of our legislation and our own people in the Financial Services Commission advised me that they agreed it would improve the quality and that it would not make it unattractive for potential licence holders. It would not put people off. So we accepted the recommendations and took the political decision to proceed as advised. We incorporated everything and having incorporated everything, they now tell us that there is an internal debate between the Bank of England on the one side and the Treasury on the other and the DTI as to whether this fits the requirements or not. This is nonsense because here we are in 1992 and the last legislation is 1982 and however short this may be of where we ought to be in 1993, it is not as short as the legislation we passed ten years ago. That is for certain. So how can anybody say to me that it is preferable to stick with the law we have got now until they come up with further refinements than to, at least, incorporate everything that they have been telling us to do for the last two years? So on those grounds I am afraid I refused the request of Her Majesty's Government not to proceed with the legislation and as far as I am concerned this is the law of the land. This gives effect to Community requirements on the best advice we have had from the member State responsible for our external affairs. I have given a commitment to the said member State that if they come up with new advice provided I am satisfied that it is intended to help and not to hinder - we will see it translated. If it happens to be advice which is demonstrably designed to give effect to our obligations to comply with Community law, I am happy or unhappy; I do not know which it should be, to tell the Member opposite that I can not do it by regulation, notwithstanding the fact it is not that I could not. The regulation is also in section 79 and as well as being able to do it for forms and for advertisements and for everything else, we can actually give effect in Gibraltar to the law of the Community relating to any matter contained in the Ordinance or having as its intention the regulation of credit institutions and we can repeal or vary any provision of the Ordinance. So in fact that section - which it seems to me is very interesting because I have not really looked at it as closely before - seems to be really a very good example of how you can repeal the entire Ordinance by regulation.

HON P R CARUANA:

Absolutely, I am grateful. Mr Speaker, the Honourable the Chief Minister is at it again. He announces with great fanfare that he has caught me out and then it is a damp squib. I said in the last House of Assembly several times that the application of Community law to Gibraltar, much as I would like the opportunity to support the Government when they do it or not to support the

Government when they are doing it wrongly or not doing it effectively is something that I recognise and that I would not oppose the use of regulation for that purpose. Let him not say that my description of this section 79 amendments as admirable, shoots me in the foot simply because there is a section in it which relates to the application of Community law by regulation, when I am down in Hansard as saying that I consider that to be perfectly acceptable. Let him not compare that either with the sort of powers that he has been giving himself by regulation in all the other Ordinances that we have been approving today, which have nothing to do with applying Community law, but are simply usurping the domestic legislative function of this House.

HON CHIEF MINISTER:

I am certainly glad to hear him say that because in fact I do not think he is being as explicit in saying that he supports that we can use regulation to change the provisions in the original Ordinance which this does. But of course that is (m), if he had waited a bit longer I would have then have come to (n) which has nothing to do with Community legislation and allows regulations to be made in order to introduce offences and penalties. You can then come to (o), in case we have left anything out, and it says we can provide regulation "for such other matters as are reasonably necessary for or incidental to the due administration of the Ordinance." If he accepts in fact that we can and that there is nothing wrong with giving effect to Community law in Gibraltar by regulation without primary legislation, let me tell him, that that accounts today for three quarters of the legislation that we have to bring to the House. I think it will make life certainly much more sedate for all of us now that he has accepted and now we have only got the completion of the other 25% and we are there. As I say, Mr Speaker, getting back to the serious part of the Bill, the situation is that, frankly, we do not want to be uncooperative with UK. We want to be giving effect to Community obligations and to their advice with their greater knowledge of the subject. Let me say that in fact even at the last minute we have had conflicting signals because although I had this letter, as I said, in May asking me not to proceed with actually bringing this Bill which had already been published, to the House, at the same time we had the representative of the Bank of England making enquiries as to how soon did we expect it to be in the statute book. This is an example either of the left hand not knowing what the right hand was doing or that there are different interests at stake and some people view it one way and some people view it another. As I said, we did not think the request was reasonable or necessary because nobody can argue that when we pass this law today our legislation on banking will be closer; we believe it will be there but certainly nobody can argue that

we will be considerably closer than it was before it. In fact, I have to tell the Member opposite that the amendments that I am moving are the reflection of the latest powers of wisdom that have reached Gibraltar from northern shores including the drafting of the sections which the Honourable Member says it is such awful English. So, obviously, the English of the United Kingdom is not as hot as people might have thought in the past, but I am assured that we have had no hand in this drafting.

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I would just like to thank Honourable Members for their support for the Bill, Mr Speaker. Having had a look at the amendment that has been referred to, I agree, the wording does look rather strange and we are trying to have a further look at it before the Committee Stage of the Bill.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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 ESTATE DUTIES (AMENDMENT) ORDINANCE, 1992

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Estate Duties Ordinance, 1992, 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. With that I have a feeling I am about to disappoint the Honourable Members opposite on the use of regulations. Mr Speaker, in accordance with the Government's policy in this respect the Bill provides for several important aspects of the assessment of estate duties to be provided for in regulations. Consequently, it considerably widens the regulation making powers contained in section 39 of the principal Ordinance.

Clauses 2, 3 and 6 of the Bill taken together provide for regulations to be made which will define amongst other things the individuals who may be exempted from estate duty, the property upon which the tax calculation is to be based, the property that is to be deemed to pass on the death of an individual for the purposes of the Ordinance and the rate of tax itself. Regulations already published by the Government but not yet brought into effect indicate that it is not Government's immediate intention to change the substance of existing provisions including the rates of tax. Clause 6 further provides that any regulation to increase the rate of tax must be laid before the House of Assembly, although such a regulation will not need the approval of the House before coming into force. Nevertheless, the House will continue to have the power to annul any such regulation by resolution if it so desires. Clauses 4 and 5 of the Bill provides for the level of fines contained in the Bill to be increased and expressed in relation to the standard scale approved for this purpose. Clause 6 also provides for the offences described in regulations to be subject to penalties up to a maximum of level 5 on a standard scale. As a consequence of this extended provisions with regards to regulations, the Bill provides that sections 8 to 19 of the principal Ordinance be repealed. As I say, Mr Speaker, these provisions are consistent with Government's policy and practice in bringing forward legislation in regards to other areas of public revenue. With that, 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 P R CARUANA:

Mr Speaker, a more honest Explanatory Memorandum attached or appended to this Bill might have read "The objects of this Bill is to take all significant matters relating to estate duties out of the province of this House." That would have been a more honest statement because as I think the Honourable Financial and Development Secretary has himself said that this device reflects Government's policy. It is Government policy to extract all matters that are capable of raising revenue for the Government of Gibraltar out of the principal legislative framework and into the subsidiary legislative framework. Fine, that is a matter for them, but let them not then conceal the fact that all that they are trying to do is to circumvent the legislative function of this House. This is a prime example because the only thing that this Bill does is take powers out of the House and gives it to the Government in regulation. That is not even an incidental purpose. It is the only purpose of this Bill and what they have done is they have taken sections 8 to 19 of the principal Ordinance - which before could only be amended by the House - put an enormous red line

through it and said fine and now from now on I will do all these things myself by regulation in the Gazette. With the greatest of respect to the Honourable the Chief Minister, if he cannot see the difference between the sort of powers reserved to him and his whim in this Bill as compared to the ones reserved to him in the Banking Bill, then I think he is being less than totally honest with me and with himself. Let us use an example. Each of these sections, the first one gives the Government by regulation the power to exclude persons from liability to estate duty. You will pay estate duty and you will not pay estate duty; you because of this; you because of that. The criteria is up to the Government. The individuals are up to the Government. Alright I do not suppose they are going to use these powers but theoretically they could, which is the point. I do not suppose that they intend to say that Peter Caruana has to pay estate duty but so and so does not. I suppose they are going to say this category of persons has to pay estate duty and this category of persons does not. This category of persons has got to pay 20%, that category of persons has got to pay 80%. I think that this is an inappropriate time discussing the principles of the Bill, Mr Speaker, to make a comment on things that the Chief Minister says. The Honourable the Chief Minister has been quoted as saying 'beyond our shores' as if it was a marketing plus. When the Honourable the Chief Minister goes to conferences in London or elsewhere and says "Forget the bit about the left-wing revolution, the bit that I am interested in is the bit before that, if £10,000 tax is too much or somebody else introduces a lower one do not worry because I have got the powers and I will reduce it to £8,000." That might be very impressive locally but that outward bragging of omnipotence is to some people a sign of instability and lack of confidence because if you can so whimsically change the law for the benefit of somebody, you must be in the jurisdiction in which laws can be whimsically changed and if you can change the law whimsically in my favour, you can just as equally change the law whimsically against my interests. It does not result in international investor confidence that the message is promulgated outside our shores that here in Gibraltar we have a government that makes and changes its laws without need to go to the legislature and basically what I decide over breakfast will be law by teatime. The Honourable the Chief Minister might think that that is an attractive way to make Gibraltar appealing. I can assure him I am interested that his marketing efforts on behalf of Gibraltar should succeed and my interest is not just political as a representative of the community, but personal and professional because my family's livelihood depends on it. It is a line that I would urge him to use less often than in the past. What he actually means is, if a lawyer rings me up tomorrow and tells me that this sort of client is disadvantaged in Gibraltar because he has got to pay estate duty at 35%, we say "Do not worry because under the Estate Duties (Amendment) Ordinance, section 6, I

can now do this by regulation and by next Thursday and if Thursday is too long to wait I will publish a supplementary Gazette. I will get the editor of the Chronicle out of his bed and they can have it ready by breakfast time tomorrow." That is all very well but that is excessive flexibility in law-making because it works both ways. It is a two-edge sword and people recognise it as a two-edged sword. Mr Speaker, reverting to the general principles; my comments have not been entirely impertinent in relation to this Ordinance because this is precisely the defect in this Bill. The power to alter dutiable property. The power to impose by regulations, rules as to the aggregation of property and how the estate duty liabilities are to be computed. The list of dutiable properties is now transferred to regulation. In other words, the whole mechanism of the Estate Duties Ordinance now comes out of the Ordinance and into regulations. Of course, the Chief Minister in his humorous quirk at the outset was right. They have not discovered sliced bread in relation to estate duty. They have done it with income tax and they have done it with import duty and there may be not anything left. I do not think there is anything left. They have probably done it with everything but this is the Bill that I have in front of me and this is the Bill, therefore, that I criticise for the purpose. I am not, Mr Speaker, proposing to go through item by item because the whole of the Ordinance; every single line of it; every single provision of it is subject to the same criticism. Look at this one; what they can do by regulation is to grant the Commissioner powers including a power to remit duty or provide relieve in respect of duty otherwise payable. So it creates a completely arbitrary regime. There is no longer a law in Gibraltar to which people can point and say "This is the law of Gibraltar in respect of estate duty. We are all in the same boat and those of us who are not in the same boat are clearly visibly not in the same boat". Everyone can look at section 45 of the Ordinance and say. "We are all in the same boat unless you have got blue eyes and pink hair, in which case the Ordinance says that you exempt from estate duty". No! It is completely arbitrary and it is privately arbitrary by regulation because not only do they decide who pays duty on what and at what rate but then the Commissioner has the arbitrary powers to remit it in individual cases by reference to criteria, which I am sure will be proper but which I do not know what they are. As I do not know what they are, I have to assume that they are capable of being improper and I shall never know of them because if the Commissioner of Estate Duties spends the next six months writing remission certificates, we will never get to know about it. That is a completely secretive arbitrary legislative regime and quite improper. I am sorry, Mr Speaker, this Opposition, if it has any duty to perform, not politically in the context of the community, but as an integral part of this legislative chamber has the duty to this House to ensure that its legislative supremacy and its legislative function is not abused; is not diminished by the majority in it. In performing this task, believe

you me, Mr Speaker, its just as tiresome for me to have to say the same thing five times in one afternoon and I am sure it is for the Members opposite to have to listen to it five times in the afternoon. This is a function which we are determined that if an Opposition allows the principal purpose of this House and meekly allows and silently allows the principal purpose of this House to be destroyed, then it will have pretty weak moral ground on which to complain about it if and when it happens completely. Mr Speaker, speaking about the dignity and prestige of this House, I have been particularly irked - which will no doubt please the Members opposite enormously - that here we should be considering a law enabling the Government to make regulations; and it is now June, and as far back as April they were already printing in the Gazette regulations of the sort that they will not have the power to make until this House approves this Bill. If that is not announcing to the world that this House is a rubber stamp and that there is a Bill before the House but there is absolutely no prospect that it is going to be thrown out and therefore we are going to do what the Bill will allow us to do when it is passed, three months earlier. There can be all sorts of explanations and in fairness I have heard one from sources close to Government that the intention was to be helpful in the sense that people reading the Bill would then know the extent of the regulations that are going to be passed under it. Admirable, but then let us have it in relation to all the other Ordinances that have given powers to the executive to make regulations. It seems to me pretty selective consideration to give to the public at large and to the Opposition to have used this device of Government by regulation dozens of times in the last five years and now in the case of the Estate Duties Ordinance take the view that it is important that we should all know in advance what they are going to do with the powers once we give it to them. I think that if somebody were to stand up on the other side of the House and say that it was an administrative oversight that regulations should be published, although I accept they are not yet in force because the regulations say that they will come into force on a date to be appointed and obviously that day has not been released - but, Mr Speaker, if we can remove our party political hats and consider ourselves Members of this legislative House, it is demeaning and diminishing of the prestige of this House that its functions should be pre-empted in this way. Therefore, if there has been any element of administrative oversight, any element of mistake - it is very human and very normal - it will be regrettable but it would not be something that I would stand up and criticise in these or in similar terms but I would welcome being so told. Therefore, Mr Speaker, not for that reason but for the more substantive reasons that I had gone into before we will voting against this Bill.

HON CHIEF MINISTER:

If I can deal with the last point first, Mr Speaker, it was not an administrative oversight that the regulations were published, but it was not a major policy decision. In fact I found that they had been published after they were published and when I asked "Why?". I was told that the decision had been taken because it was thought that that would reassure people that the amending of the Ordinance when it happened was not an indication of a major change in the area of estate duties because the regulations, if you like, were no different from us publishing a Green Paper. If we publish a regulation which says "This regulation will come into effect some time in the future", I do not think anybody is abridging the powers of the House because strictly speaking if the House does not approve the Bill then the date for the regulations to come in would never happen. Therefore this is just like us publishing this piece of paper in the Gazette and saying "This law will come in on a date to be appointed by the Governor and then when we approve the Bill the date is appointed. So in that respect there are no regulations yet.

HON P R CARUANA:

If the Honourable Chief Minister will give way very briefly. I apologise for interrupting him. It is the statement of things that are clearly not the case. This is probably an improper interruption. For example, the very first line of the regulations, Mr Speaker says 'In exercise of the powers conferred on him by section 39'. Well, in fact, he did not have those powers on that date. The question of the operative date is one thing. The statement that the Governor had on those days those powers - he had some powers under section 39 - but those four lines which he had then do not extent to all the things that have been done by these regulations believe you me.

HON CHIEF MINISTER:

section 39 already gives the powers to make regulations to carry out generally the purpose of the Ordinance and all we have done is added what section 39 may be used for and what we have done, Mr Speaker, as I repeat, is simply to publish, if you like, draft regulations to show what it is intended to use this section for. But I agree it is not something that we have done in any other case before and certainly it seems to be not a good thing to do because rather than making the Members opposite happier, they feel that it is in fact abridging the right of this House to decide by voting, even if the vote is with the Government majority, such a thing as a regulation should happen. Fine, we will not do it again. I certainly have no great wish to see it happening. That gets rid of that. I take the point

of what the Member has said about my using the ability to respond to market demands as in fact a market tool in trying to persuade people that they will never be worse off with us than they are with anybody else if they choose to base their business here. I have heard the argument that if we can change something by regulation to give people an advantage then presumably we can change it equally quickly to give them a disadvantage except that I cannot see how anybody can think that there is any incentive for us to make regulations less attractive because presumably if what making it more attractive is what makes them come, if we make it less attractive we will make them go. Since the argument for saying we have got an ability to respond quickly to what other people do because we can give effect to what the competition is doing so that you do not need to move. If you are here today and tomorrow Dublin decides that anybody that is operating in the finance centre for some reason or another pays half the rate of estate duty, then if you come to me and you say "Well, look I am afraid this is an unattractive proposition that we are now seriously thinking of packing our bags and going to Dublin", I can respond very quickly and say "Look you do not need to, we can match whatever Dublin is offering." I am not saying that that is the primary reason for doing this. It is not, I am telling him that that is my response to that kind of argument. It may be that people feel that this is not an attractive proposition. I am told in the meetings that I have been and I have spoken that most of the professionals that comment on this seem to think that it gives Gibraltar some kind of special advantage. But it is not that I go around bragging saying I can do anything I want in Gibraltar by regulation because that is not the point of me going to these places to speak to people. As far as I am concerned, it is of no particular concern to me to be important in the eyes of foreigners outside Gibraltar. The only people that I care about are our people here in Gibraltar and for me the important thing is that as a Government we should continue to have their support and they should see us as doing our best to protect their future and the future of their children. The intention is not to show off in front of anybody. The intention is to try and get more business for Gibraltar and if I were to be given sufficient evidence to suggest that I am doing more harm than good, then obviously, I would stop doing it because I certainly do not want to be wasting my time and energy trying to drum up business with the line that is in fact having a counter effect. That is my point on that. The actual power that the Commissioner has to reduce the penalties or to recover any penalty and not to do so is in the existing section 38 of the Ordinance so in fact the existing Ordinance already gave that discretion.

HON P R CARUANA:

Mr Speaker, I do not want to get bogged down in a debate on that. I know that to have a book shoved under your

nose in the middle of a debate is difficult to assimilate. The section that I was complaining about was not the power to remit penalties but the power to remit the principal duty itself which is of course much more serious than the power to remit the penalty. Mr Speaker, let me hasten to put the Chief Minister's mind at rest that the point that I made in relation to the speed with which you could change laws was not intended as a general criticism of his efforts to market Gibraltar's finance centre. It was intended to be a very limited point designed to be helpful perhaps delivered in a way which sounded excessively critical, but it was not intended to suggest that because of that you should stay at home and not go to all these places and market Gibraltar. Finally, Mr Speaker, before I sit down, the Honourable the Chief Minister knows that he can convene this House on seven days notice. He can put legislation through this House in one day and that he knows or would like to think that he knows that his Opposition is committed to assisting him in things that are genuinely for the economic interest of Gibraltar and that if the Chief Minister wants to go around telling his audiences in London that the legislature of Gibraltar is so committed - not the Government - to the finance centre that they are willing to be convened at short notice and to pass legislation through, then that is something that he can say and that it will result in legislation being on the book in eight days; less if we can accept short notice. He does not need to have recourse to regulations to pass legislation of that kind. The difference between somebody going or staying in Gibraltar is not going to be decided in one week, two weeks or three.

HON CHIEF MINISTER:

I take the point, Mr Speaker, but I was answering the comments of the Honourable Member. Obviously independent of all that, the Member knows that we have taken a policy decision way back in 1988 which we have been implementing consistently since then. It is just that since the policy is such a wise one I take advantage of using it in my marketing strategy.

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I have nothing further to add.

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

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

The Hon P J Brooke
The Hon P Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the House should resolve itself into Committee to consider the following Bills clause by clause: The Savings Bank (Amendment) Bill, 1992; The Nature Protection (Amendment) Bill, 1992; The Port (Amendment) Bill, 1992; The Business Trades and Professions Registration (Amendment) Bill, 1992; The Companies (Amendment) Bill, 1992; The Auditors (Approval and Regulation) Bill, 1992; The Employment (Amendment) Bill, 1992; The Banking Ordinance 1992; The Estate Duties (Amendment) Bill, 1992.

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

THE SAVINGS BANK (AMENDMENT) BILL, 1992

Clauses 1 to 3

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 P J Brooke
The Hon P Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clauses 1 to 3 stood part of the Bill.

Clause 4

HON P R CARUANA:

Mr Chairman, in his address on the principles of this Bill, the Chief Minister, suggesting or giving the House and others the impression that I had spent a long time saying nothing, said that all these amendments add nothing to the powers that they have already got and therefore what is the Leader of the Opposition doing wasting everybody's time and he said "I put myself on record to that effect." Well, if that is what he thinks and if that is what he wants to stand by, then I propose an amendment that the Director shall mean the Director of Postal Services because to the extent that the Director is not the Director of Postal Services, this section gives him a power that he does not presently have. Mr Speaker, the section presently reads "Director means a person appointed by the Governor from time to time to be the Director of the Gibraltar Savings Bank". At present the Ordinance reads "The Director means the Director of Postal Services", which means that it cannot be changed. Under the present Ordinance the Director could not be changed without a vote in this House. The Chief Minister insists that this does not increase his powers and that it is not intended to increase his powers and therefore in order to make the Bill reflect what the Chief Minister has asked to be quoted by on the public record, I propose that the definition of 'Director' shall be changed so that it shall now read "Director means the Director of Postal Services". Only then with what the Chief Minister said before be correct. You should delete everything after the word "means" and insert "the Director of Postal Services".

HON CHIEF MINISTER:

Let me say, Mr Chairman, how much I welcome the amendment by the Honourable Member opposite because he has just admitted that I am right because he says if we accept this amendment then presumably I will be honouring what I have said 100%.

HON P R CARUANA:

There are other cases later where I am going to do the same.

HON CHIEF MINISTER:

I see, I thought he was saying that this is all that is required.

HON P R CARUANA:

In relation to this line.

HON CHIEF MINISTER:

Let me say that what he is proposing with this amendment is to change in the Ordinance the title of the person who is the Director at the moment of the Savings Bank who happens to be both the Director of the Savings Bank and the Director of Postal Services. The Director of Postal Services is appointed on my advice and I have exactly the same power whatever label, uniform, or cap we put on him. So, in fact I do not need his amendment to maintain my existing powers because I regret to say that the power that this gives which is that whoever is a Director of the Gibraltar Savings Bank is appointed by the Government. In fact in practice it will be the same individual that we have got now but it is quite obvious the purpose of the legislation is to give effect to our Community requirements in terms of being a credit institution. It may well be that in the process of the development of the Gibraltar Savings Bank as a credit institution there will be a need to discuss with the Financial Services Commissioner the qualifications that may be required. It could well be that professional banking qualifications may be required, which would not be held by the Director of Postal Services but I regret to say that that would not be an increase in my power, it would be a diminution from my power because that would limit who I could appoint and at the moment I can appoint anybody. So I regret I have to say no to the amendment.

HON P R CARUANA:

Mr Chairman, the Chief Minister's rather unimpressive attempt to extrapolate himself from an amendment which has nothing to do with who is going to be and who is not going to be the Director of Postal Services is complete and utter nonsense. Certainly there was a time when the appointment of the Director of Postal Services was a matter for the Public Services Commission. I understand that that may not any longer be the case in practice and that he may in fact have the power to hire and fire successfully. Well I do not think he has got it. He may take the power to hire and fire successive Directors of Postal Services, but the Chief Minister can huff and he can puff as much as he likes. He knows very well that he cannot now change the person that is Director of the Gibraltar Savings Bank without removing from his office the Director of Postal Services and I do not accept the Chief Minister's argument either in theory or in practice

that he presently enjoys the power that these regulations give him to change the Director of Postal Services or the Director of the Bank every day of the week if the law of contract would permit him to do so. The fact of the matter is that he does not have the power today to appoint the Director of the Savings Bank. The Director is whoever is the Director of Postal Services and of course, he could capriciously sack that man notwithstanding the fact that he is a great job in the postal services because he wants somebody else as the Director of the Savings Bank. Frankly, for him to stand in that exalted place in this House and to try and justify the lack of increase in power between his position before and his position under this regulation and to say that they are the same does him less than complete credit.

MR CHAIRMAN:

If there is no other contribution we must now put the amendment to the vote and let me make it clear that the way it is done is that the amendment in the name of the Leader of the Opposition, the Honourable Peter Caruana stand part of the Bill.

The Chairman then put the question and on a vote being taken on the amendment the following Hon Members voted in favour -

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The F Vasquez

The following Hon Members voted against:

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

The amendment was defeated.

On a vote being taken on Clause 4 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 P J Brooke
The Hon P Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 4 stood part of the Bill.

HON P R CARUANA:

Mr Chairman, on sections in which I tried to introduce an amendment in order to make a specific point, if my amendment is lost we will be voting against.

MR CHAIRMAN:

Is there any other clause that you would like to make comments on? If you tell me what the clause is I will come to that.

HON P R CARUANA:

Mr Chairman, there are several. If the Chief Minister will accept my point that his powers are considerably greater with this Bill passed than without them I will sit and I will not make a nuisance of myself.

HON CHIEF MINISTER:

I accept his point, he can sit down and stop making a nuisance of himself.

HON P R CARUANA:

Does he accept the price for doing that? Does he concede that his powers under the regulations that he now proposes to legislate exceed the powers that he had before this Bill. If he says yes to that, I am not going to waste time.

HON CHIEF MINISTER:

I say yes to that.

MR CHAIRMAN:

Let me make a comment. The power of this House does not lie in the Bill. It lies in the words. Therefore I think the Opposition, even if they feel that they are going to lose, they should express their views and there is no one here who is trying to stop that happening.

HON P R CARUANA:

Mr Chairman, I am very grateful. In fairness to the House my amendments were not a desire to bring about that substantive change. It was a device to prove to the Honourable the Chief Minister that the remarks that he had made in an attempt to belittle my own contribution to the House were not justified.

HON CHIEF MINISTER:

He is not keeping his side of the bargain. I withdraw.

HON P R CARUANA:

Well he has got to make up his mind as to whether he wants me to sit down or not. Does he accept that he has greater powers after this Bill than he had before? Yes or no?

HON CHIEF MINISTER:

Is he going to sit down or not?

HON P R CARUANA:

Yes.

On a vote being taken on clauses 5 to 14 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 P J Brooke
The Hon P Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clauses 5 to 14 stood part of the Bill.

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

THE NATURE PROTECTION (AMENDMENT) BILL, 1992

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

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

THE PORT (AMENDMENT) BILL, 1992

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

Clause 2

HON F VASQUEZ:

Mr Chairman, Clause 2 and in fact the same applies in respect of Clause 3, so perhaps we can take them together. The Opposition would like to propose an amendment to that. The amendment being that the wording of the fourth word from last in both sections be amended from "one month" to "six months" in both cases. So the conception for clause 2 reads now in the last line "submit claim within six months of the sale"

MR CHAIRMAN:

We are now on Clause 2 and we have an amendment from the Opposition. Would you like to say anything in support?

HON F VASQUEZ:

Mr Chairman, the point is that the powers granted by the Bill would appear to be to facilitate the position of the Captain of the Port. In order to do that you do not need to limit the amount of time in which the owner of the vessel has to claim any residue arising under the sale. The fact is that once the Captain of the Port has exercised his power of arrest and sale, he had immediately under the Ordinance as it stands at present, in fact, helped himself to the money that is owed to the Captain of the Port. What then happens to the balance? As drafted, the Bill provides after one month if the owner does not claim that money then Government gets it. What we are suggesting is that at least the owner has a longer period in which to claim his money. There is no prejudice caused to the Government by this amendment.

MR CHAIRMAN:

The amendment standing in the name of the Honourable and Learned Mr Freddie Vasquez is that at the last line the "one month" is substituted by "six months".

HON M A FEETHAM:

Mr Chairman, having taken into account what has been said and taken the wisdom of the Honourable Member opposite who deals in the shipping world, we are prepared to accept the amendment.

MR CHAIRMAN:

So the amendment standing in the name of the Honourable Freddie Vasquez stands part of the Bill.

Clause 2 as amended stood part of the Bill.

Clause 3

HON F VASQUEZ:

I have exactly the same amendment to propose in respect of Clause 3, Mr Chairman.

Clause 3 as amended stood part of the Bill.

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

THE BUSINESS TRADES AND PROFESSIONS REGISTRATION (AMENDMENT) BILL, 1992

Clauses 1 and 2

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 P J Brooke
The Hon P Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clauses 1 and 2 stood part of the Bill.

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

THE COMPANIES (AMENDMENT) BILL, 1992

Clause 1

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 P J Brooke
The Hon P Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 1 stood part of the Bill.

Clause 2

HON F VASQUEZ:

Mr Chairman, in respect of Clause 2(b) which at present reads "inserting in the definition of company after the word registered, the words "or in case of a company formed outside Gibraltar, registered". Mr Chairman, I have had some difficulty with that wording because I have got the Ordinance, as amended, so many times before me. The definition of company at present reads "company means a company formed and registered under this Ordinance". It will read after the enactment of this clause, as presently drafted, "company, means a company formed and registered or in the case of a company formed outside Gibraltar, registered in Gibraltar." Mr Chairman, I think perhaps what the clause ought to say is, and should be amended, "or in the case of a company formed outside Gibraltar and registered under Part IX of the Ordinance", in order to distinguish companies incorporated in Gibraltar and companies incorporated outside Gibraltar and registered under Part IX. That can be the only type of company referred to there and I think by stating that it would make the position substantially clearer, Mr Chairman. I should specify, it does not change the legislative proposal at all, I think it makes it clearer.

MR CHAIRMAN:

If you would like just to write it down and let me have it?

HON F VASQUEZ:

I have not written it down in full, Mr Chairman, but I am now in a position to state exactly what, in my submission, the amendment ought to be.

MR CHAIRMAN:

You have to do it as you want it read into the Ordinance.

HON F VASQUEZ:

Yes, Mr Chairman, I will read it out and then I will pass it up to you. The proposal is that subsection (b) should read "Inserting in the definition of company, after the word 'Ordinance' "or in the case of a company formed outside Gibraltar, registered under Part IX of this Ordinance." "

MR CHAIRMAN:

You are going to delete completely what is there now?

HON F VASQUEZ:

Yes. All it is is to clarify between companies formed in Gibraltar and those companies that are not formed in Gibraltar, in which case if there are any registered in Gibraltar under Part IX of the Ordinance. That is the only two types of companies that we have in Gibraltar, Mr Chairman. The submission is that as presently drafted it is not particularly clear.

HON CHIEF MINISTER:

I think that for somebody who was worrying about shoddy drafting, Mr Chairman, I do not think we are going to go down the route of doing legislation this way. We do not think the Member opposite has made a case for saying that what he is proposing is more clear. I do not think it is more clear to the people who are here than what is already there. But, it would seem to me that it is not just a question of clarity, it is a question indeed that he is proposing to restrict companies who can be registered to those that are covered by Part IX of the Ordinance and at the moment since there is no qualification to what registered is, then if there is any other change in the Ordinance which allows it to happen other than under Part IX, it would be covered by the definition of company, whereas if we say that in the case of a company formed outside Gibraltar, it has to be registered under Part IX, which is the policy implication of what he is saying, I think the power that we have as it is presently done will be reduced. We would not want that to happen.

Mr Chairman then put the question on the amendment in the name of the Hon and Learned Freddie Vasquez and on a vote being taken the following Hon Members voted in favour:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The following Hon Members voted against:

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

The amendment was accordingly defeated.

On a vote being taken on Clause 2 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 P J Brooke
The Hon P Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 2 stood part of the Bill.

HON P R CARUANA:

Mr Chairman, by way of indication we are abstaining on all of these, having abstained on the principles of the Bill, I do not see we can vote in favour of a particular Clause.

MR CHAIRMAN:

Is there any other Clause which you would like us to stop at?

HON F VASQUEZ:

Yes, Clause 7.

Clauses 3 to 6

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 P J Brooke
The Hon P Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clauses 3 to 6 stood part of the Bill.

Clause 7

HON F VASQUEZ:

Yes, it is a very minor, I think it is a typographical error, but on page 120 of the Bill, (b) (2), 4th line says "Address the nationality of any person or person". I think that should be "person or persons" and the Bill should be amended to that extent.

HON CHIEF MINISTER:

I think, Mr Chairman, that we can take it as read because in fact from my experience in this House, when there has been typing errors in legislation we have not had to go through the motion of deleting the eighth word in the 4th line to replace it with the same word in the plural. There are bound to be typographical errors on a percentage of all the typing. What is supposed to happen is that if it is obviously grammatically incorrect to say any person or person, then it is reflected in the printed version which comes out. So I do not think we do need to have a vote to correct grammar.

Clause 7 to 14

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 P J Brooke
The Hon P Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clauses 7 to 14 stood part of the Bill.

Clause 15

HON F VASQUEZ:

Mr Chairman, clauses 28(b), 28(c) and 28(d). What I have tried to indicate in the course of my submissions or my address when considering that the general principles of the Bill was the fact that when these sections were enacted in England under the 1989 Companies Act, what the Act in England also did was to repeal section 35 of the 1985 Companies Act in England which is the equivalent of our section 20(a) of the Companies Ordinance at present. Section 20(a) of our Companies Ordinance at present is the section which enacted section 19 of the European Communities Ordinance. It was the first attempt to work into the Companies Act, the European idea of the ultra-vires doctrine. What these new sections do is expand that, develop it and actually expand the concept, but in England these three sections were enacted at the same time as the old section 35 was repealed. As drafted, in this Bill we are getting the three new sections and keeping what is now basically a section which is of no further application. I am told, and quite rightly, that it is not only of no further application but it might be a conflicting application because when any Court or a person reading the Ordinance comes to try to interpret the Ordinance, he is going to be faced with two separate sections saying the same things in different ways. The new section goes further than the old section. If I can refer you, Mr Chairman, to section 20(a) of the Companies Ordinance, as presently constituted, that is the one that

reads in the marginal note "Power to contract not restricted by Memorandum and Articles" and the source cited is the 1973 European Community Ordinance, section 9(1). I have before me a copy of the Companies Act 1985 and section 35 is identical to this section. If it will help the Honourable Members opposite, I can pass this book across which shows section 35 of the English 1985 Act and it provides that very section, in favour of persons dealing with the company in good faith etc etc. It is identical wording but then if we go to section 108 of the 1989 Companies Act, which is the one, Mr Chairman, that introduced these sections in England, the sections in England started in Chapter 3 Part 1 of the Companies Act 1985, that section 35 substitutes the three sections. So the proposed amendment is that clause 15 should read "The Principal Ordinance, be amended, by the deletion of the existing section 20(a) and the insertion of the following three sections which should be numbered 20(a), 20(b) and 20(c)."

MR CHAIRMAN:

May I draw attention to the Honourable Member? If he intends to propose an amendment, could he start writing it because I will need it in writing.

HON F VASQUEZ:

I will propose the amendment. All I am seeking to do, Mr Chairman, is to satisfy the Honourable Members opposite that what I am saying makes sense and what I am seeking to do is to avoid any conflict within the Ordinance as it is going to be enacted.

HON P R CARUANA:

I think, Mr Chairman, that it ought to be made clear that the way we read the sections, if the amendment is not approved, you will end up with the new section and the section that it is intended to repeal and there is an irreconcilable conflict as to which of the two is the law of the land.

HON M A FEETHAM:

Mr Chairman, can we carry on with the other Bills at this stage and come back to that later on?

MR CHAIRMAN:

There is no objection really we can leave it until tomorrow and we can carry on now with the next Bill and perhaps the two sides wish to get together and find a suitable amendment.

HON P R CARUANA:

Mr Chairman, I think that there is relatively little to take in Committee Stage of the other Bills and I think we ought to make progress and eliminate those and we can come back to either the whole of this Bill or only this part of this Bill tomorrow as the Honourable Members prefer.

HON CHIEF MINISTER:

Mr Chairman, when we are in Committee, in fact, we have got the flexibility of being able to move backwards and forwards on the Agenda and therefore what we are suggesting is that we will look at the point that has been made and at the proposed amendment, but we do not take a vote on this section now to give us time to consider it. When we are near finishing the others we clearly have not yet been able to give a satisfactory answer to the Member or accept his proposal, then what we will do is we will continue in Committee tomorrow morning before we take the motions.

HON P R CARUANA:

We agree, Mr Chairman..

MR CHAIRMAN:

We shall stay in the Committee Stage until tomorrow and therefore for the moment we will postpone and continue with this Bill tomorrow. I am just going to make another observation, perhaps if the Honourable Member who is proposing this amendment has other amendments, he might have it ready and pass it on so that we do not get stuck again tomorrow.

HON F VASQUEZ:

Mr Chairman, I can say I have just a comment that I need to make in respect of clause 19. It is not going to be an amendment.

MR CHAIRMAN:

We will carry on with the next Bill now.

THE AUDITORS (APPROVAL AND REGULATION) BILL, 1992

Clauses 1 to 6

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 P J Brooke
The Hon P Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clauses 1 to 6 stood part of the Bill.

Clause 7

HON M A FEETHAM:

Mr Chairman, I have already given prior notice of a slight change in clause 7(a). The figure '4' is to be omitted and the figure '3' is substituted therefor.

HON P R CARUANA:

Mr Chairman, of course we agree but given what the Chief Minister has said before we are going to have to define the difference between grammar and typographical error. That is clearly a typographical error. I agree with what the Chief Minister said before. The Honourable the Chief Minister will agree that in one of my first weeks in the House I made him bring an amending Ordinance because of a little 'g' or a little 'h' or something, I do not remember the details but it raises the question of what is a typo and what is not a typo and if this is a typo it begs the question of why the Honourable Member has brought this amendment?

HON M A FEETHAM:

It just happens that there is another amendment. The emphasis of that amendment actually changes the scope of the next clause and therefore both were submitted at the same time for that simple reason.

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

On a vote being taken on clause 7, 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 P J Brooke
The Hon P Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 7, as amended, stood part of the Bill.

Clause 8

On a vote being taken on clause 8, 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 P J Brooke
The Hon P Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 8 stood part of the Bill

Clause 9

HON M A FEETHAM:

I have also given prior warning. In clause 9, the word "deem" is omitted and the words "be deemed" are substituted therefor.

HON P R CARUANA:

Mr Chairman, the same point. The danger and the difficulty with accepting what appears to be the obvious point made by the Chief Minister although one should not be pedantic and I agree with him. The problem is it raises the question, what is pure pedantry and what is not? It is

clear on a reading of that section that it is a grammatical or typographical mistake. It cannot be appropriate for the Honourable the Minister to bring an amendment but for him to say that it is pedantic if we bring the amendment. It is clear that it cannot possibly in the English language read "shall deem to be approved", it must be "shall be deemed to be approved". Let us establish what is the parliamentary convention in this House in relation to typographical errors and grammatical errors and let us both apply the same criteria. But I warn the House that it is fraught with danger. It is almost impossible to define.

HON CHIEF MINISTER:

No. I can tell the Member what the parliamentary procedure is in this House from having been in it for twenty years. When it is obvious that the legislation which reflects a policy is not in fact altered by a typing error, then it is corrected on the basis that it is a typing error. If the typing error is capable of being interpreted as changing the meaning, then you have to correct it just in case it was the intention to have a different meaning. Fundamentally, it is just something that because the wrong sense has been used or the plural or the singular or a number and it is quite obvious that it is a printers error, then it has been corrected in the past without the need for people to make amended legislation. Otherwise we will never be finished. If people keep on making typing errors when it leaves the House, we will have to keep on bringing it back. There have been occasions when it may well happen that the clause appears to mean one thing because of a typing error which is not grammatically incorrect but which changes the meaning and when it changes the meaning then effectively what has been published is something that gives the impression that you may be prohibiting something when in fact it is your intention to permit it and because of a typing error you have done the opposite. In those cases, in my experience, somebody has moved an amendment and said look we are amending this because in fact a mistake was made and a 'nought' was put in where it should not be and the cross is saying the opposite of what the Government intended to say, but since that is what has been published, one needs to correct the meaning by removing the negative. That is my experience of how it has worked in the past.

HON P R CARUANA:

Mr Chairman, I have no difficulty with accepting that as the guideline and as the rule but applying that to these amendments requires the amendments not to be brought.

HON CHIEF MINISTER:

I agree with the Member entirely.

MR CHAIRMAN:

Apart from that, normally, and this is from my own personal experience in this House, if the Government spots an error of this nature and they have time, they usually bring the amendment already prepared so that when we go into the Committee Stage it is done and finished. If it is normally spotted by the Opposition, it usually does not go through the rigmarole. It is accepted by the House and it just goes through. It is really a practical way of getting over it.

HON P R CARUANA:

Yes. We accept that.

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

On a vote being taken on clause 9, 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 P J Brooke
The Hon P Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 9, as amended, and stood part of the Bill.

Clause 10

On a vote being taken on clause 10 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 P J Brooke
The Hon P Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 10 stood part of the Bill.

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

THE EMPLOYMENT (AMENDMENT) BILL, 1992

Clauses 1 and 2

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 P J Brooke
The Hon P Dean

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

Clauses 1 and 2 stood part of the Bill.

Clause 3

HON R MOR:

Mr Chairman, I have already given notice and the amendment has been circulated. All the amendment does is purely to correct an error of drafting in the designation of the paragraph and it does not in any way alter the substance or the intention of the Bill. All it does is that it recognises that there already was a paragraph (g) in section 86 therefore consequentially correcting designation of the paragraph together with the corresponding punctuation.

HON LT-COL E M BRITTO:

Mr Chairman, the Opposition will be voting in favour of the amendment and against the clause as amended.

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 P J Brooke
The Hon P Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

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

Clause 4

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 P J Brooke
The Hon P Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 4 stood part of the Bill.

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

THE BANKING BILL 1992

HON P R CARUANA:

Mr Chairman, I think we can go over to clause 87 now that the draftsperson is in the House. I omitted to take an opportunity to raise this matter earlier than this session of the House, which is what I would normally do, with amendments of this kind because it is not the sort of point that needs to be debated across the House. It is not a controversial point. That amendment to clause 88 set out in paragraph No.6. It is in the letter of notice to the Members.

MR CHAIRMAN:

We have other amendments before that. We will be coming to that.

Clauses 1 to 9 were agreed to and stood part of the Bill.

Clause 10

HON CHIEF MINISTER:

I beg to move that clause 10 (1) (b) is amended by omitting the final semi-colon and substituting therefor a colon and the following words "provided that were, in the exercise of the powers conferred on him by section 79(n), the Governor has made regulations which apply to the provisions of this Ordinance to a building society, those sections shall apply to such society in the manner prescribed in the regulations;".

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

Clauses 11 to 37 were agreed to and stood part of the Bill.

Clause 38

HON CHIEF MINISTER:

I beg to move that clause 38(1) is amended by omitting the words "other than an institution incorporated under the law of a country or territory inside the Community" and substituting therefor the words "that is incorporated in Gibraltar".

Clause 38, as amended, was agreed to and stood part of the Bill.

Clauses 39 to 58 were agreed to and stood part of the Bill.

Clause 59

HON CHIEF MINISTER:

I beg to move that the marginal heading to subclause 59 is amended by omitting the figure (vi) and substituting therefor the figure (vii), which seems to be a typographical error.

Clause 59, as amended, stood part of the Bill.

Clauses 60 to 74 were agreed to and stood part of the Bill.

Clause 75

HON CHIEF MINISTER:

I beg to move that clause 75 is omitted and replaced by the following new clause 75 "The provisions of section 39 of the Financial Services Ordinance, 1989, shall not apply to -

(a) an unauthorised institution, or

(b) a person who uses any words to which that section refers with the prior written concern of the Commissioner and in accordance with such conditions, if any, as the Commissioner may impose in giving that consent".

Clause 75, as amended, stood part of the Bill.

Clauses 76 to 78 were agreed to and stood part of the Bill.

Clause 79

HON CHIEF MINISTER:

I beg to move that clause 79 is amended-

(a) by omitting the figure "1",

(b) by inserting after paragraph (m) the following new paragraph "(n) applying the provisions of this Ordinance and any law of the Community relevant to the regulation of such credit institutions to credit institutions of a particular kind which regulation may make provisions for-

(1) the repeal of any Ordinance which, but for the regulations would regulate such credit institution;

(2) transitional arrangements necessitated by the repeal of the kind provided for in subparagraph (i), including the transfer to such regulation of provisions contained in the Ordinance being so replaced;

(3) the variation or exclusion of provisions of this Ordinance not relevant to such credit institution and not required for compliance with any requirement of Community Law; and

(c) by re-designating paragraphs (n) and (o) as paragraphs (o) and (p) respectively.

HON P R CARUANA:

Mr Chairman, would the Honourable the Chief Minister indicate whether the purpose of that amendment is to apply those provisions to the Gibraltar Savings Bank? Or if not, what it has in mind as an objective?

HON CHIEF MINISTER:

The reality is, as I have said at the beginning, that the amendments that we have got before us have been drafted by our advisers in the UK, frankly, because the policy decision is to produce legislation which meets Community requirements and the agreement that we have got with them is that we would not delay but we will introduce anything at the last minute and we hope this is the last of it. Frankly, I am not very clear why these last minute amendments are needed.

HON P R CARUANA:

It serves no local purpose at all.

HON CHIEF MINISTER:

As far as I am aware.

Clause 79, as amended, was agreed to and stood part of the Bill.

Clauses 80 to 87 were agreed to and stood part of the Bill.

Clause 88

HON CHIEF MINISTER:

I think actually what is happening with clause 88 is that it has one typographical error five times and since I have not moved the amendment in this case I do not need to amend it and I will just leave it out.

HON P R CARUANA:

Mr Chairman, if the Honourable the Chief Minister wants to move the amendment, the errors have now taken time to clear.

HON CHIEF MINISTER:

No. I am moving the amendment. I am leaving out the superfluous 'ands' which is (a) and (b) and we are introducing it in the original line, so if I read the amendment out he will see that it makes grammatical sense. Mr Chairman, I beg to move that clause 88 be amended by omitting subclause 1 and substituting the new subclause

"(1) Any institution which are becoming into force of the Ordinance held a licence under the Banking Ordinance and

(a) was the branch of a European authorised institution, will be considered as an authorised institution;

(b) was a subsidiary of a European authorised institution, shall be considered to be a licensee;

(c) was a branch of an authorised institution not being a European authorised institution, will be considered to be a licensee".

HON P R CARUANA:

Mr Chairman, the only improvement that I can offer is that there should be an 'or' after each semi-colon because otherwise it reads like a continuous list of requirements. The whole problem with this wording is that they are all separate provisions, each of which simply remits to a common first two lines for the purposes of not having to repeat it, so that the law would read - "Any institution at the coming into force held a licence under the Banking Ordinance and (a) or (b) or (c)". They are quite separate provisions but that is only an improvement, Mr Chairman. I think that the suggestions of the Chief Minister are sufficient to cure the principal problems and the rest would just be tidying up. We will support the amendment as it stands.

MR CHAIRMAN:

If the Chief Minister agrees and insert 'or' and 'or'.

HON CHIEF MINISTER:

No. I am told that it would make it worse if I put in 'or'. I think that we should stick with what we have got.

HON P R CARUANA:

As I have said, Mr Chairman, whilst the Chief Minister's attention was distracted, the amendments that he has proposed to his amendments, although he has not tabled it yet, are in our submission adequate to correct the principal defect of the drafting.

Clause 88, as amended, stood part of the Bill.

Clause 89

HON CHIEF MINISTER:

I beg to move, Mr Chairman, that Clause 89 is amended by omitting the figure "(1)".

Clause 89, as amended, stood part of the Bill.

Clause 90 was agreed to and stood part of the Bill.

Schedules 1 and 2 stood part of the Bill.

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

THE ESTATE DUTIES (AMENDMENT) BILL, 1992

Clauses 1 to 7

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 P J Brooke
The Hon P Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clauses 1 to 7 stood part of the Bill.

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

The House recessed at 8.00 pm.

TUESDAY 30TH JUNE 1992

The House resumed at 10.45 am.

MR CHAIRMAN:

We are in Committee Stage as you know and on an Ordinance to amend the Companies Ordinance. We are at Clause 15 and the amendment now has been produced by the Minister so we can go on from there.

HON M A FEETHAM:

Mr Chairman, I beg to move that the Bill be amended by the insertion after clause 42 of a new clause 43 as follows: "Repeal of Section 20(a). Section 20(a) is hereby repealed". Mr Chairman, we have looked at the observation made by the Member opposite yesterday and whilst it does not appear that there is actually a conflict in the legislation, as presented, it is accepted that if old section 28 is not repealed, there will be a duplication in the Ordinance and that will not be correct.

MR CHAIRMAN:

We carry on now with clause 15 and we move on from there.

HON F VASQUEZ:

Mr Chairman, this side of the House is happy with the proposed amendment in that it puts right the fault in the draft that has been identified. At this stage I wonder if I can crave your indulgence and go back two clauses. We were speeding through the clauses yesterday evening and there is a small matter which appears in clause 13. I will be grateful for the opportunity of raising that at this stage before we carry on with the Bill. Clause 13 in its provision for the new section 28(1) in the Ordinance on page 121 of the Bill, states "If at any time the number of members of the company which is a private company is reduced below one..." It is a matter of drafting. I think it makes rather a nonsense. We are not dealing in mathematical concepts here, we are dealing with physical individuals and of course you cannot have below one physical individual. The recommendation from this side of the House, Mr Chairman, is that that be amended to "reduced to none" rather than to "below one".

MR CHAIRMAN:

Are you proposing an amendment?

HON F VASQUEZ:

I am proposing an amendment to remove the words "below one" and to substitute "reduced to none" which has the same meaning. I think it is rather a nonsense, Mr Chairman, to have a reference to less than one person. We cannot have a division of a person.

MR CHAIRMAN:

So the question is now that you propose that in clause 13 an amendment should be made on the second line where it says "below one" to read "to none". Any comments?

HON M A FEETHAM:

Accepted.

Mr Chairman put the question on the proposed amendment which was resolved in the affirmative.

On a vote being taken on the clause, 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 P J Brooke
The Hon P Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 13, as amended, stood part of the Bill.

Clauses 15 to 18

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 P J Brooke
The Hon P Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clauses 15 to 18 stood part of the Bill.

Clause 19

HON M A FEETHAM:

Mr Chairman, I have already given prior notice of an amendment to insert between clauses 19 and 20 a new heading which will be new section 45(a).

HON F VASQUEZ:

Mr Chairman, this side of the House wants to make another recommendation that that new section 45(a) should not be included in the Bill at all for the reasons that I cited in my address yesterday when dealing with the principles of the Bill. That is that this new section 45(a) grants to companies a new power which at present they do not have. In fact, they are specifically prescribed under I think it is section 45 or section 54 of the present Bill, I cannot recall. Mr Chairman, companies at present are prescribed from purchasing their own shares. It is an essential element of company law that a company must not purchase its own shares because in doing so it is reducing its own share capital. It is rather like a snake eating its own tail. Now this new section 45(a) introduces a new concept in allowing a company to purchase its own shares which is something which the English 1989 Companies Act has allowed companies to do. The point that I made yesterday, Mr Chairman, is that the English legislation prescribes very carefully the circumstances in which a company may purchase its own shares and provides certain guarantees and protections to shareholders and especially minority shareholders in those companies. Section 45(a) as drafted, which this Bill proposes to insert in the Companies Ordinance refers to Schedule 11....

MR CHAIRMAN:

We have got to deal with one section at a time. Let us clear section 19.

HON F VASQUEZ:

I am sorry, I am referring to clause 20.

On a vote being taken on clause 19 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 P J Brooke
The Hon P Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 19 stood part of the Bill.

Clause 20

HON F VASQUEZ:

The objections that I was raising, Mr Chairman, in fact relate to clause 20 and not clause 19. The objection is that the Ordinance has to be very careful in prescribing the circumstances in which a company may purchase its own shares in order to provide protection for shareholders and especially for minority shareholders. It is the view of the Honourable Members on this side of the House that to introduce a section for enactment in an ordinance that provides for the grant of power to a company to purchase its own shares and further to provide that that power will only be exercised in circumstances set out in schedule 11 and then not to provide the provisions of schedule 11 at the same time means that this House is simply not aware of the principles that will apply in the grant of companies of that important and potentially pernicious power to purchase its own shares. It is a nonsense and almost an abuse of this House. How can this House be expected to approve a measure when it simply is not aware of the circumstances that will be enacted and in which companies will be allowed to carry out this important new power? So it is the view of this side of the House that this section, as presently drafted, is unworkable. If this section, as presently drafted, finds its way through the Companies Ordinance somebody with shares in a company is going to say or a company is going to come along and say "We want to purchase our own shares, in what circumstances may we do it?" Well, we look at schedule 11 and there is no schedule 11 and without the insertion of the schedule 11 that clause becomes totally meaningless and unworkable. It is an abuse of this House to enact that new provision which is unworkable and meaningless. For that reason, Mr Chairman, the view of this side of the House is that that section should be stood down until schedule 11 is drafted and enacted so that this House is aware of the principles that will apply and the principles that are going to be enacted to enable to set up the circumstances in which a company may purchase its own shares. Until that is the case it is an abuse of this House even to legislate this section, as at presently drafted.

HON M A FEETHAM:

Mr Chairman, clearly the difference between the view being expressed there is consistent with the difference of views on both sides of the House as regards legislation and as far as we are concerned we intend to proceed with the Bill as it stands and as far as the schedule which will prescribe conditions is concerned, that will be done as soon as possible thereafter or at the same time. This is a matter really for the legal department because if you look at the commencement of the Bill it says that it can be done simultaneously, on different days and different sections coming in at different times. So really it is a matter for the Attorney-General's Department to deal with the matter in keeping with the policy of the Government. I take the point made but it is consistent with your line not consistent with what we are saying.

HON F VASQUEZ:

No. The point is, that this House is being asked to enact something to give companies the power to do something without knowing the circumstances in which that power will be exercised and so the point is, Mr Chairman, that this House simply does not have the information available to it in order to make the judgement which it has to make in deciding whether to pass this proposed amendment to the Companies Ordinance or not. It is simply that the information is not at hand.

HON M A FEETHAM:

It is not different to what we have been doing in respect of drawing up legislation and then providing the regulation to give effect to the legislation.

HON P R CARUANA:

Can the Honourable Minister give way?

HON M A FEETHAM:

Can I just finish? We are in Committee Stage anyway. It does not really matter. You can stand up as many times as you want. As far as we are concerned this is a new section to the legislation which concerns the power of a company to purchase its own shares and the conditions will be set in schedule 11. That will come into effect at the same time or subsequently or even before and it is very clearly stated at the beginning of the Bill that we are presenting in this House. So whilst the principle of the company to buy its own shares is what we are arguing, the conditions under which it will be done will be made known later.

HON P R CARUANA:

Mr Chairman, I understand what the Honourable Minister is saying. It is to give the Government power to do by

regulations things that we would have liked to have done in an ordinance. The difference, if I can attempt to establish one with respect to the Honourable Minister, is this. In the case of section 45 what is not before the House now and what the Honourable Member will want to do by regulation - I have noted that the powers that they have under regulations include the power to prescribe schedules - are things that are not here yet and which go to the very root of whether the principle of the substantive section is correct. In other words, I am certain that no-one across that side of the floor of this House considers that it is correct, in principle, to allow a company to buy shares without any restriction or condition. It is a licence to steal from shareholders, basically. The section, as it presently stands, is a licence for directors to steal from shareholders. Therefore, the contents of that schedule 11 goes to the very route of whether it is proper or improper for this House to legislate this section at all. It is not a question of providing for the administration of the section. It is a blank cheque. It is an improper piece of legislation. It is an offensive piece of legislation standing by itself whereas other things that we were legislating yesterday at least by themselves stood up and were capable of being supported by the House albeit subject to differences of opinion but there was nothing in the sections of yesterdays Ordinances which were in the same sense as this inherently objectionable as they stood. There is a distinction. The Honourable Minister may not consider that the distinction is sufficiently great. I note the distinction that he has sought to make by comparing this to regulations of the sort that we were discussing yesterday. What I have tried to do is to persuade him that there is a difference in the sense that what is not before the House goes to the very route of the principles in the section and, Mr Chairman, I would go further. In any case, presumably, as different sections can be given effect to on different days, this section will not be brought into effect until the schedule has been prescribed but still that does not address the point that I am making which is that the House is being invited to approve or disapprove it. I do not want to disapprove of this because I think it is actually a good idea. We cannot have our open-ended investment companies unless we have a section of this kind. Therefore, I do not want to be put in a position where I do not support a legislative provision which in principle I would support if it were complete before me. The point is that we cannot approve or disapprove it not knowing exactly what we are approving or disapproving. What I am disapproving right now is the unrestricted right for a company to purchase its own shares. That is a disapproval which I would recommend to the Members opposite as well.

HON CHIEF MINISTER:

Mr Chairman, I think the problem is that on this occasion, as on almost every other occasion, the Member opposite tends to exaggerate what it is that is taking place.

If in fact we pass section 45 today and section 45 says that a company may redeem its own shares in accordance with schedule 11 and schedule 11 is not yet there, then until schedule 11 is there, the company cannot redeem its own shares. So we are not risking creating a Pandora's box of unrestricted redemption of shares. I think that needs to be put into context because the world is not going to collapse because we have passed this today. Secondly, the reason why the schedule is not there is because the final shape of that schedule is not ready. Therefore, we had to take a policy decision in the Government. This is important to us. It is important enough that it has been going round since 1987. I reminded the House that in 1987 before we were in Government we were presented in this House with conditions for the redemption of preference shares which were drafted at the time and which were announced as us being the first people in the whole of Europe to be providing the framework for UCITS. That was five years ago and we still do not know what we ought to be doing and even today I am not sure what it is exactly we are supposed to be doing. All that I can tell the House is that what I am not prepared to do is to say that we will not create the vehicle today and wait until the next meeting of the next House to legislate because this is important. The sooner we get it done the better and it cannot happen without the schedule. This is the way that the lawdraftsman thought we could reconcile my insistence that there was a deadline that we had to get this on the statute book once and for all and the fact that the precise restrictions which is a balance between the need to protect the interests of shareholders and the need to make Gibraltar competitive and attractive. I do not know why we just cannot follow basically by and large what they do in UK, which is presumably what we ought to be doing. The position of the Government is that we are proceeding with this but of course the section will not be operational until the schedule containing the basis upon which section 45 can work is there. If you say under section 45 "A company may exercise the power contained on subsection (1) only if it does so in accordance with the provisions of section 11", it must follow that even if we brought in section 45(a) and it did not have schedule 11, a company would not be able to do what it is told to do. It would say that in order to do so it would have to go to schedule 11 to find out about that provision and it finds that the last schedule is schedule 10 and there is no schedule 11. Clearly schedule 11 has to be there before the power to redeem shares can be exercised and schedule 11 is not at the moment ready and that is why it does not appear in the Bill and the sooner it is ready the sooner this will be brought in. The alternative would be that we would not proceed with creating the power to do it and that is not acceptable to the Government.

HON P R CARUANA:

Mr Chairman, yesterday the Honourable the Chief Minister accused me after one of my interventions of ignoring

everything that he had said and proceeding with my prepared text as if everything that he had just said I had not heard. With the greatest of respect, he is much more guilty of that today than I could possibly have been yesterday. I said myself before the last intervention of the Chief Minister that we were not concerned about the practical implementation of it because clearly it could not come into effect until the schedule. So all that he has said about the timing is completely a waste of this House's time because I recognised that myself ten minutes ago. He says he asked himself rhetorically that he does not understand why they cannot do what they did in England and I say that nor can I because if they had done what they did in England the contents of schedule 11 would have formed an integral part of section 45 and the House would have discussed the whole shooting match. The difference is that if section 45, in the present form had been introduced into the House of Commons without the contents of schedule 11, it would have been laughed straight out of the front door. The point that I was making and I repeat it again for the benefit of the Chief Minister who either has not understood it or has not wanted to hear it, is that schedule 11 will now be written by them. It will contain whatever they like. This House will not have an opportunity to debate its contents nor to contribute to its contents and therefore we are being asked to approve the principle without being told the basis upon which that principle is going to be available to users of it. That is to be asked to write a blank cheque and we do not need to debate. The Chief Minister understands that that is what I was saying but wishes to disagree or thinks that that is the position in which I should be. Fine, we will just leave it at that. But at least let him understand what I was trying to say. In that sense this side of the House will vote against this section because we were being asked to vote on half the baked potato and I want to have the whole baked potato in order to know whether the potato is baked or not.

HON CHIEF MINISTER:

The reason why I did not understand that that was his concern because that seems to be the same concern that he was expressing yesterday about everything else. He has only seen half the baked potato because we can then go by regulation to change even the principal ordinance. In fact, if his argument is that this is unacceptable to him on the same principle as everything else is about using subsidiary legislation, then he has wasted my time and everybody else's time because we know that already. I thought he was making a new point and I thought the new point that he was making was that without the schedule we were creating the power to repurchase shares unconditionally. That is what I understood he was saying. I was trying to point out that we were not doing that. It is not the same thing. It is one thing to say that we have created a power to create the possibility of buying

shares without any conditions. It is another thing to say that we have created a power which can only be exercised when the conditions are specified and the condition has got to be specified by regulation which I do not like because I think conditions should not be by regulation but in the main ordinance. But he accepts that in fact it is not possible and it will not be possible unless we have a schedule which says schedule 11. I have to do it in accordance with schedule 11 and you go to schedule 11 and there is nothing. Then you would have a problem because you have to say a failure to comply with the requirements of schedule 11 is an offence and how do you comply with nothing. So obviously schedule 11 is going to contain some conditions. I think we all agree that that is the case. The Member's objection is that he does not know what those conditions will be and that therefore that allows us to presumably allow companies to do what they like in the repurchase of the shares and he will have no control and influence over it. Obviously we are going to put in schedule 11 a machinery, as I have said, which complies with Community law for a start. Presumably if the Community requirements on company legislation prohibits companies to do what he says would be very dangerous because companies will be able to take all the money from their shareholders, then obviously our own legislation will do the same thing because we cannot have company legislation which conflicts with Community company requirements. He has got that safeguard already and secondly if that is what we wanted to do then we can do it now. All we need to do is amend section 45(a) by removing the schedule and then anybody can buy the shares on whatever conditions they like without any limitations. We have got the power to do this now in this House. We simply amend section 45(a) to remove all references to schedule 11. There is no need to bring schedule 11 and everybody can do whatever they like. So if that is what we wanted to do we can do it now. It is obviously not what we want to do. The reason why we are holding back on the implementation of this measure which we both agree is desirable and important is because the conditions that we are going to attach to it are not yet finalised. That is all, not a big matter of principle, except that he believes that when they are finalised we should come back to the House and have a debate on it. It is a problem certainly because we are grateful to the Members opposite when they come up with improvements on the legislation which will make the legislation work better and that is an important function of the House. Clearly it is very difficult for us if, as has been seen today, we are talking about changing particular words here or there where frankly as a Government we are making a policy decision. Maybe we should look at the machinery of where Members opposite feel that something in the drafting does not do what it ought to do and how we can do something about putting it right before we get to the final stage. It is not that we want to say no, it is that we cannot afford to say yes if we are not 100% sure what it is that we are saying yes to.

HON P R CARUANA:

Mr Chairman, we are very sorry if the Government considers that our participation of the legislative process is a nuisance or an obstacle to them but this is well established principles of democracy and I think oppositions, even bad oppositions in other democracies are also nuisances to Government when it comes to expressing their views on matters of legislation. I just want to say this, I think the Chief Minister is completely wrong and ought not to express opinions and matters of law until he has taken advice from those that he has around him to advise him on such matters because if the law says that you can do something provided that you comply with conditions on page 23 and on page 23 there are no conditions, then you can do it without conditions. The only thing that saves this section is not what the Honourable the Chief Minister has just said. The only thing that saves this section and this power from being used without condition - it is not what the Chief Minister has just said - is the fact that presumably they will have the wit not to make this section applicable until such time as they have published the schedule. That is what saves this power from coming into being and not the fact that you can only do it in accordance with the provisions of schedule 11, because if schedule 11 equals nought then you can do it subject to nought conditions and subject to nought conditions equals unconditionally. Hardly even a legal point, it is almost basic linguistic interpretation.

MR CHAIRMAN:

Will the Minister if he has not got any more comments move the amendment please?

HON M A FEETHAM:

Mr Chairman, I will move it again. I have already given notice that between clauses 19 and 20 the new heading "New Section 45 (a)" is inserted.

HON F VASQUEZ:

The question I had was that we have accepted the Hon Member's amendment, that is the inclusion of the new heading "New Section 45(a)". I thought we had dealt with that and we were dealing with my amendment for the exclusion of section 45(a) altogether.

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

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The following Hon Members voted against:

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

The amendment was accordingly defeated

MR CHAIRMAN:

We have defeated the amendment to delete section 45(a) but we have not voted on the amendment proposed by the Minister for Trade and Industry. We are now going to vote on that. It is an amendment to Section 20 and it is a way of presentation, it is just a presentation of putting just above Section 20 "New Section 45(a)".

HON P R CARUANA:

Mr Chairman, this amendment relates not to including or deleting the whole section but simply a new heading to it, so it would be almost pedantic to vote against the inclusion of a little heading. That is why we supported the Minister's amendment, not to say that we are not going to vote against the whole thing.

Mr Chairman put the question on the proposed amendment which was resolved in the affirmative.

On a vote being taken on Clause 20, 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 P J Brooke
The Hon P Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 20, as amended, stood part of the Bill.

Clauses 21 to 27

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 P J Brooke
The Hon P Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clauses 21 to 27 stood part of the Bill.

Clause 28

HON M A FEETHAM:

I have already given prior notice of a new subsection (4), of Section 100. The word "April" is to be omitted in the two places where it appears and it is to be substituted by the word "August".

Mr Chairman put the question on the proposed amendment which was resolved in the affirmative.

On a vote being taken on Clause 28, 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 P J Brooke
The Hon P Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 28, as amended, stood part of the Bill.

Clauses 29 to 42

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 P J Brooke
The Hon P Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clauses 29 to 42 stood part of the Bill.

New Clause 43

HON M A FEETHAM:

I have already given prior notice of this amendment which was in relation to the observation made by the Member opposite and therefore I move that the Bill be amended by the insertion after clause 42 of a new clause 43 as follows, "Repeal of Clause 20(a). Section 20(a) is hereby repealed".

New Clause 43 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 Savings Bank (Amendment) Bill, 1992; The Nature Protection (Amendment) Bill, 1992; The Port (Amendment) Bill, 1992; the Business, Trades and Professions Registration (Amendment) Bill, 1992; The Companies (Amendment) Bill, 1992; The Auditors (Approval and Regulation) Bill, 1992; The Employment (Amendment) Bill, 1992; The Banking Bill 1992; and The Estate Duties (Amendment) Bill, 1992, have been considered in Committee and agreed to with amendments 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 Nature Protection (Amendment) Bill, 1992 and the Banking Bill, 1992, with amendments, the question was resolved in the affirmative.

On a vote being taken on the Savings Bank (Amendment) Bill, 1992, the Port (Amendment) Bill, 1992; the Business Trades and Professions (Registration) (Amendment) Bill, 1992; the Auditors (Approval and Regulation) Bill, 1992, with amendments; the Estate Duties (Amendment) Bill, 1992 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 P J Brooke
The Hon P S Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The Bills were read a third time and passed.

On a vote being taken on the Companies (Amendment) Bill, 1992, with amendments; and the Employment (Amendment) Bill, 1992, with amendments, 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 P J Brooke
The Hon P S Dean

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The Bills were read a third time and passed.

PRIVATE MEMBERS' MOTIONS

HON P R CARUANA:

Mr Speaker, I have the honour to propose the motion standing in my name which reads as follows:

"This House condemns the Government for:

- (1) failing to lay before the House Estimates of Revenue for the current year in respect of such importance sources of revenue as amongst others import duty, electricity charges, company tax, exempt status tax, stamp duties, ground and sundry rents and premia

on assignments amounting last year to a sum of about £33m and notes that section 65(1) of the Constitution provides that "the Financial and Development Secretary shall cause to be prepared and laid before the Assembly before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of Gibraltar for that year";

- (2) diverting the aforementioned significant revenues away from the Consolidated Fund to Special Funds with a view to enabling the Government to spend those monies without seeking the authority of this House;
- (3) passing a decree allowing import duties to be paid into a Special Fund in breach of the law namely section 45 of the Import and Export Duties Ordinance, which requires import duty to be paid into the Consolidated Fund, and notes with regret and concern, that the financial information relating to estimated revenues and expenditure available to this House is incomplete and reduced to the point where the role of the House in general and the Opposition in particular to act as watchdog of public monies and expenditure is severely prejudiced".

MR SPEAKER:

Before the Honourable Member carries on, I would like to draw to the attention of the House, that this is a motion of censure against the Government and therefore the ex-officio Members in this House will not be allowed to vote.

HON P R CARUANA:

Mr Speaker, as a matter of parliamentary style, I try, where possible, not to fall into the trap of debating legal matters across the floor of this House. There are other forums in which that can be done and I will try to the greatest possible extent to uphold that principle in my contribution to this motion, but regrettably it will not be possible to do it altogether and especially in relation to the third point. It will be necessary to stray a little bit into quasi-legal arguments. In principle, what I try to do here without in anyway shirking from the consequences of statements that I have made in public which I will repeat during the course of this motion - is to formulate my complaints from this side of the House in political as much as in, or perhaps moreso, legal terms. Mr Speaker, in our view never before in the history of this House has a Government placed before this House Estimates of Revenue and Expenditure which gives so incomplete a picture of the finances and spending proposals of Government as the 1992/93 Estimates that were approved by the Government votes in this House last month. I think, Mr Speaker, it is pertinent to refer to some of the Chief Minister's utterances in this House in the past. "The Opposition" said the Honourable the Chief Minister in the 1989 Budget debate and I quote him from page 174 Hansard of Wednesday 3 May 1989, "is there as the guardians

of the public purse". "We accept", he said during the 1988 Budget debate page 94 "the right of the Opposition to monitor and question what we do". I would just comment as an aside, Mr Speaker, that the word 'monitor' implies that you have the means to do it as it is being done as opposed to the process of checking which takes place after the event. Monitoring implies that you keep an eye on it as it is going along, to see how it is going along. He carried on "They should look at us honestly and critically and not try to find fault for the sake of finding fault and stop us making mistakes if they think that we are about to make a mistake, because at the end of the day, Gibraltar will benefit and at the end of the day the people of Gibraltar will have a greater respect for us as politicians and a greater respect for this House of Assembly, if we operate in this fashion". Well, Mr Speaker, it is precisely because the Estimates no longer allow the Opposition to do precisely what the Honourable the Chief Minister thinks or in 1989 and 1988 thought, it existed to do, that I have brought this motion in the House today. Mr Speaker, the Estimates approved by the House last month exclude revenue or estimates of revenue of the Government from such sources, as the motion says, as company tax, import duty, exempt status tax, stamp duty, ground and sundry rent, workers hostels, electricity charges and premia on assignments, amongst others. Some of these, Mr Speaker, of course are absent from Estimates not for the first time. It should not be thought and I would try to make it clear during the course of my address that it is not any part of my case that what has happened in the 1992/93 Estimates is a principle that was discovered at the time of those Estimates. Perhaps previous Oppositions had not picked it up with the result that what we have now is a problem of scale and it is the scale which has raised the alarm or at least which has given me the opportunity now to raise the alarm, but in respect of items on a smaller scale it has happened, certainly since 1988. I will show in relation to specific matters but of a different and distinguishable kind, that it has happened even before 1988. Mr Speaker, according to the 1991/92 Approved Estimates, or where available 1991/92 Forecast Outturn and to answers to questions given in this House, the 1991/92 value of these excluded items of revenue are as follows. Import Duty £17m, Stamp Duty £1.5m, Exempt Company Tax £1.3m, Ground and Sundry Rents £850,000, Premia on Assignments £30,000, Electricity Charges £6.2m, Company Tax £7.2m and the Training Levy £1.4m, amounting in all to about £36.382m, although in the motion itself I use the lower figure of £33m because there are two items on that list which I did not reckon on when I drafted the motion. Mr Speaker, that figure constitutes about 35% of total Government revenues of which this House now has no estimates for the current year, and as I will go to explain later, nor estimates of the proposals for the expenditure of that money. It should therefore, as I said in the House at the time of the Budget debate, be clearly understood by this House and by the public at large that in discussing and voting upon the Appropriation Bill and in generally debating

- as has become the practice of the House, if not strictly the exercise of the debate in the Appropriation Bill - the state of the finances of the Government of Gibraltar and the state of the economy generally that this House had before it. I was considering no more than 55% of Government expenditure of recurrent revenue and no percent of Government's expenditure of money that it may have already borrowed or may borrow during the course of this year, unless that borrowed money finds its way into the Improvement and Development Fund and not some other special fund or the Gibraltar Investment Fund. Mr Speaker, I am aware that some of the money, perhaps all of the money, that is borrowed by the Government (the point is that I cannot know which) is used by the Government to subscribe the shares to the Gibraltar Investment Fund and that that money comes back into Government's coffers in the form of the purchase price of the purchase by those companies of Government housing stock. Then the Government finds itself therefore with the money again in its hands and - we know that much of it, perhaps all of it, the point is that we do not know - it goes through the Improvement and Development Fund into the various things that we approved when we approved the Appropriation Bill, ie the projects of the Honourable the Minister for Trade and Industry and the projects of the Honourable the Minister for Housing. Mr Speaker, therefore, what we are approving is the expenditure of funds of borrowed money that is expended through the Improvement and Development Fund or that is expended through the Consolidated Fund but if the Government wants to borrow money and not pass it through either of those two funds before they spend it, they can spend it without any formal information or appropriation to this House. For example, Mr Speaker, and moving on from the question of borrowing, we now get no estimates whatsoever of what the Government proposes to do spend on health. Well, I know that we did not get much information in the last couple of years because, since the Gibraltar Health Authority ceased being a Government department, we no longer got detailed proposals in a departmental basis of the health budget but at least, under the allocations and the reallocation section of the Estimates, we knew how much money the Government was injecting into the health service. We did not of course know how much was being collected by the Health Authority in its own respect through subscriptions charges and prescriptions charges and hospital fees but at least we knew how much the Government was injecting into the Health Authority. If the figure was seen to drop, we could question whether this represented a reduced expenditure on health in Gibraltar. Now, this year, we have had no information about how much money the Government proposes to inject into the health service. We do not know how much the Government intends to spend on the purchase of electricity. The Government has in effect privatised a part of the electricity generating industry. The fact of the matter is that we do not know whether they are spending £1m or £10m in the purchase of electricity. We do not know whether the electricity that they are

purchasing therefore is cheap or expensive or whether the taxpayer is getting good value for money or bad value for money. The fact of the matter is that we do not have the information before us when we are debating the question of Government's expenditure and Government's revenue. They are not the only examples, Mr Speaker, but I think they are probably the principal ones. All of this begs the question, Mr Speaker, how does this square with the Chief Minister's assertion in 1989 that the Opposition is there as the guardians of the public purse or that the Opposition has the right to monitor and question what the Government does and how it is doing it or that we should warn them in advance that they are going to make a mistake so that they do not make it and that Gibraltar thinks more of the House of Assembly and the politicians for doing it? Mr Speaker, none of us in this House and certainly not on this side of the House have powers of clairvoyance and if we do not have the total economic picture in front of us when we are discussing what the Government is proposing to spend, then I do not see how we can do any of those three things. Mr Speaker, I have to say, that the hypocrisy of the whole situation is clear at least to me. The Government cynically organises the affairs of public finances in such manner as to give the public and the House as little information as possible, thereby making a mockery of the Opposition's duty to guard the public purse or to monitor or question Government's administration of public matters. Therefore, Mr Speaker, the position reached is this. That in respect of these items of revenue that I have described, neither the House nor the public at large will have any idea how much the Government expects to collect or how much it has collected or worst still, how the Government spends those tens of millions of £s until the Government publishes its accounts for the current year. In accordance with present and past practices, that will not be until around the middle half of 1995; that is more than three years from now and about two years from the end of the current financial year. Well, Mr Speaker, by that time, the figures will be of long past historical interest only. They will have no value to the Opposition for the purpose of them acting as guardians of the public purse or for the purposes of monitoring what the Government is doing or stopping the Government from making mistakes so that Gibraltar will benefit and so that the people will have more respect for the politicians in this House. I said it so recently in this speech that I do not have to remind the House that those were the roles that the Honourable the Chief Minister himself commended to the Opposition not that many years ago. Mr Speaker, to quote from a leading article in the Financial Times on Monday the 20th May 1992, with Mr Speaker's indulgence, "Good Government", said the Financial Times, "can withstand public scrutiny. Indeed is more likely to thrive under it". We think that the contrary is also true. That bad Government cannot withstand public scrutiny and can only thrive by

withholding information from the public domain. By this criteria, Mr Speaker, the Members opposite categorise themselves with distinction into the second and not into the first category. For these reasons and others that I will now go on to explain, I believe that by the manner in which the Government has carefully calculated to organise its financial affairs, it has for practical purposes rendered this House in general and the Opposition in particular, an impotent bystander in the matter of guarding and watching over the public purse and Government's finances and expenditure in general. Mr Speaker, Gibraltar is awash with rumours, hopefully completely ill-founded, of a Government getting into greater and greater financial difficulties. If that is not true, then reducing the amount of financial information published by Government is hardly the way to dispel those rumours and to ensure public confidence which is what we all want, in public finance and the corollary of that is also true. If a Government were to be getting into an increasing and worsening financial muddle and wished to conceal that fact and save its neck for as long as it possibly could, I can think of no better way of doing it than by making it effectively impossible to gauge the actual financial position of Government at any given or the current moment in time. I believe, Mr Speaker, that the current estimates are meaningless and useless as a tool to gauge the Government's overall financial position. I think it will be helpful to explain the process followed by the Government which has led it to believe that it can lay before the House what, in my opinion, are, not only politically deficient, but - lest anyone think that I am retracting from statements that I have previously made in public - legally deficient estimates of revenue and therefore as a result present an incomplete picture of expenditure as well. As I intimated earlier, the process of reorganisation of public finances and the accountability therefor which culminated in these inadequate and deficient estimates did not begin in 1992. It began in terms of scale, almost as soon as the Members opposite formed Government in 1988 and one really has to go back, Mr Speaker, to the root cause of all of this. The first major coach and horses driven through the concept of Government's accountability to this House was really the Borrowing Powers (1988/1992) Ordinance of 1988 which is one of the very first pieces of legislation made by the Members opposite. Section 12 of that Ordinance gave the Government power to put money borrowed by Government into a Special Fund - the Gibraltar Investment Fund - by a process which I will explain in a moment but the legality which I do not accept either. Government was then able, or so it believes, to spend and pay out all borrowed money without the approval and therefore the knowledge of the House. That, in effect, Mr Speaker, fatally wounded the whole process of control of public expenditure by this House. As at the 31st March 1990, over £20m had been borrowed and placed in the Gibraltar Investment Fund. The point is not how much has been spent in this way, but rather that the mechanism that had been created could be used by the Government whenever and however it pleased to do it. The concept of control by

this House had really been blown out of the water. Mr Speaker, at the root of the whole mechanism is that, according to the Constitution, Government only needs the permission of the House to spend money if that money is coming from the Consolidated fund. There are provisions in the Public Finance (Control and Audit) Ordinance requiring them to come to the House for spending money out of the Improvement and Development Fund as well, but that is in an Ordinance and not in the Constitution. Hitherto, unconstitutionally, the Consolidated Fund had been intended and was envisaged to be the fund into which all general Government revenues would be paid. It must have all seem so obvious and simple to the Members opposite. If we do not pay revenues into the Consolidated Fund, we can spend them without telling the Opposition or anyone else how much of it we have spent and on what for a few years at least and that is that we have to publish the accounts of Gibraltar for the current financial year. The process is then taken one logical but perverse and, in my opinion, unconstitutional step further. Well, if we can spend it without telling the House or seeking the permission of the House through the mechanism of an Appropriation Bill, then we do not even have to tell the House how much we are collecting from Government revenues that we propose to spend through special funds and in a manner that we do not have to come to get the permission of the House. So, game, set and match, Mr Speaker, at that problem. Not only do we not know how much the Government expects to collect from company tax, stamp duty, exempt company tax, ground and sundry rent, premia on assignments, monies collected in electricity charges, monies collected in import duty, but when they have collected it, they spend it as they please, on what they please without any form of control or advance knowledge by this House. The Chief Minister may care to say how he expects that we can be an effective guardian of the public purse in those circumstances. So, Mr Speaker, revenues have been gradually and over the years diverted to special funds away from the Consolidated Fund and they have been diverted, by means of a process using the Public Finance (Control and Audit) (Amendment) Ordinance - I do not argue on my legal opinion and do not pretend that my political submission in this House have any more political credence simply because I am also a lawyer but I have also said publicly what I am attempting to achieve in this motion is to defend my arguments politically and not primarily legally - to create special funds and using an amendment which they themselves introduced into the Public Finance (Control and Audit) (Amendment) Ordinance in Section 20 thereof. By regulations under that Ordinance establish a special fund, for example, the Social Assistance Fund and by regulation they say that the revenues of the Social Assistance Fund shall include Government's takings from import duty. Hey presto! There is a law of the kind that they may or they think is referred to in Section 63 of the Constitution as entitling them to pay that revenue other than to the Consolidated Fund. Section 63 of the Constitution, Mr Speaker, says

"All revenues or other monies raised or received for the purposes of the Government of Gibraltar, (not being revenues or other moneys that are payable by or under any law into some other fund established for a specific purpose, or that may by or under any law be retained by the authority that received them for the purposes of defraying the expenses of that authority) shall be paid into and form one Consolidated Fund". Therefore the Constitution of Gibraltar says that unless revenue falls into the exception in brackets in section 63 of the Constitution, there is a constitutional obligation to pay it into the Consolidated Fund so that the whole constitutional mechanism of appropriation bills and having to seek the approval of this House to spend Government's revenue, then applies to that revenue. The question arises, as a matter of law, whether having written a little regulation made under the Public Finance (Control and Audit) Ordinance, saying that the revenue of the Social Assistance Fund, for example, shall be import duties, that that is capable in law of being a kind of law of the sort referred to in the Constitution, being a law which provides for revenue to be payable into a fund established for a specific purpose. Mr Speaker, I am going to go on very briefly just to outline, without wishing to make them stick, although if provoked in my reply I will not hesitate to give the full legal argument. There is no question of taking Government by surprise even if you should decide to take this matter to court. I would not then seek to take the Government by surprise by legal argument. Mr Speaker, the section in the Constitution says "payable by". "Payable by" in those circumstances must mean that the law requires "payable" meaning "mandatorily payable". For example, and that is why there is a section 3 to this motion, the Imports and Exports Duties Ordinance, says "That the takings of import duties shall be paid into the Consolidated Fund". That is a law which requires that particular kind of revenue to be payable into the Consolidated Fund and there is a second question as to whether any of the special funds of the Government meet the requirement, for that exception to come into force, that the fund be established for a specific purpose. The principal purpose of most of these funds is nebulous, generalised and could be applied almost to anything. As if that were not bad enough, the very amendment that the Government has passed to the Public Finance (Control and Audit) Ordinance, allowing them to pass monies from one special fund to another, is much more than capable of rendering none of these special funds to be funds set up for a specific purpose. Mr Speaker, let nobody on that side of the House think for one moment that I am not aware of every intricate statutory provision upon which they seek to rely legally for what they have done. Presumably they have legal opinions to the contrary, just as my legal opinion can be wrong, so can theirs. The fact that they have a legal opinion does not mean that that is what the law is. The fact is that even if the conduct of the Members opposite is capable of justification in law, it is still, in my political submission, a manipulation and abuse of a legal

procedure that was not intended for that purpose and it is an abuse, a political abuse of that legal procedure for the quite different purpose of organising Government's affairs in a way that requires them to give the least possible information. Mr Speaker, I want to summarise, again briefly, the gradual build-up that there has been over the years of these diversions of funds. Mr Speaker it is just for the record of this debate because of course Members will be aware of it, but by Legal Notice 140 of 1991 - which of course the purpose of which is to make provision for the future repayment of the public debt of Gibraltar - regulations were passed under the Public Finance (Control and Audit) Ordinance setting up the sinking fund so that the revenue of that fund should include stamp duty and exempt company tax. By Legal Notice 34 of 1992, ground and sundry rents and premia on lease assignments were stated to be properly the revenue of that fund. I am choosing my words carefully because one of my legal arguments would be that regulations made under the Public Finance (Control and Audit) Ordinance for the purposes of regulating a special fund cannot, as a matter of law, have any effect other than regulating the fund that it set to establish. Therefore, when a regulation made under that Ordinance says that import duty, for example, may be paid to the Social Assistance Fund that is permissive as far as the Social Assistance Fund is concerned. It cannot be mandatory as far as section 63 of the Constitution is concerned. By Legal Notice No.21 of 1991, company tax was stated to be the admissible revenue of the Gibraltar Investment Fund. The Gibraltar Investment Fund has as its main purpose to promote the economic and social development of Gibraltar by investment of public monies in such commercial or industrial undertakings as the Government considers beneficial to the promotion of such development. We may have to argue as to whether that is a specific purpose as well but that does not form part of what I want to say in this House today. That fund, Mr Speaker, the Gibraltar Investment Fund, which had been set up in 1988 by Legal Notice No.54 of 1988 is then for some mysterious and unexplained reason cancelled and a new Investment Fund set up by Legal Notice No.35 of 1992 in March of 1992. But the new fund, the new Gibraltar Investment Fund set up in March of 1992, is deemed to have existed since the 21st April 1988. Mr Speaker, such a ridiculous device is by itself enough to heap scornful suspicion and criticism on the clarity of Government accounting of public finance. To set up in 1992 a fund and say that it has existed since 1988 when public accounts for the intervening years have already been tabled is of dubious propriety and gives a good idea of this Government's attitude to the whole concept of financial reporting propriety. It would certainly not be admissible in the private sector. It amounts or is capable of amounting, without explanation, to fiddling about after the event, doctoring the records to fit the reality instead of the realities being correctly reflected in the record in the first place. By Legal Notice 31 of 1992, electricity fees were made properly admissible

revenue of the Gibraltar Electricity Fund and I have been to the import duty point which was diverted, as I call it, to the Social Assistance Fund by Legal Notice 42 of 1992. The purposes of the Social Assistance Fund is to give assistance to meet social needs of individuals according to criteria determined from time to time by the Government. Whether that is capable of amounting to a specific purpose within the meaning of section 63 of the Gibraltar Constitution is another thing about which we shall have to argue at another time and in another place. Mr Speaker, other special funds have been created to receive and spend income from workers' hostels, fines and the proceeds of sales of property under the Drugs Ordinance, revenue from telecommunication services and the proceeds of sales of coins. Mr Speaker, worthy causes all of them I am sure. One might even be tempted to say because the cause of the special fund is worthy, let us leave the matter at that and let us not get too technical about whether they come to the House or not. Alas, Mr Speaker, the political deviousness of the plot is developed yet further because not content with collecting and paying revenues into special funds and spending them from those special funds without the knowledge of the House at the time until we get the accounts for this year which has to include a degree of accounting in relation to these special funds. The Government then amends, as I have said section 20 of the Public Finance (Control and Audit) Ordinance so that it can transfer monies from one special fund to another. The financial hotchpotch and the total absence of accountability to and control by this House is now completely complete. The Government could spend monies in the general sinking fund which is itself established for a perfectly innocuous purpose for the purpose of the Gibraltar Investment Fund ie almost anything at all. The fact that revenues are paid into a particular special fund is no guarantee any longer that those monies would be spend on the substantive purposes for which that special fund was established. That is why you cannot treat the worthy purpose of any fund to justify what we regard as these disgraceful, in political terms, goings on. Mr Speaker, perhaps I should just mention that it might surprise the Members opposite that having made a public allegation of breach of the Constitution that I have carefully worded the motion so that it does not in turn make an allegation of breach of the law. Not that I resile from that, as I have already repeated, but it was an attempt on my part, which I do not mind abandoning if others wish me to, not to convert the floor of this House into a court of law which it is not. My submissions on this motion in this place do not have sufficient merit, whatever the legal position might be on a political level, for the purposes that concerns me in this House today. They have no merit that I should properly try to defend in this House as opposed to in another place. I make that comment, Mr Speaker, because in his opening speech in the Budget Session, the Honourable the Financial and Development Secretary commented that I had now moved a

motion in slightly different terms to the comments that I had made in public and I thought I would offer him that as an explanation as to why that was so. Mr Speaker, as I say, and as the Constitution in section 65(1) says, "The Financial and Development Secretary shall cause to be prepared and laid before the Assembly before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of Gibraltar". I do not wish to sound pedantic but those words are crucial because "of Gibraltar" means "of Gibraltar" and not "of the Consolidated Fund", which is how the Members opposite and those that advise them on matters of law - be they wherever they may be physically situated - have presumably taken the view that those otherwise clear and unambiguous words in section 65(1) of the Constitution namely "of Gibraltar", in fact, do not mean of Gibraltar, they actually mean of the Consolidated Fund. Never mind what Parliament in England approve. We are going to interpret it as if that section 65 read "of the Consolidated Fund" because it follows the practice of laying before this House estimates of the revenues of Gibraltar which do not include those items of revenue which are paid into special funds and not into the Consolidated Fund, in order to properly exclude those items of revenue from the revenues required upon a clear interpretation of the words "of Gibraltar", you would have to read section 65(1) to read "not of Gibraltar" but of the Consolidated Fund. Presumably nobody, not even the Honourable Members opposite, would argue that simply because they are paid into a special fund, those excluded items of revenue are not the revenues of Gibraltar. The fact that the Honourable Member opposite passes a little regulation saying that import duties should be paid into the Social Assistance Fund does not mean, presumably in his opinion, that import duties are no longer revenues of Gibraltar. When he passes a regulation that says that company exempt company tax or that ordinary company tax should be paid into the Gibraltar Investment Fund, presumably he does not think that company tax is no longer revenue of Gibraltar. If he thinks that by paying it into a special fund, he no longer has to give estimates of that revenue, he has to interpret section 65(1) of the Constitution as if it read not as it reads "revenues of Gibraltar", which is what he is required by those words to give, but he is interpreting it to read as in section 65(1) required him to give only estimates of the revenue of the Consolidated Fund. Mr Speaker, I warned that notwithstanding what I am trying to achieve here and what I have said before that I might have to stray momentarily into legal terrain, there is, in our opinion, no correct legal basis for this interpretation of words that are otherwise unambiguous and crystal clear. Those that take a different view have to resort to circular arguments of statutory interpretation, such as, for example, there are others, the marginal note of section 65 of the Constitution, which is the one that requires them to give estimates in the first place. The marginal note of that says "Authorisation of Expenditure". Well it follows that in calling for the production of estimates

of revenue and expenditure, no fool that wrote the Constitution could possibly have required us to give estimates of revenue, the expenditure of which we do not need an Appropriation Bill for. Mr Speaker, with the greatest of respect to anybody that results in strained arguments of statutory interpretation such as those, they have to contend with the fact, firstly that the first and golden rule of statutory interpretation is that you do not have to have recourse to statutory interpretation rules when what the law says is clear. When the highest law of this land, the Constitution, says that the Financial and Development Secretary shall cause to be prepared and laid before the House of Assembly before and not later than thirty days after the commencement of each financial year estimates of the revenue and expenditure of Gibraltar, ie the whole of Gibraltar not of the Consolidated Fund for that year, who could possibly read those words and knows how to read the English language and say or think that they are ambiguous or unclear to the point where we have to resort to other meanings and techniques of statutory interpretation to work out what the illiterate draftsman meant when he wrote those words down on paper. They are crystal clear. Their meaning is crystal clear. If you have to resort to tricks and devices of statutory interpretation to try and find another meaning, to try and justify another meaning, what you are trying to do is to justify a practice which the law, clear as it was on the first place, did not sanction. Mr Speaker, those that seek to interpret the Constitution differently to the obvious and clear meaning of the words that it uses, also have to contend with the inescapable reality that the Constitution itself clearly envisages that certain Government revenue would not go into the Consolidated Fund. Yet the Constitution still calls for revenues of expenditure of Gibraltar which clearly means all of Gibraltar. So let nobody argue that the poor person that drafted this Constitution did not mean what she said because she was not taking account of the fact that some revenue might not have to be paid into the Consolidated Fund. No! The person, in line ten, wrote the requirement calling for the production of estimates of revenue and expenditure of the whole of Gibraltar had ten lines earlier herself (I understand it was a lady) had also written that certain types of revenue might not have to go to the Consolidated Fund. It was clearly in her mind and we should therefore assume that because her memory survives more than ten lines worth of writing, then when she wrote the words "of Gibraltar" in section 65(1) she had not completely forgotten what she had said in section 63(1). Therefore, Mr Speaker, just by way of summarising that point which is an important point in the two that I make. The logic, presumably, the legalistic logic upon which the Government relies to justify or to take its view that I am wrong when I say, even legally, that section 65(1) of the Constitution has been breached, is this, that notwithstanding the fact that section 65(1) of the Constitution calls for the production to the House of all estimates of revenue and expenditure of Gibraltar,

that could not possibly have been what they meant, they must have meant estimates of the revenues and expenditure of the Consolidated Fund. Mr Speaker, I suppose if you try hard enough and if you rely on the principle that no one is going to go to the trouble and expense of challenging you in court, you can think of almost any strained legal argument to justify any activity that you like. Speaking purely politically, though not legally, Mr Speaker, I have a certain but very limited degree of sympathy for this Government because this perverse logic is actually not of their invention. The truth be told. Dealing with the question of whether the estimates of revenue and expenditure are constitutional or not, they actually did not invent this particular dog because it has been used before. But again the scale has now been blown to such proportions that they realise, presumably, that this was an excellent device and let us see how they can use it more often and to greater effect, perhaps. But it has been used before. What is of their own invention, as I say, Mr Speaker, is the scale of the resulting abuse. To demonstrate the fact that it is not of their own invention, social insurance - I give this only as an example - and national insurance contributions have, as far as I am aware, always gone into a special fund and estimates of revenue from those sources have never been given in the general estimates of revenue. I do not know if the Chief Minister may be able to correct me on that. As far as my research has been able to go, there are instances such as that perhaps going back as far as 1969 on the very day on which the Constitution was written I do not know. Two points need to be made in this respect, Mr Speaker. Firstly, is that from a legal point of view the fact that it has been done before is completely irrelevant to the question as to whether it is lawful or not. The fact that previous Oppositions have either not noticed it or had not thought it serious or perhaps have taken a different view, is not authoritative for the purposes from what the law of the land actually is. It might be unfortunate for the Members opposite, if I am right, that of all the Governments since 1969, they are the first ones to fall foul of the sharp eye of the Opposition, but that would have to be so. Mr Speaker, the other point that I think arises and needs to be made is this. In the past it has been done in relation to income raised for a very specific purpose and spent on that and only that specific purpose. Now we have slightly changing ground rule. Now we apply that precedence to general sources of income - import duties, income tax, rents, stamp duties and we credit them to a special fund that has no specific connection with the nature of the revenue. So, although it is no answer in law, I think, at least, it is an answer politically that the precedent of monies raised by way of social insurance contributions and national insurance contributions, ie revenues raised for that specific purpose, to be paid into a fund to administer the funding of the Social Insurance Scheme and the National Insurance Scheme and only that, is not a precedent which is politically valid for the collection of revenues of a general nature, such as income tax which is not collected for a specific

Government expenditure as is social insurance contributions. It is then put into a special fund for purposes that has nothing to do with the purposes for which the money was collected and, worse, then transfer it from one special fund to another as the fancy takes you. To the extent that there is some sort of precedent - legally it would not save the position if I am right, if I am wrong of course I am wrong and that is the end of the matter - even politically that precedent would not help because it has been used in a very different form and in a very different way. Mr Speaker, in my opinion this practice in relation to the adequacy of the estimates presented is illegal but whatever the position might be in law - I cannot repeat this often enough - the proliferation of the practice to the present scale and that it should be done by regulation is pure political abuse of the system of public accountability contained in the Constitution. Whatever the law might be, it was perhaps naively drafted by persons who never contemplated the fact that it might fall into the hands of a Government obsessed with secrecy. I think it is important to emphasise that points one and points two of my motion make quite different points even though they both arise from and is part of one device. Firstly, and unfortunately it is the point covered in point two of the motion, but firstly so that the chronological order of the device should be followed, the Government creates funds under Public Finance (Control and Audit) Ordinance by means of regulation, obviously, under that Ordinance. In those regulations which it publishes on a Thursday, the Government itself decrees that an item of revenue, for example, import duty, be paid into the Social Assistance Fund. All revenue so diverted into such funds, all set up by regulations, therefore do not go to the Consolidated Fund and therefore Government does not need an Appropriation Bill to spend it. The legality of this first step itself depend on the questionable, as I have said, issue of such regulations of the sort of laws by which the Government can divert funds from the Consolidated Fund within the meaning of section 63(1) of the Constitution. That, however, is a separate and second legal point that rises out of all of this. That concludes the first step of the device and is the practice complained of in point no.2 of the motion. The second step of the device is to say "If we do not need the permission of the House by means of an Appropriation Bill to spend the money, then we do not need to give them estimates of revenue of what we collect and pay into special funds so that we can then go on to spend it without their permission". That is what I say is unconstitutional and that is the practice complained of in point No.1 of the motion. Mr Speaker, as I have said before, the Constitution requires that the estimates should include the revenues of Gibraltar. By what stretch of the imagination can anyone correctly think that these items of revenue are not revenues of Gibraltar. If income tax, company tax or import duties are not the revenues of Gibraltar, well whose revenue is it? Mr Speaker, the acid tests that show the extent of the political abuse that the Government practice represents are these. It

leaves this House with no meaningful picture of public funds or of the financial position of the Government until several years after the event. Who can possibly think that that is right or even what the Constitution intended? Secondly, the House has to vote on the Appropriation Bill, not knowing whether Government is balancing its total budget overall because we do not have a picture that shows all the income and all the expenditure. Government may bring an Appropriation Bill showing that it expects to collect, from the sources covered in the estimates, £50m and it may seek the appropriation of the House to spend £49,500,000. You might say then they are operating a budget surplus. That is OK. They can afford to spend all those things but that is actually not the case because how do we know that the expenditure not reflected in the Appropriation Bill because it has been spend out of special funds, is less than or at least no more than the revenues of which we are not getting estimates? The fact that in the estimates, declared revenue exceeds declared expenditure is not an indication that overall the Government is operating a budget surplus or a usual budgetary position because in order to know whether all Government's expenditure exceeds or does not exceed all Government's revenues, you need the full picture of all Government revenue and all Government expenditure whether it is being effected through a special fund or whether it is being effected through the Consolidated Fund. The political result is that in this House we vote authorising the Government through the Appropriation Bill to spend whatever it was, the odd £50m without knowing whether that will result in a budget surplus or a budget deficit. That is why the Opposition felt last month that it could not vote in favour of the Appropriation Bill. For all I know, that expenditure added to other expenditure that you propose to expend through a special fund may exceed your total revenue. You may be operating a budget deficit and you may be, God forbid after all that you said to the AACR, plugging that hole with borrowed money in relation to recurrent expenditure. Who knows? Whether you are doing it or not is not the issue. The issue is, from the point of view of public transparency and public accountability, that if you wanted to do it, you could and we would be none the wiser to criticise you for it. If, Mr Speaker, as a third acid test, Government's practice is legal and politically acceptable, then the same device could be used to eliminate the budget session of the House altogether. This time next year we may not meet for a budget. We no longer meet for a finance bill because they have transferred to themselves by Ordinance, the power to do by regulation all the fiddling about with revenue raising measures. They have had no compunction about cancelling the revenue raising function of this House. I do not think anyone should shirk at my suggestion that they might so organise their affairs and their powers to eliminate the expenditure authorising function of this House as well. If the device that they have used for these odd £35m - I accept that my figures are a reasonably intelligent guesstimate - is legally correct, if that is the result of a correct legal interpretation of the Gibraltar Constitution, there is nothing to stop them using the same device to divert all the revenues of Gibraltar; all the revenues of the Government. Why stop

at import duty and company tax? All of it, every last dime could be diverted to a special fund and then because they correctly take the view that they do not need an Appropriation Bill unless the money that they want to spend is in the Consolidated Fund, they will not have a need to have an Appropriation Bill again. They collect all Government revenue. They park it into one or any number of special funds and we do not meet in May or June anymore and nobody authorises anything. Nobody knows how much is going to be collected. Nobody knows how much is going to be spent. Nobody knows on what. I was going to say that they could cancel the Consolidated Fund altogether but they might have a little bit more difficulty with that, of course, because certain things are constitutional and legal charges on the Consolidated Fund. I ask myself who could possibly think, whether legally or politically, a legal device that is capable of resulting in the entire regime of sections 63, 64 and 65 being cancelled and worse cancelled at the political whim of the Government of the day, through the process of regulations, not even legislation? If what they are doing is legally and politically right, scribble in the Gazette on Thursdays and the effect of that is capable of being that the entire machinery of appropriation bills set up by the Constitution is, according to their logic, circumvented. Mr Speaker, I think that they would have to find extremely persuasive arguments to persuade any court of law that that could possibly have been what the Constitution intended. I have never yet come across a voluntary constitution. I have come across countries that do not have a constitution but that there should be voluntary constitutional provisions? In other words, constitutional provisions that only apply if the Government of the day want it to apply is something which, in my humble submission, they are going to be hard pressed to justify legally and certainly cannot justify politically even if they can justify legally. The practice results in the House now having no idea whatsoever of what Government's total expected revenue for the year is. The House is, therefore, as I said before and I say in my motion, completely in the dark and can only criticise the Government - hence I echo the words of the leader in the Financial Times that I have quoted before - either on a speculative basis or years after the event. For example, if I wanted to challenge the Government in order that they should not make a mistake and that the people of Gibraltar should therefore think more highly of the politicians in the House, as the Chief Minister commended in 1988; if I should want to criticise the Government for proposing to spend more than they are going to collect, how can I now possibly do that if I do not know how much they are going to collect or how much they expect or they think they are going to collect and how much they propose to spend? I can therefore only criticise them on the basis of clairvoyant or speculative powers that I might have about how much the Government must need to spend

on health from what I know about what they needed to spend in the past. How much the Government must need to spend on the Social Assistance Fund or if that is an impossible task, because presumably they would use this device in that the permanent solution to the whole question of the pensions problem, how much money the Government is now pumping into these funds? Well who knows? As I said, the question is not how much or how little. The question is that I do not know and therefore what I said in the motion is that we now have an incomplete picture to the point where the role of this House in general and of the Opposition in particular to act as a watchdog of public monies and expenditure, is severely prejudiced. I suppose that I could, as and when Question Time arrives and out of context and if one happens to coincide, I could ask, "How much does the Government intend to spend on health in the forthcoming year?" In other words, I could so construct my questions in Question Time to try and get all the information that I no longer get in the Estimates of Revenue. We know Government's track record on answering questions. In fact, their stated policy is to give us as little information as possible, like I got in one of my questions at the beginning of this year. That information is not available. It is not a practical way. I think that I am entitled to that information as a matter of constitutional right. Even if I could through some extraordinary skill at Question Time glean the same information, it is not good enough. Why should I put myself in the hands of the Government's political will to answer questions properly in respect of information to which I think I am constitutional entitled? And what political objection could the Government possibly have to giving us estimates of all the revenues regardless of whether they need an Appropriation Bill to expend it? The fact that they do not presumably suggests that they want to muddle the picture. It is another avenue of possible investigation of Government finances that they erect and, I must take my hat off to them, extremely effectively done because I can tell the Honourable the Chief Minister, that from this side of the House, he has succeeded completely in obscuring whatever transparencies previously existed of Government's finances for the Opposition to do their job. Mr Speaker, I have to say this. Sympathetic as I am to those proposed constitutional changes that the Chief Minister wants to see in Gibraltar that he has made public - I give or withhold my agreement as he announces what he wants to do with the Constitution - I have to tell him that to the extent that he seeks to amend the Constitution with the British Government in a way that gives to the Gibraltar Government, the elected representative of the people, which I support, more powers that they should have in this day and age and takes some of them away from the Honourable the Financial and Development Secretary and others, that I, as the Opposition of the same people with the same aspirations as him, must make sure that in constitutional changes that give him more power commensurate amendments

are also made to the same constitution to restrict his powers or at least to provide constitutional checks and balances. What the Chief Minister should not assume is that he is going to have unanimity of support for constitutional changes to increase his powers and that those of us whose public duty it is to provide the political and constitutional checks and balances to his powers are not going to tell the same people that he tells that then we must have constitutional provisions written in to provide ordinary, prudent standard, political checks and balances to the exercises of his power. If the use that he has made and the scale that he has made of that use, of the Public Finance (Control and Audit) (Amendment) Ordinance and all that I have been talking about all morning, is an indication of the manner in which he uses whatever powers are available to him, let him rest in no doubt that what I have just described would be uppermost in my agenda for any meetings that I might have on the subject matter of constitutional reform in Gibraltar. Mr Speaker, Point 3 of the motion deals with the passing of a decree allowing import duties to be paid into a special fund in breach of the law, namely section 45 of the Import and Export Duties Ordinance which requires import duty to be paid into the Consolidated Fund. Mr Speaker, section 45 of the Import and Export Duties Ordinance reads "Subject to the provisions of this Ordinance, import duty at the rate set out in Schedule 1 shall be charged, levied and collected upon and in respect of the several goods specified in that schedule and shall be paid into the Consolidated Fund". Remember that now import duties are not paid into the Consolidated Fund. They are paid into a special fund, namely, the Social Assistance Fund. Mr Speaker, in criticising that practice and in saying that it is in breach of the law, let the Chief Minister not think that I am unaware of the provisions of section 20 of the Public Finance (Control and Audit) (Amendment) Ordinance, as amended in 1991 by Ordinance No.5 of 1991, which reads, "Notwithstanding the provisions of any other Ordinance the revenue of a special fund established under any written law or under the provisions of section 18(3)(b) shall in addition to any monies which may accumulate thereto pursuant to such law consist of (a), (b), (c), (d) - any monies declared by the Governor to form part of such funds". The Governor has through regulations made for the purpose of the Social Assistance Fund, declared that there shall be credited to the fund, namely the Social Assistance Fund. Originally there was an (a), (b), (c), (d) and then by subsequent amendment in 1992 (Legal Notice No.42 of 1992) an (e) was added to that list-"Net receipts of monies collected by virtue of section 45". Everyone will say that it is clear but because the first line of section 20 says that notwithstanding the provisions of any other Ordinance, for example, section 45 of the Imports and Exports Ordinance, all that follows gives us the legal right by regulation to pass regulations, the legal affect of which we think, is to, in effect, amend section 45 of the Imports and Exports Ordinance and render it not contrary to section 45 to pay import duties into the Social Assistance Fund

as opposed to into the Consolidated Fund as it were. I have to say, Mr Speaker, that in relation to this point I can only become legal and I toyed with the idea for that reason of not including it in the motion at all but I thought that consistency required me to do so. It is our political submission that in law, that is a completely improper (the legal term is ultra-vires) use of regulations made under the Public Finance (Control and Audit) Ordinance and that regulations made for the purposes of regulating the Social Assistance Fund cannot in law affect the Import and Export Duties Ordinance. Of course, I accept that the Chief Minister may have his own different legal opinion or that he may have taken other legal opinions, presumably from the Attorney-General or elsewhere and that whoever has given him that legal opinion has advised him that he can. Mr Speaker, that is why I do not think that the floor of this House should be converted into a court of law and points of law argued. I fully accept that in replying to me the Chief Minister will have to expound the contrary view mainly, but it is not and if I say it is, I am wrong. It is obvious. I do not believe that he thinks that he is breaking the law. I accept that he has presumably taken advice and the advice that he has been given tells them that it is legal. The parties have adopted their positions in preparation for the proper forum in which to resolve that matter at law. Mr Speaker, those collectively are the reasons why the motion first of all recites the three practices which we believe detract from the political function, mainly, the legal function of this House and that is why in the conclusion of the motion, we note with regret and concern that the financial information relating to estimates of revenues and expenditure available to this House is incomplete and reduced to the point where the role of the House in general and the Opposition in particular to act as a watchdog of public monies and expenditure is severely prejudiced. 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 P R Caruana.

The House recessed at 12.55 pm.

The House resumed at 2.40 pm.

HON CHIEF MINISTER:

Mr Speaker, I have already indicated that I will be answering on behalf of the Government in response to the points that the Honourable Member has made in support of the motion and therefore there will be no other Government speaker. It seems to me that the Member opposite in any case has a right of reply at the end. If anybody else wants to say anything additional or new I would imagine it would be more useful to them if they say it before I speak. Alternately, I am prepared to go ahead and speak but of course any new point will be ignored because there will be no other speaker, whoever else speaks on that side.

HON P R CARUANA:

Mr Speaker, the Honourable Members can speak in however many numbers they choose. There is one Member on my side that wants to make a brief intervention. I would like to make it after the Chief Minister. For my part I have no difficulty in offering him by way of giving way or however else the opportunity to reply to anything that my speaker may say by whatever procedural means I can.

HON CHIEF MINISTER:

Mr Speaker, it is his prerogative. If he does not want to be followed by me, then that is fine, but if I do not follow him then I cannot answer him and I do not see why I should have to interrupt him to answer him when I am given the opportunity now for saying whatever he wants to say.

HON P R CARUANA:

Mr Speaker, I was offering to give him the opportunity to speak a second time in reply to whatever Mr Cumming might say if he wants the opportunity.

HON CHIEF MINISTER:

Mr Speaker, the Government is being faced with a call for its resignation. As far as I am concerned we can only resign once. We can be asked to resign seven times but it is still one call for a resignation and I will answer once because that is what this motion is. If anybody else wants to put one more reason why we should resign apart from the reasons the Leader of the Opposition has given us, he might persuade us to resign, so it is worth listening.

HON P R CARUANA:

He can always resign afterwards.

HON CHIEF MINISTER:

Because that is the only thing we are here to answer. We are here to answer for the mandate that we got in January this year from the people of Gibraltar. Therefore, the motion before the House is of course a censure motion. It is a censure motion based on a series of arguments some of which are technical arguments. I would say most of which are technical arguments and a few of which are political arguments. I will deal primarily with the political arguments because that is why officials do not get involved in censure motions because it is not a matter of technicalities. It is a matter of the will of the people and we represent the will of the people and we reflect that will in the exercise of the responsibilities that we have as a Government using our judgement. That judgement can be questioned. I think the Opposition is entitled to say they would not do the things that we do

or they would do things we would not do and that is a perfectly legitimate thing in a parliamentary democracy because otherwise if we all agree on everything we shall all be in the same party, obviously. What I think is unprecedented, Mr Speaker, is to condemn a Government for doing what it promises to do. I am a politician of twenty years standing and as far as I am concerned when I sat on those benches what I would do was monitor the performance of the Government and monitor their policies to see whether if there was a change to what they said they would do during the election campaign and what they were doing once they got elected. The Member opposite has never once in his interventions suggested that anything that we have done in this year's estimates is anything other than what we have been doing since we got elected in 1988, except that the process has continued but it has not just started and that we are doing anything other than what was, as far as they were concerned, the main issue during the election campaign in January this year. That is to say, we went to an election in January this year. We asked our people to renew our mandate. We make no secret of the fact that as far as we were concerned we were asking for substantial support for the continuation of the policies we had introduced in 1988, which they do not agree with and they are entitled not to agree with. If they agreed with this they should not be sitting there, they should be voting for us, so they are entitled to say they do not think we should have carried out the changes we carried out since 1988. The people are entitled to say to us we should not carry out those changes and they have one way of saying it and that is by voting. During the election campaign the Member opposite, in the final debate with me, finished up saying that it was a question of the perception that people had of the changes that we are introducing and so on. Well, that perception is created by the kind of statements that he has made in the House and by the kind of language that he has used in the House because when we come to the technicalities of his argument - forgetting the political, ideological or philosophical elements - frankly, I think he does not know what he is talking about. I honestly think so. I am advised he does not know what he is talking about but independent of the advice I had come to that conclusion myself. I am advised that he does not know what he is talking about by people in his profession because when he is talking about the Constitution of Gibraltar although he has said that his arguments here are the arguments of a politician and not the arguments of a lawyer, he has argued as a lawyer not as a politician. Let us go first of all to the root of his argument. He has done a lot of work on this, if not before he made the public statements in May, certainly since then. I assumed in May when the Member opposite came out with a press release and was then interviewed on GBC, that he had jumped the gun once again. Today it is obvious that he has actually gone into some of the details of some of the things that perhaps seem to me he has missed out. But he has not done everything that he should have done because he has

missed out some and I will tell him which they are. Section 65(1) of the Constitution, which is quoted in the motion, Mr Speaker, does say that the Financial and Development Secretary shall cause to be prepared and laid before the Assembly a statement showing the revenues and expenditure of Gibraltar. The argument of the Member opposite is that the revenues and expenditure of Gibraltar do not just mean the revenue and expenditure of the Consolidated Fund. It is the revenue and expenditure of every fund the Government has got. That is the argument as I understand it. I think if one reads that particular clause in isolation, that is what it seems to say. Of course, the second paragraph of that same clause in the Constitution says "The head of expenditure contained in the estimates for the financial year." That is the estimates clearly in paragraph one. The same estimates "shall be included in a bill to be known as an appropriation bill". Therefore if we had to have estimates of revenue and expenditure for every fund, it will follow logically that we will have to have an appropriation bill for every fund. That interpretation is complete nonsense, because, as I mentioned earlier in the context of the Savings Bank Ordinance, the Savings Bank Ordinance has been classified - and we intend to change it this year because we think it really is a nonsense - as a special fund. Well would we then need to have an appropriation bill every time somebody wants to withdraw money from the Savings Bank because it is Government revenue and Government expenditure? Every time money goes in or comes out? If the Member looks at the estimates of expenditure for 1992/1993 and I sometimes wonder why he wants us to put more stuff in it when he seems to read so little of what is there already. If he looks at page 3 he will find that the Savings Bank Fund has £62.8m and it is shown there as the balance sheet of the Government. It has been done like that always and every time we do changes it is not that we are hatching some machiavellian plot in order to hide some disaster. I do not hide disasters in an economy and certainly not in an economy the size of ours which is only £300m which is peanuts. You can take it out of the front page of the balance sheet but you cannot take it out of the unemployment list, out of expenditure patterns or out of anything else. The real economy is out there and either it is doing well or is not doing well or it is doing medium which is what it is doing at the moment. In looking at this and in looking at the role of the House the fact that we do changes does not necessarily mean that the House is less well equipped to take rational decisions. It can, in fact, be better equipped to take rational decisions and it will certainly be better equipped if it did not think that there is now £62.8m in the kitty because there is not. In the way that it has always been done, the Gibraltar Savings Bank Fund has been simply treated as any other Government fund and therefore although the money in the fund belongs to the depositors and not to the Government, it actually appears as an asset of the Government of Gibraltar which

it is not. The point that I am making, because the Members seem confused, is that next year when he finds that it has disappeared, he does not have to go round like a scalded cat looking for some machiavellian plot to see what I have done with the £62.8m. On this occasion I am telling him before it happens rather than letting him discover it after it happens. If we were to accept his interpretation, then what I am telling him is that - if he looks at page 3 of the Estimates of Expenditure-it would mean that the Estimates of Revenue and Expenditure which start showing income in page 8, which is the income of the Consolidated Fund, would in theory have to be amended to show the income of all these funds. It would so have had to show since the Constitution came in in 1969, if his interpretation is right. The one thing that we need to make clear, for the people of Gibraltar who are listening in to us, is that we have not introduced in the budget in 1992, a presentation of the accounts which is in conflict with section 65(1) of the Constitution because we have introduced a presentation of the accounts in 1992 which is the same presentation of the accounts in 1991, in 1990, in 1989 and in 1988 since we came in. Going back to 1972, since Sir Joshua Hassan came in and going back to 1969, Mr Speaker, when you came in, you did it too. In 1969, in 1970 and in 1971. You came to this House and you presented in this House an appropriation bill with revenues of estimates and revenues of expenditure of the Consolidated Fund and of no other special fund. So we have twenty five years of negligent interpretation of the Constitution. Countless Auditors, countless Chief Ministers, countless Financial Secretaries, all of whom are wrong and Mr Peter Caruana is right. That is not impossible, let me say. It could well be that he is right and everybody else is wrong. I have always been a minority of one so it is not something that I think is such a bad thing to be in and I have very often been proved right. I am not saying that it necessarily follows. He may have stumbled on something that everybody else has got wrong until now and of course we welcome that he should go to the Supreme Court and test it and in fact I will be amending the motion and reflecting that view. The position would be, of course, that if the Member's view was correct and if the Supreme Court ruled that in fact the Estimates of Expenditure of Gibraltar mean more than just the Estimates of Revenue and Expenditure of the Consolidated Fund for the purposes of section 65(1) of the Constitution, we would then have to bring here an amendment to this year's Appropriation Bill. We would have to bring in a new set of estimates showing the estimates of revenue and expenditure of every special fund if he was right. But we would also have to do it for the other twenty four years when we were not in Government because they would all be wrong and it will all be unconstitutional and we would have to correct it all going back to 1969. But of course if the courts told us that that was the case then that is what we would have to do. So as far as section 65(1) that is basically our position. We find

it strange that certainly on that count the Member opposite will want us to resign given that we are demonstrably in good company if we are mistaken and presumably, unless he knew this already, in the election campaign in January, he would have followed the same procedure had he been elected because that is the procedure that is standard. People prepare estimates of revenue and expenditure for the revenue that is the revenue of the Consolidated Fund. Let us look at section 65. Why is that there? It is there because section 63 and 64 lay down a procedure for the expenditure of funds from the Consolidated Fund and do not lay down any procedure for any other fund. Since there is no procedure for any other fund, it is only there that the House of Assembly is required to be given estimates thirty days before. Let me tell the Member that when I arrived here in 1972 and in my first budget in 1973, I started questioning the Estimates of Revenue. I was told that that is not something that one has got the right to question because it is not something on which you are going to vote. You are appropriating expenditure. The revenue is there simply to give the House an indication how it is intended to finance that expenditure and that is what we are showing. How we intend to finance the expenditure out of the Consolidated Fund in the next twelve months. Revenue that is not there is not available for the financing of the Consolidated Fund, it is being used for another purpose. Let me say that the draftsman or draftslady according to the Leader of the Opposition. He says he believes it was a lady that did it. I do not know whether she took a lot of trouble over our Constitution because in fact our Constitution is virtually the same as everybody else's. That is to say, the Constitution of almost every other colony says the same as ours. If I read from section 68 of the Falkland Islands Constitution of 1985, which is much more recent than ours, it says "All the revenues or other monies raised or received for the purposes of the Government, not being revenues or other monies that are payable by or under any other law into some other fund established for a specific purpose or that made by or under any other law be retained by the authority that received them for the purpose of defraying the expenses of that authority, shall be paid into and form one Consolidated Fund". It is down to the last comma and full stop a repetition of section 63 of our Constitution and every Constitution in every colony says the same thing and everybody in every colony thinks that that means the Consolidated Fund. It means the Honourable Member may be shaking the foundations, not just of the Government of Gibraltar, but of the entire empire with his legal action and then every colony might have to go back to their respective House of Assembly and change all these things back to the year dot. Clearly a colonial system of accounting invented in the Foreign Office and exported to the periphery of the old empire and this is why we must change it. We make no secret of course of our intentions to change it. We said so

in 1988. We included in the manifesto in 1988 the creation of the Gibraltar Investment Fund as one of the centre pieces of our economic programme. What we did of course was to, as he himself has recognised, Mr Speaker, look at the mechanisms that were already in existence and had been used prior to 1988 and made greater use of them. I think that is the right for Government. We are elected. We want to do certain things. We look at what is available to us, the tools, and we say to people "Look we want to do it this way". Is it possible to do it this way? Do we have to legislate or is it constitutional or is there another way of doing it or can we do it in a way that is easier?" Based on that advice we do it. But let us be clear, this is nothing to do with policy or politics. If we are told that it is possible to allocate revenue to the fund—as the Member has pointed out by having an amendment to the Public Finance (Control and Audit) Ordinance that says "Notwithstanding the provision of any other Ordinance" - that we want to allocate it and the Member opposite says we cannot. He is not saying politically that we cannot. Of course, politically we can, we have got a majority. He is saying technically we cannot. He is saying technically we cannot amend the control because in fact the amendment that we make means that it is the revenue of the Social Assistance Fund but it is not revenue that is allocated for a specific purpose and therefore that does not allow us not to put it into the Consolidated Fund. Well if he were right, and it would be a technical argument, that is to say, if he were my Attorney-General instead of being my Leader of the Opposition, then I would assume that he had no political axe to grind and I would say to him "OK if I cannot do it this way, tell me how I can do it". But I would not tell him I would not do it. Therefore, we would come to the House and if instead of passing that amendment, we need to pass a different amendment, we will pass the different amendment and we will still do it because it is the policy of the Government to do it. If he disagrees with the policy then it is irrelevant whether technically it is right or not as far as agreeing with the policy is concerned. The technicality of it I am grateful to him for because it demonstrates to me that technically there is an imperfection in the mechanism. I am very grateful that he should point out that imperfection because I want to have it water-tight. I do not want anything to go wrong. So if he tells me that it might be faulted then I will perfect it so that it cannot be faulted. I am grateful to him for that and any further help he can give me on that score I will take to make sure that what we want to do cannot be undone, but it seems to me that that is not in the nature of saying "We do not agree with using the money in the fund as opposed to using it in the Consolidated Fund". In terms of the expenditure of public money, it is quite obvious that the position of the expenditure from the Consolidated Fund has given rise to problems ever since the 1969 Constitution came in. Initially related to how to handle the utilities which were previously the work of the City Council. A

number of different attempts were made and none of them have been very successful. Originally, something called notional accounts were produced. Then in 1976/77 the Government came with the concept of the special funds and created a special fund for electricity, a special fund for water and so on. In fact made it retrospective to 1969. As I remember in 1976 - something which will no doubt have upset the Member opposite enormously if he had been here - the Government brought a law that said "The revenue and the expenditure on electricity in Gibraltar backdated to 1969 is deemed to have gone into this special fund, which is deemed to have been in existence in 1969". I did not actually make a big song and dance about it because they had a problem and they had to find the solution to that problem and we came in and scrapped what they did in 1988 because it was not working. We have now made a new attempt to deal with the problem from January this year. We will see during this year whether it works any better but it is really a great deal to do with double counting. The complex system that was introduced before which we scrapped because it was really a nightmare in terms of keeping track of exactly what was going on. The money was treated as coming into the Government when the bills were sent and then it appeared as revenue. In practice that meant that the Consolidated Fund was meaningless because we had at a stage in 1980 a situation where the Consolidated Fund showed something like £2m and the unpaid bills in the Consolidated Fund was £3m, so in fact the Consolidated Fund was minus £1m. Once that was shown it was then treated as being paid into the special fund and then all the costs of the Government in the utility were shown in the Appropriation Bill and then those costs were shown as re-investments in the revenue side of the picture. So at the end of the day, you had the same money moving across three or four times and inflating the figure of the total expenditure budget. From the point of view of that system, what we did in 1988 was simply to repeal all the special funds and go back to what it used to be like in 1975. We have been operating between 1988 and 1975 simply treating utilities as straightforward Government departments which means really that from a trading department point of view, it is not a very satisfactory thing because as the Constitution says all the revenue goes into the Consolidated Fund and all the expenditure comes out of the Consolidated Fund but there is no attempt to match it or relate it. The fact is that charging people for consuming a service is not the same thing as having a tax. It is a different thing but it is treated identically. That explains what we have done with the electricity charges as from January this year. We have not had to do it with water and we have not had to do it with telephones because they have left us. The three special funds that existed were the Telephone Fund, the Water Fund and the Electricity Fund. We have converted the water and the telephones into private companies and therefore the expenditure is no longer Government expenditure and the revenue is no longer Government revenue

and they no longer have anything to do with these accounts. We were left with the electricity which is a half-way house, as the Member opposite mentioned. Therefore we have gone back to using what was in place until 1988 to deal with that situation of the half-way house with certain technical changes which we feel will avoid the double counting. So until we have really tested the new fund for one year in 1992 we will not really know whether it is an improvement on the situation or not and if it is not an improvement we might scrap it and start again. This is now the third attempt, not by us but there have been two previous attempts to deal with it in different ways from how we are doing it now. This arises because, fundamentally, the purpose of the Consolidated Fund is the provision of central Government services. The accounting systems are designed to do that and the Appropriation Ordinance is designed to do that. It is being used since 1969 to deal with the situation where the Government of Gibraltar was doing everything from running a health service, to running an education authority, to producing water and electricity, to running the police. Well central Government accounts do not normally cater for such a wide variety of different activities and in our judgement it is not an efficient way to run the show and therefore we set out in 1988 to implement a system which will restructure the finances of the Government in a way that we would use the existing resources better and we said we would do that. We were asked in Opposition to explain how it would work and we said "No." We have had many occasions when we told you from the Opposition how to carry out changes and they were rejected. So at the end of the day we said we would do it if and when we got elected. When the people want us to do it then they will vote for us and having got elected we set about doing it immediately. We did not wait. We got elected in March and we started doing it in April. The two centre pieces of what we created which is new. Everything else was there already. The two centre pieces of what is new in the system is the Social Assistance Fund and the Gibraltar Investment Fund. They were really the two things we set up in 1988. We have been building up those two funds over the last five years and we intend to carry them forward as the vehicles for the policy of the Government. The Investment Fund really has its money deployed in three ways. It was used to give financial support to provide funding, to provide cash to the trading companies that were created out of the break-up of GSL in a situation in 1988 where GSL was losing money heavily. We were not prepared as a Government to close it down because we had given our workforce a commitment that we would keep it open for four years. We were not permitted, we were advised, on taking office to give it support from the Consolidated Fund because that was contrary to Community law. If we had come here in 1988 and produced an appropriation bill we were told that would have been contrary to Community law. Like it always happens in the administration of the GSLP when we are faced with a problem we find an answer tackling

the problem from a different angle. So we set up a series of companies. That series of companies took over activities which were not shiprepairing activities ie Gunwharf, the security company and so on. The result of that was that we were able to sustain employment and contract the companies and that was one of the major functions of the Investment Fund in that period. Other than that, in the last four years, the resources that we put into the Investment Fund have come into the Improvement and Development Fund or are in deposit in the Savings Bank. I explained this in the election campaign to the Member opposite when he was saying "What has happened to the borrowed money?" and I said "The borrowed money either has been spent through the Improvement and Development Fund or is in deposit in the Savings Bank." So when does the money get spent? Is it spending money to move money from one fund to another fund? No, expenditure is when it leaves the control of the Government and it ceases to be public money and you pay for a commodity. Mr Speaker, if tomorrow we get £10m from Barclays Bank where we have a loan agreement, which we have not yet used, and I put the £10m into the Gibraltar Investment Fund, I have not spent that money. I have deposited it in the fund. The fund then puts that money into the property company. That money has not been spent. That money is invested in the property company. It is still under the roof of the Government. The property company buys this building and the money appears as revenue in the Improvement and Development Fund - on page 5 of the Estimates. It is still not being spent. It gets spent when we put into effect the decision of this House in the Appropriation Ordinance. That is expenditure. So how can the Member say that because the loan came into the Investment Fund and from the Investment Fund from the Commercial Property Company and from the Company Property Company into the Improvement and Development Fund, we are spending the money without the approval of the House? He knows nothing about it. He has no control. By that reason everytime I borrow ten I can spend thirty because everytime I move it from one fund to another, according to him I am spending it. I am afraid he does not understand and however much information I give him he is still not going to understand. It is obvious that he does not even understand that there is a particular reason why in section 64 of the Constitution it tries to make people like him understand that the investment and expenditure are not the same thing. If he looks at section 64, he will find in 64(4) that it says "The deposit of any money forming part of the Consolidated Fund or the investment of any such money shall not be regarded as a withdrawal of the money of the Fund for the purposes of this section." I do not need an appropriation bill even to take the money out of the Consolidated Fund, never mind the Investment Fund, which is a special fund. The point I am making, Mr Speaker, is that he is bringing a motion asking me to resign because I have castrated the House of Assembly and he cannot exercise his role of monitoring expenditure anymore and I am telling him buying shares is not expenditure. It is investment because

you can sell the shares and you have got the money back and in your balance sheet and in your book, whether you have £1m of shares or £1m of cash, you have got an asset. Expenditure is when you actually use the money to pay for consumables or in the Improvement and Development Fund to pay for the purchase of fixed assets. I think that might persuade him that in fact he has got the wrong end of the stick as regards to special funds. This is why, Mr Speaker, the Public Finance (Control and Audit) Ordinance actually makes special provision for the Improvement and Development Fund to be attached to the estimates of income and expenditure of the Consolidated Fund. If the Member were right and if section 65(1) meant not just the Consolidated Fund but every special fund, which he has confirmed to me is what he is arguing, then since the Improvement and Development Fund is a special fund, why do you need a special law to make that fund appear in the estimates if all of them have to appear in the estimates. The law is totally redundant. If the Constitution says "Every special fund must be included in the estimates", why do you need a law that says "The Improvement and Development Fund exceptionally is the only special fund included in the estimates. Why? There is no need to pass a law to do it. It is already required under section 65(1) of the Constitution according to the Member opposite. I think that is again evidence that it is not required although it is not prohibited. You can actually pass a law making it necessary to do it but the only law that exists makes it necessary to do it in the case of the Improvement and Development Fund. We could repeal that law, let me tell the Member opposite. We could amend that law and we could decide tomorrow to take out the Improvement and Development Fund from these estimates and as far as I am concerned on the basis of the advice available to me and on my own reading of the Constitution and on the reading of all my predecessors, we would still be complying with section 65(1) of the Constitution. So in fact we could actually reduce the amount of information that there is here if we wanted to. We are carrying surplus information. The reason of course why particular treatment was given to the Improvement and Development Fund is not difficult to work out. The Improvement and Development Fund was the recipient of UK aid and, therefore, the UK, in giving aid to Gibraltar, said the fund into which the aid that I give you goes must be included in the budget. If the Improvement and Development Fund that never had a penny from UK, I can assure the House, that that would never have been seen as being an important issue, but of course the UK, naturally, wanted to see that the money it was providing was seen openly and visibly because it was money being provided for the whole of Gibraltar. The decision had to be brought to this House for that reason. So I think, Mr Speaker, it is clear that it is not just a question that we do not agree with the Member opposite in terms of the motion that he is moving simply because we have different philosophical positions. It is that we do not actually agree that even on technical grounds

he is right. The Member recognises that the interpretation of section 65(1) - being the narrower interpretation of saying "This is the Consolidated Fund, its revenue and expenditure" - is in fact, he thought, limited to the failure to include social insurance funds but I can assure him that it is not the only special fund. I accept that what he says is that with the passage of time, the element that is covered in the special funds is much bigger than it was in the past and therefore, to the extent that the volume makes a difference, we have got less control now than before. He can argue as he was doing before. The fact that something has not happened does not mean that something might not happen if there was at some time in the future a different kind of Government. I can certainly demonstrate it has not happened, of that there is no question. This is my baby, nobody else's. The structure was put in and I carried it in my head for sixteen years over there and I honestly believe it is a good structure. It makes sense.....

INTERRUPTION

No! Not for me! For the job that I have to do. This is a tool. The policy; the objective is the efficient management of our resources to secure the future of our people and in looking, as a technician and as an economist and as a Member of the House of sixteen years in the Opposition, at the way things were done and at the available mechanisms, it seemed to me that there were some mechanisms there which could be put to better use than they were being put. When we went in, we went in with the intentions of doing it. We spelt it out. We spent four years doing it. We go to an election in January. The Member opposite criticises what we had been doing, which he is entitled to do but what I cannot understand is how we can be condemned; not for renegeing on the policies on which we got elected three months ago but for trying to fulfil them. It is an incredible situation. I think there must be no similar parliament in the western world. Every Government that I have ever known that has been asked to go has been asked to go because it is not doing what it promised to do two months before. Well, we promised two months ago that we would continue with the same policy that we had been carrying out since 1988 and the Member accepts that this policy has been there since 1988 and he is saying that it is now almost complete. He is right. It is almost complete now. There are a few more things that I would like to do, but we are nearly there....

INTERRUPTION

HON CHIEF MINISTER:

No! It has nothing to do with £50m. He does not understand or he does not care. I am not sure which it is. If there was political honesty and political integrity in what he was saying when he talks about abuse. The language that he uses suggests that he really does not understand or he does not really care because as far as he is concerned he just wants to make a political attack and therefore this gives him a good platform to do it. If so, good luck to him but I will then save myself a

lot of time and a lot of energy and my breath and not try and explain it. If Members opposite genuinely want to know what is the mechanism and how it works and so forth so that they can understand it better, that is fine, but if when they get one explanation they will simply say the explanation is not satisfactory or find another reason for faulting it, then I will not bother with the original explanation. It really does not make any difference. I do not think they really care because I cannot believe that the Member opposite does not understand that the money that he mentioned that goes into the general sinking fund in any way reduces the power of the Opposition to approve or not approve expenditure. Why? Because the servicing of the public debt is automatic. I do not need an appropriation bill. I can simply get the money from ground rents, put it into the Consolidated Fund, take it out of the Consolidated Fund, not tell the House until the accounts are audited years later. I do not need approval. I do not need a law. I can do that already. It has been going on already in the servicing of the debt since 1969 and he will find it detailed in 'Consolidated Fund Charges' on page 19 of the Estimates of Expenditure, Mr Speaker. So it is there.

INTERRUPTION

Well if he says so himself what is he complaining about? How can he come along and say "But the Member opposite is now able to spend that money without the House having to approve it, but I said myself that he could already spend it without the House having to approve it". So if I could already do it why should I go to all this trouble to do what I can already do? What is it that we have done? Why is it that we have done it? If we can already do it, why have we set up a special fund and we are putting money away there for the repayment of the national debt if I can already take out of the Consolidated Fund without any law, without any appropriation, without the vote of the House, whatever money I want to repay the public debt? Why? Because we said in the election campaign we would do it. In the election campaign the Member opposite accused us of leaving a burden of debts for future generations of Gibraltar with this optical illusion that we had created out of borrowed money. Remember that it was only January that we had been told that for the last three years we had had a huge increase in massive debt, which is not true - the debt went up in May 1991 - that we had spent all this money and artificially created an optical illusion and that future generations of Gibraltar would be debt-ridden and unable to pay for it. In the election campaign we said, "No, we will make provision to pay the debt. The debt has got fourteen years and we will make provision to pay the debt." And we have! It is not that we are doing it to avoid having to vote money. We do not need to vote money. What we have done is that we have selected things which are related to the developments because we are trying to think of a way of matching the management of our finances with commonsense and logic. If you are going

to have money that you borrow and that money goes into property development and the property development produces ground rents, let us put the ground rents into a fund to pay back the money we borrowed, that is good housekeeping. We do not need to do it. We can do it already but it makes more sense. They did not get that explanation during the estimates because they chose not to have it. They chose to bring a censure motion before hearing the explanation. Why? Because they are not interested in the explanation. If they had been interested in the explanation, they would have waited to hear what was the reason for the changes this year like they have had a reason - not they, because they were not here - the Members that were here before were given a reason everytime we introduced a new thing. I would stand up at estimates time and I would say "If Members look at this year's estimates, they will see that there are differences between this year and last year and so that people understand what the differences are I will now explain them" It does not deprive somebody of the right of saying "I do not agree with the changes." They can still criticise it and say "I think it is not a good thing" or "I think you have made a mistake" or "I think it is going to be worse" but if you have already made up your mind that it is bad before I have stood up and explained it, that makes me think that really you are more interested in saying that it is bad than in finding out what it is. That is the conclusion that I have to come to and therefore I can tell the Member opposite, certainly if he goes down the route of saying "All this money has disappeared. We have now one third of the revenue and we do not know where it is going." We have got money that is going into the the Investment Fund and I have already explained that the Investment Fund will continue operating as it has been doing since 1988 except that fortunately for us the area of restructuring of GSL is now behind us. So now either we will be investing the money, as we said in the manifesto and as I mentioned in the budget, through the Gibraltar European Investment Trust or it will go into the Improvement and Development Fund. It will only get spent as a result of an appropriation bill when it comes out of the Improvement and Development Fund. If we look at the money that is going into the General Sinking Fund, that money in that General Sinking Fund will be used to repay the £50m of debt. We could have done it already out of the Consolidated Fund. We do not need a bill to do it now and we did not need a bill to do it before. We did not need to bring estimates here on that particular aspect because it can be shown in the final audited accounts but it was consistent with what they were accusing us of not doing and which we said we would do. They put in their manifesto that the loans were there and how were they going to be paid? They are going to be paid out of the General Sinking Fund. How are they going to be funded? They are going to be funded out of the things which we have identified that are going to the General Sinking Fund and the General Sinking Fund has been created. It is deposited in the Savings Bank and the money that

we get from a number of things that we consider to be related to the success of our policy of investment in infrastructure and investment in buildings will hopefully, in fourteen years, mean that whoever is in Government in fourteen years time has not got a problem of saying "Tomorrow I have got to go back to the London Stock Exchange and repay £50m, where am I going to get it from?" Well the £50m will be there for him to repay back. So we are not leaving future generations of Gibraltarians with debts that they cannot meet. But that money is not being spent now. It is not spending money to put money in a Savings Account. And you do not need an appropriation bill to do that. The third element, Mr Speaker, is the Social Assistance Fund. The Social Assistance Fund has taken over the money that was provided to the Health Authority as well and therefore the basic numbers are that the Social Assistance Fund is really giving support to three fundamental activities is healthcare, home-ownership and social assistance. We are talking about a budget of the order of £18m a per year. That budget is the kind of level of yield we expect from the receipts of customs. That is what we expect in terms of a normal yield of customs and really it is divided into three equal parts. That is that about £6m will go to support the health service, £5m will go to support home-ownership and £6m will go to support community care. The only difference is, of course, that last year the money came in and the money went out in one lump sum and when that happened the Member opposite stood up here and told the House that "24% of the money that is being voted for will, in effect, as far as this side is concerned, be given on a blank cheque basis. As far as the duties of this House is concerned, I should know exactly how the money is being used for and how it is being administered and therefore where are these funds? To what extent do we know anything? I do not know if Members opposite accept my mathematics but I say 24% is what the Government is saying to us to vote on a blank cheque basis." So what he was saying a year ago, before we took this step, is that we were already, he says, spending the money without the House knowing anything about it. The only difference is that instead of the money coming in and going out, it is now going straight into the fund that spends the money. That is the only difference and if at the estimates time, as I explained at the time, we were not going to give him the explanation then and have the motion on the Order Paper, we waited until the motion because he preferred it that way. The Member opposite, when we got to that Head, said "Right, there was £10m going to the SAF and £5m going to the Health Authority, where is the £16m now?" The answer would have been that it is going into the same area but now it goes straight from import duty into the SAF. As well as being consistent with the restructuring exercises that we have been doing since we came in in 1988, from our point of view, it has other advantages. We would not have done it just for that reason alone. Not least of which is who is entitled to claim? I think we can now demonstrate that these benefits that are being provided are being provided exclusively from the yield of import duty and

not from any other source. To my knowledge there is nothing in the European Community that tells anybody how they use their import duty and we choose to use our import duty in this way and therefore there are no contributions, conditions, residence requirements, nationality conditions or anything else that anybody else can put their finger to anywhere else. That just happens to be a side bonus, if you like - the icing on the cake. Mr Speaker, we consider that in carrying out these changes we can demonstrate to the satisfaction of the people - indeed we demonstrated that, as far as we are concerned, to their satisfaction a few months ago - that everything that we are doing, we are doing in order to meet the objective at the end of the day of a well run efficient system which will use the resources of Gibraltar which are very, very limited in the way that maximises the benefit for our own people and minimises the exposure that we have to pressures from others. I am not saying that we will never make a mistake. I did not pretend that we did not in the election, but I can tell the House and I can tell the Members opposite that it is very, very tough going and certainly, as far as I am concerned, the idea of abstaining on this motion and letting them run the show is quite tempting. It is not blackmail in case Mr Cumming thinks that I am trying to blackmail anybody because presumably he cannot accuse me two weeks ago of blackmailing the people of Gibraltar because I said in a television interview that I was not prepared to continue in office unless we had the clear support of working people for whose benefit we are here. At least in his position if he is coming here asking me to resign today, he should not have considered it blackmail three weeks ago that I was saying I was going. He should be coming here and saying "Go ahead and do it" like the Leader of the Opposition is saying. It looks as if Mr Caruana is keener to see me go than Mr Cumming, Mr Speaker. That does not mean that the Members of the Opposition are not perfectly entitled, constitutionally, to bring a censure motion now and one in every House if they want to, that is their prerogative. All I am saying is that if at any point in time they can persuade us that in the best interests of the people of Gibraltar, they are better placed than we are to carry out this major enterprise which is creating an independent Gibraltar in the not too distant future, economically initially of course because in the world in which we live, the ultimate basis for the right of self-determination has to be the fact that we are able to pay our own way and unless we get that we are in the hands of others. Honestly, if at some stage the Members opposite were demonstrably better equipped to carry on with the task than we were doing because we were making a lot of mistakes and getting a lot of things wrong, we would no longer be acting in the best interests of Gibraltar in resisting their take-over. So I think they must bear in mind whenever they bring censure motions asking the Government to resign just how reasonable I am and how easily persuaded I can be. We did it once in January this year. I do not think it is very normal to call general elections several times in one year. It is normal to do it once every four years. We have

no magic wand. The things that we are doing, honestly, are not essential but they are things that have got practical benefits that we have quantified. But, of course, they are not make or break. If we did not put money aside in the General Reserve Fund to pay off the £50m of debt in fourteen years that is not going to break the bank but we said that we would do it. We promised to do it in January and we started doing it immediately. We put in £14m directly from the Consolidated Fund which we do not need to vote, we just take it out and put it in. We can do that anytime we want. The Loans Empowering Ordinance allows us to use the money from the Consolidated Fund for the servicing of the public debt. The Constitution does, it is a direct charge on the Consolidated Fund. You do not need to vote money to repay debts. If the Member opposite looks at the Estimates of Expenditure he will see, Mr Speaker, that in the year that has just finished, at the beginning of the year we put in an estimate of £5m for paying back some of the revolving bad debt from NatWest. At the end of the year, the revised figure showed £15m. That means that during the year we took another £10m out. We did not tell anybody. We did not need to tell anybody, not because we have done it, not because we have introduced any new law, not because we have changed anything, because it has always been like that. So in putting money into the Reserve Fund, we were not doing anything in order to avoid the House having to vote the money because the House has never voted the money. Whenever I make the point, the Member says "Well who says anything different." Well you say something different, you are condemning the Government, Mr Speaker, for failing to bring estimates to the House not because he does not like the fact that the estimates are not there - because I do not see why that should not be a consideration - but because his ability to act as a watchdog of public expenditure is prejudiced and I am telling him that it is a lot of nonsense. His ability to act as a watchdog of public expenditure is not prejudiced by what we have done. It is prejudiced by his incompetence and his ignorance! That is what it is prejudiced by. He would not be able to monitor public expenditure if I put every conceivable nook and cranny of the Government in front of him and try to take him through it because he has not got a clue of what he is talking about. That is what I am saying. So why does he sit down there and say "why? why? why?" Because that is what you are saying that I have done and I am saying I do not need to do that to you. You cannot be the watchdog of public expenditure even if you join the Kennel Club. That is what I am saying, I am sorry I get carried away, Mr Speaker. So the reason for calling on the Government to resign is because we have interfered and that seems to be the reason. The Member opposite started quoting what I said in 1988. What I said in 1988 - not that it happened, but I suppose it never happens, I suppose all Governments say it and all Oppositions ignore it - was that the responsible way to behave as an Opposition was to be helpful to the Government. He is saying how can I be saying that and then make it impossible for them to be helpful because I am depriving them of

information. I have tried to demonstrate, Mr Speaker, that the things that he has mentioned that we have done are basically putting money into the Investment Fund. I said to him that I can demonstrate that that is not money that I am spending which requires an appropriation ordinance and that, therefore, you are not being deprived of monitoring that as expenditure. I said to him that the other money is going into the General Reserve Fund and that there you are not being deprived of being the watchdog because that money never required an appropriation bill. That money can simply be removed from the Consolidated Fund because it is a direct charge. The third money which legitimately you could say "Well, yes, that is something that I should have been the watchdog", you said last year, before I did it, that you had already stopped being the watchdog. I just quoted you in Hansard. You said last year that the money that went into the SAF and the money that went into the GIH was 25% of the expenditure and all that you could tell was that the money was going there but you could not tell how it was being spent, so you could not exercise your role as a watchdog. So if what this censure motion is about is a system that was there twelve months ago and we have been to an election four months ago and we have defended the system four months ago and the Member opposite has attacked it as he is entitled to do and we have been able to persuade 73% of the people that if they put us back we are going to carry on with the system and that it is a good system and that the accusations of the Member opposite are not justified and he has been able to persuade 20%, then I do not see how he can condemn us for doing what we asked people to vote for. That is what they are supposed to be doing. What is wrong, in political terms, is if we had said, as we did in our election manifesto, "We promise people that when we get elected we will be putting in a mechanism that will be putting money aside to pay off the debt." So nobody needs to have sleepless nights about what is going to happen to us if the economy does not perform as well as we would all like to see it and therefore in a number of years we are having to pay £50m and we have not got a penny. What are we going to do? The Members opposite said that we had no answer. We said that we had an answer. The reason why you say you do not have an answer is because you have not thought what to do. We had it ready and planned and the moment we got in we did it. If we had not done it, I think the Member opposite would have been entitled to come with a censure motion today. Not from what I have done. If I had not done it, he could have come along and said "Where is the mechanism you said in the election you were going to put into paying off the debt? I do not see it. It is not in the estimates. Have you done something else? Where is it?" In fact, in doing it we do it by publishing it and we published it in May and therefore by the time we came to the House, what we were doing and how we were doing it was already in the public domain. The element other than the one dealing with the Constitution and the appropriation of funds in the Member's motion is the one to which he made a reference as to whether the amendment

to the Public Finance (Control and Audit) Ordinance, which allows the allocation of funds to a special fund, is sufficient to, if you like, compensate for section 45 of the Imports and Exports Duties Ordinance, which he claims in his motion it is not. He chooses to call it a decree. I suppose that he thinks that that makes it more forcible. They are not decrees as far as I am aware. If he can point to somewhere where there are powers to make decrees I will investigate the possibility.

HON P R CARUANA:

..... as opposed to the measure of the legislature and as that is exactly what regulations are, regulations are decrees.

HON CHIEF MINISTER:

I am glad he has explained it because I am sure most of Gibraltar must have been as mystified as I was as to what the decree was. The answer to the point that he is making there, which I have not dealt with, is quite simple. I think I referred to it earlier on. As far as the policy of the Government is concerned, this is the policy. The instrument that we have used to carry out that policy on the advice available to us is technically capable of doing what we want it to do but in fact I will make sure. He has already raised it once in question time and I have already asked for the advice once and I have already been told once that it is alright but I will go back and ask again. Maybe I should not ask the same person. Maybe I will ask somebody else. But if there is any doubt at all then we will come here and amend the principal ordinance. We will certainly not change what we are doing. Let that be absolutely clear because what we are doing is a political decision and it is a matter of Government policy and the Government will stand by that policy and defend it or go because that is what we think is the right thing to do morally and politically. We believe that that is the way we should conduct the affairs. We believe that that is the most efficient way to do it. We believe it will produce the best results and if that is what we believe that is what we have to do. We then have to go to technicians and say to them "Make it possible for me to do it". If at the end of the day somebody said "It is the Constitution that does not make it possible", the basis of that argument can only be that the Constitution has been misinterpreted by every Government in Gibraltar since it was written all of whom have done it wrong. It will also mean that we would need to come back and present twenty-four new budgets and approve everything that has not been approved which would all have been unconstitutional. It will mean that every audited accounts of the Government of Gibraltar since 1969 would have to be scrapped because all the expenditure would have been ultra-vires because it would not have been properly appropriated and of course it might well mean that we

have to go back to the UK and say "Look change the Constitution because this is a nightmare". I certainly think the sooner the Member opposite gets it tested the better for all of us. As I have said, I do not know to what extent other colonial territories have been using funds independent of the Consolidated Fund but I know that the Constitutional position and the wording of the section is virtually word for word exactly the same in every one of the eight remaining colonies. It has been like that for a very long time because I have just read from the Falkland Islands Constitution which is 1985 so they are still using in 1985 the same wording as they were using in Gibraltar in 1968.

HON J C PEREZ:

They probably used it in India.

HON CHIEF MINISTER:

They probably used it in India in the nineteenth century. So, Mr Speaker, I am moving the amendment of the motion of the Leader of the Opposition by the deletion of all the words after "This House".....

HON J E PILCHER:

Which again has been used on many, many occasions.

HON CHIEF MINISTER:

..... and the substitution of the following -

- (1) Notes that section 65 of the Gibraltar Constitution Order, 1969, requires that estimates of revenue and expenditure be presented to the House for the purpose of appropriating the use of monies from the Consolidated Fund;
- (2) Notes that in accordance with the Constitution and the laws of Gibraltar, the 1992 Appropriation Ordinance was approved by this House on the 28th May and was accompanied by such estimates of revenue and expenditure;
- (3) Notes that every Appropriation Ordinance approved by this House since its creation in 1969 has been accompanied by such estimates of revenue and expenditure in respect of the Consolidated Fund and the Improvement and Development Fund which have been similarly approved;
- (4) Notes that the Government commenced, in the Appropriation Ordinance 1988, a policy of restructuring the allocation of finances in its programme of providing a more efficient utilisation of public funds in accordance with the manifesto on which it was elected on the 25th March 1988;

- (5) Notes that the Government sought a vote of confidence to continue with its fiscal and economic policies to complete its economic programme and obtained the support of 73% of the electorate that exercised its right to vote on the 16th January 1992;
- (6) Commends the Government for keeping faithfully to its declared policy which it has obtained a mandate to pursue in order to secure the economic and political future of the people of Gibraltar and therefore for proceeding with such restructuring of public finances as will in its judgement make best possible use of the available resources;
- (7) Challenges the Opposition to pursue in the Courts of Gibraltar their allegations that the Estimates of Revenue and Expenditure presented to and approved by this House failed to comply with section 65 of the Constitution".

I commend the amendment to the House.

MR SPEAKER:

I must explain to the House that there are two basic types of amendments. One is an amendment which modifies the original motion and another one which completely changes the motion and is in fact another motion. We are presented here, as it is obvious, with the second type. Now that means therefore that whilst they would have just put the amendment and debated the amendment itself exclusively and then put the amendment to the vote and then if it is carried then we carry on with the motion as amended. In this case the procedure is different. What we do now is we debate the two amendments side by side and any Member can speak on either the amendment or the original motion. When the mover of the amendment winds-up, the mover of the motion winds-up. We put the amendment to the vote and if the amendment is carried then obviously the motion is defeated. So that is the procedure that we are going to follow and of course any Honourable Member can speak on either but he can only speak once except of course the mover of the motion and the mover of the amendment who can wind-up.

HON P CUMMING:

Mr Speaker, the Honourable the Chief Minister is brilliant at this business of the optical illusion. He is bitterly painting black and white so that one flickers between seeing things from one perspective and another, so that one is sort of swept up into unreality in spite of one's clear view of certain matters. The Chief Minister has asked, in an angry kind of way, "Do they genuinely want to know when we ask for certain information?" and he expounds like a university professor. I must say that I have greatly enjoyed our sessions here which have been

like a university seminar because, frankly, many parts of them have been very informative, very instructional and I am certainly not proud to accept instructions from him in so many matters in which he knows so much about. But economics like law is not an exact science and you cannot prove like a theorem an est demonstrandum sort of thing that one is entirely in the right or entirely in the wrong. These issues can be explained if one turns ones mind to it in simple phrases, simple words, like Mrs Thatcher did. Mrs Thatcher was able to consult very high flying economists and then state her policies in very simple phrases, such as the housewife who organises her housekeeping money and the pros and cons of the different policies as it attaches to that. When the Chief Minister is in his university don mood and wants to give a teaching session, he does it brilliantly and it is fine. I am ever grateful for that. I enjoy it. But where the element of malice comes in, is where hidden away here and there - not the lie heaven forbid; but the half truth, the three quarter truth - are the masterly strokes of obscurantism which uses technical phrases so that then he can say "Am I to explain all this for the seventh time round and give a long explanation?" Parts are brilliant and understandable and other parts are completely obscured so that then one could say "Well, it is just me that I am not intelligent, I do not understand". That is obscurantism and that is a mechanism which cannot be used for various different purposes. One can be to hide something of which one is ashamed and to protect something which you do not like the public to hear about. But there are other reasons, and I would thank the Chief Minister for mentioning the subject of blackmail which I had forgotten. The reasons for obscurantism are various, as I have said, and sometimes they are simply psychological ego-defence mechanisms whereby you say, "All this information is reserved to me and as you do not understand it, I am therefore of a higher status level than you." This mechanism has been used to confuse the electorate and to deceive the electorate and of course it will last for a certain time but after that people will see through it. Do we genuinely want to know? Yes we genuinely want to know the real truth. I even want to know the university lectures but whenever there is a mass of obscurantism, that is to say, I have found - I have studied educational psychology - that when I do not understand something that pertains to the sort of things that would be expected of me to know and I have tried to find out genuinely, I am given a genuine answer. With a few questions and answers I am able to clarify it but sometimes you find that there is a wall and somehow you just cannot break through. At first I used to think, not just here, but in any situation in which I am student that it was just me but very often it is not. It is the one who is trying to teach you and defending his ego, (1) that he does not know and therefore he is defending himself with big phrases, (2) that there is something that he wants to hide from you and (3) it is just blackmail. That is to say, as only I understand these issues, heaven help Gibraltar if they do not put me in charge of them and

this brings me to the question of the Kennel Club and the question of whether or not the Opposition can be the watchdog. You see the Government is charged with the efficient administration of our economy and therefore they are very, very busy and therefore they cannot come often to the House of Assembly. They have to be very busy looking after the economy. But as you all know Italy has just been three months without a Government. It has even been some weeks without a President and yet its economy is thriving and flourishing. So, there is the question of the man who keeps a dog or many dogs and yet insists on doing all the barking himself. This is how I see the Chief Minister acting in this matter of the watchdog. He has plenty of advice and he could have more if he needed it. He has many experts who can be safely left with the running of the economy and of the Government and of the Executive, not just for one day but for many days and in Italy's case for three months whilst he attends to the business of democracy. You see, the Chief Minister could work and be brilliant in so many fields. We have already discussed the one of being a teacher and of being a conjurer, being a magician, changing black white and so on as he chooses. The other profession where he could be an expert and that is as an actor. As an actor he could be absolutely brilliant because when he stands up so solemn and his voice goes deep and husky with emotion and he says "This is the question of the will of the people." That is great, I enjoy it for its drama and after all he could also be a comedian when he wants to and we have a jolly good laugh. How can this be a question of the will of the people, where in his manifesto does he promise to take anti-democratic initiatives that are going to deprive this House of information? It does not say it anywhere. I read it several times over and I have not found this promise to the people and consequently to say that because he had a huge majority, therefore the will of the people was that he could do what he likes with democracy in Gibraltar it just does not follow. What is it then that the people want in this matter? Most people do not actually care all that much about economics and about law in the widest sense. They do not want to follow all the details. The seats here are not shocker block or anything, you do not have to buy tickets to get in here. People are inclined to leave it to those people whose business it is to attend to them. Not at any moment do the people not think that the House of Assembly is important. I think the vast majority of people do think the House of Assembly is very important. The only thing is that as most of the outcome is predictable because we expect at the end of the day that the Government will vote for the Government and the Opposition will vote for the Opposition and so things continue to be predictable and apart from the occasional little bit of interesting or funny bit of drama, the rest is boring and people obviously do not turn up for it. The vast majority of Gibraltarians who are old enough and I think that all of us here are old enough, have been very well schooled in how dictatorships work because those of us who are interested in current affairs and can think back to the days of Franco, which all of us can, I think, saw how things used to be in a dictatorship and how people behaved

and what was done and how things were done. So most of us have quite an insight into the workings of dictatorships as well of the workings of democracy. I remember as a boy discovering through a television programme that Spain had a Parliament. I was saying to my father, what is this Spain has got a Parliament? Of course Spain had its Parliament and some laws presumably came through that Parliament and they were put in front of Franco, explained to him and some he accepted and signed and became law, others he did not like and they were sent away with a flea in the ear. So the fact that we have a Parliament does not mean to say necessarily that we have democracy. Franco would accept law coming from his Parliament or alternatively he would rule by decree. He signed a decree and that became law. The GSLP is increasing and increasing its output or its ability to rule by decree and this is a diminution of democracy however you look at it. This is how with all these technical arguments black can be turned into white and white into black. I do not have any legal skills for reading all these laws and some of them are intensively boring but I did spend some time going over, for example, the Estate Duty question. How it was before and how it is now and that is a law obviously gutted of everything important about it and moved into the sphere of regulations. So at the drop of a hat regulations can be issued and everybody knows this, they must know it and all the laws seem to be passing one by one through this so that law by decree can be carried out as it used to be done in Franco's day. Little by little democracy is eroded because, Mr Speaker, the view of the GSLP of democracy seems to be that it functions once every four years on election day and this is not the view of democracy as you would expect in a European State of this age. Democracy has to function continually and because you are so busy doing the barking even though you keep all the dogs and you do not let the dogs bark, you are too busy to come here for the number of days a year that is necessary to come and attend to these democratic matters. Everybody must know that democracy is being eroded. The fact that they have voted for the GSLP you cannot reduce to saying that they back your policy of diminishing democracy in Gibraltar. It is not that at all. There are many other factors. Very important factors that impinge upon the outcome of an election and obviously the demise of one party and the birth of another just at the junction when there is a new election obviously has to have an immense bearing in the outcome. At the time of general insecurity and fears of our people, a policy which plays on those fears and is triumphalistic and unrealistic in its expectations is something that very easily deludes people into a desperate hope that all that may be so. Even the Opposition has to say "We jolly well hope that all the economic policies of the GSLP come off and are successful", as has been repeated here in the past. "We are carrying surplus information" says the Honourable the Chief Minister. "We are carrying surplus information" and this qualifies him of course to be a comedian as well as an actor, a magician and a teacher. I have to say that I wanted to speak on this

motion because I feel that it is a very important issue to all. This is not just political points scoring or the business just of the Leader of the Opposition. This is the business of all of us and it is something that we have to repeatedly call to the attention of the electorate that the GSLP is taking totally unnecessary initiatives to diminish democracy on a day to day basis. We want to hear about things before they happen, not just because for our own building up of our egos, but so that we can carry out the role of the Opposition. It is not that you have to tell us as individuals what is going on. It is that you have to tell the people and we serve the people by studying that, by meeting, by discussing it, by analysing what it is and if we do not do this, democracy is diminished and if this Opposition does not do it, then another or better Opposition has to come and do it. But this is a very important task and some people do not seem to understand this at all. We had in the last House from Mr Moss some comments about the functions of the Opposition which showed that, as he has never been in the Opposition or needed to study what an Opposition should be, then he had no clue of how it should be. To round up I would just like to say that it is very painful at a time that we are struggling for our survival as a community that we have seen from the days of Franco when his famous offer was made to us of free press and legislative council and all this in those days, that we laughed when this offer was made, we laughed, because we knew that there was no democracy there and our own democratic institutions were flourishing. Now we are in the position that whilst we are fighting and resisting those elements because we want to retain our freedom, that our freedom should be undermined from within by these ill-thought out and unnecessary policies. Finally to say that it is painful that we should see in Spain democracy beginning to grow and to flourish and to become sought of real whilst here in Gibraltar our democracy is shrinking and becoming less. Thank you, Mr Speaker.

HON P R CARUANA:

Mr Speaker, I wish to say nothing on the amendment but it is not clear to me from Mr Speaker's very helpful guide as to who speaks next because presumably I still speak last in relation to my reply.

MR SPEAKER:

What I said before was this. The Chief Minister has introduced an amendment to the original motion but since in fact it is a different motion altogether what we do is we debate the two together. Anyone who wants to speak and speak on either. When it comes now to the winding-up obviously it is the amendment that we have to clear first so it is the Chief Minister who speaks on the amendment and then finally the original motion. We take the vote on the amendment first and the vote on the motion.

HON CHIEF MINISTER:

It seems that the Honourable Mr Cumming is going to have the pleasure of having me answering him after all, notwithstanding the fact that I did not want to take up the invitation earlier. Perhaps of course because he already knew earlier that he was going to compare me to General Franco and he wanted to be able to say it without me being able to follow him.

MR SPEAKER:

May I say that no new matter can be introduced at the end. The winding-up must be carried out on what has been spoken.

HON CHIEF MINISTER:

Mr Speaker, having moved my amendment, I am replying to the contribution made by the Honourable Mr Cumming. Presumably he has been telling the people of Gibraltar that he is going to vote against my amendment because he thinks I am a clown who looks like an academic but he is really General Franco and occasionally can make him lose his memory. I think the Member has done a great disservice today to suggest in this House that because we have continued with the policy that we tested in a general election, we are today behind Spain in democracy. Is this an indication of some kind of shift from the other side? I hope not. But we are being told today that the Member opposite thinks that notwithstanding that I have given I think a fairly lay explanation, not a very highly technical one to demonstrate that the items mentioned in the motion as being left out of the revenue estimates are items which do not deprive him or anybody else of controlling public expenditure which is what they claim is a reason for bringing a motion here. He has now exposed that it has nothing to do with revenue, it has nothing to do with expenditure, it has to do with this fundamental, philosophical and political approach which says that the way we are doing things, the fact that we are introducing things by regulations, the fact that we are restructuring public finances is nothing to do with producing what we consider to be a more efficient way of managing Gibraltar. It has to do with an attack of basic democracy. An attack of basic democracy. I do not think in the twenty years that I was here we had people belonging to the House who felt that in fact the Government of Gibraltar was deliberately setting out to remove parliamentary systems and democratic process and really if they believe that, they ought to really go. I do not know why they stood for election because if they stood for election on the basis that what we had done between 1988 and 1992 was that basic attack on parliamentary democracy and we got the support of the people, then they are wasting their time here for another four years. They will be wasting their time for many more years to come because they will

not make that accusation stick. That is total and absolute nonsense and the Member opposite knows it. Of course, he knows it. He knows it from the years that he has known me, he knows it. He knows it from the fact that he has been with me in the Union when other people have tried to use that tactic against us. The statements that he makes which I recognise because I can always track origins of statements from twenty years of life in a community as small as this one. You know what time people get out of bed and what they have for breakfast. So just by reading something you know who has written it. He knows, as I know, from when he was a Branch Officer of the Union many, many years ago in ACTSS, when I was in the public sector, that people used to say that there was no democracy. The members were not allowed to do anything. Other people say it now. The reality of it is that in Gibraltar the real test of democracy and of support that the Government has is downstairs. If the people are with their Government it is obvious and as far as the people are concerned he is right. He has been honest enough to say that for most of Gibraltar the least of our problems is what is the subject matter of this debate. If, in fact, the accusations that are underlying this were true, even by making them they do damage. I do not want to say that. I have not made that point at all and I do not want to elaborate it because I know that that immediately will be latched on and they will say "You are now even trying to silence us." I am not trying to do that. Alright I have said it in passing and I immediately qualified it before he could jump up and accuse me because I knew he was going to do it. He has done it. He has actually accused me of something even though before I finished the sentence I was already saying "I do not want to do anything that they can say I am trying to muzzle them." I do not need to muzzle them because they are no threat to me or to anybody else because the reality of it is that they do not have any standing. They got in here by default. They got here not because they were too young, as Mr Cumming says, and they came in at a point of transition, but because the system in Gibraltar is a very generous system to the Opposition in terms of votes. If we had a normal first past the post there would be fifteen GSLP seats here. That is how it would work, so that is the reality of it. They have got seven seats. They are entitled to exercise the right in this House. They are entitled to bring censure motions but what they are not entitled to do and at the same time have the audacity and the cheek of the Member opposite to accuse us of fascism is to pretend to come here four months after an election and say "We are bringing a censure motion which is asking the Government to resign, not because they are reneging on their policies, but because they are continuing with their policies." Well look what kind of democracy does the Member believe in? He believes in saying whatever he likes in January and doing something else in April. He says he cannot find anything in the manifesto that we would do anything by decree. No, but he can find in the whole election campaign his accusations that if we got in we would do it and our

defence that if we got in we would continue with the same policy as we had done between 1988 and 1992. That is what we argued in the election and I told them in the last budget, if the Members opposite want a four year election campaign, I will give it to them! It does not scare me. I do not think it is the best way to use parliamentary democracy and certainly he is not going to enhance the prestige of this House in the eyes of the people. I do not think people are going to say "What a wonderful House of Assembly we have got. They are all there like hands squabbling like neighbours in a housing estate." But if that is what they want, OK! We need a break now and again from work, so we might as well take our holidays here and have it out with them every four months. That is the way they want to play it we will play it like that but I do not think that it will be a very useful thing for them to do but it is their prerogative to do it and I do not feel they are going to enhance their standing at all in the community by doing that. So at the end of the day if a Member wants to stand up and say "I am not voting in support of a motion moved by the Chief Minister", it seems to me that the parliamentary thing to do is to go through the items that I have listed and say "I am not voting in favour of any of these things because I do not agree that this is true, I think he is wrong here, I think he is wrong there." But what he is saying is that he is not going to vote in support of what I have moved because he thinks I am like Franco. Well then by that definition it does not matter what I move because if I thought he was like Franco, I would not give him the time of the day and I would not have looked at him in the face.

INTERRUPTION

Mr Speaker, the Member opposite was not talking on the amendment? So then the original motion has been brought by the Opposition because they think I am like Franco, it is a big improvement. Well then perhaps the Leader of the Opposition should have had the courage to say that in moving the original motion and then I might have dealt with the motion in a different way. But as far as I am concerned we have treated the motion from the Leader of the Opposition, not on the basis that the Government was being condemned for an attack on parliamentary democracy but that the Government was being condemned for pursuing a policy which the Opposition consider to be in conflict with section 65(1) of the Constitution. We have sought to demonstrate that it is not in conflict with section 65(1) of the Constitution and that if it were, it is only so in conflict because it has every other budget, every other year, since the Constitution came in in 1969. If the subject matter before the House is that it is in conflict with section 65(1) of the Constitution and that makes me in the eyes of the Member opposite like Franco because I have brought this budget to this House, then

presumably it makes Sir Joshua Hassan like Franco because he brought a similar budget on a similar basis and you are like Franco, Mr Speaker, because you did it in 1969, 1970 and 1971. So, if it has anything to do with the motion - he is shaking his head - well if it has nothing to do with the motion, if it is that he thinks I am like Franco, period, per se, then it is irrelevant whether we are talking about the finances, the budget, the special funds, the regulations. It is irrelevant. It has to do with the problem that he has inside his head and amongst the many qualifications he has attributed to me, psychiatry was not one of them so I am afraid in that particular field I cannot offer any help. I commend the amendment to the House.

HON P R CARUANA:

Mr Speaker, the Chief Minister is, as we all know, the master of the red herring. He listens to an argument. Whether the argument be right or wrong, of course it is a matter of opinion. But he listens to an argument for one and a quarter hours or one and a half hours. I do not know how long I was on my feet this morning. Then he picks on two or three irrelevant red herrings which is his now traditional smokescreen which starts with sinking funds and finishes with saving Gibraltar from the dread of the pensions problem and all manner of dreadful things that European Community law would do to us, baffle his brilliance, or perhaps, in their own right, good arguments, in their own rights, but with the greatest of respect to him, absolute red herrings and irrelevant as replies to the allegations that I put to him this morning. Mr Speaker, when counsel for the defendant in a court of law does not address the issues raised by the plaintiff, the usual way to deliver the deserved insult is for counsel for the plaintiff to say "I do not wish to exercise my right of reply because my learned friend has said nothing, which in my opinion deserves or needs a reply". Were we in a court of law where the outcome of this debate were to be decided in accordance with law that is exactly what I would have done to him because that is exactly what he deserves. But as we are in the political fray and these things do not necessarily get decided on the basis of fine points of law, I feel obliged to reply to him. I regret to say that he has become, in my opinion, so unnecessarily abusive that I am not going to resist the temptation to reciprocate, but unlike him, I do not have to lose control to become personally abusive on the rare occasions in which I might choose to do so. The fact that he did and chose to apologise for it afterwards is to a limited extent to his credit. Mr Speaker, if the rules of this House allowed me to say that the Chief Minister is a liar.

MR SPEAKER:

No, it does not.

HON P R CARUANA:

I know that it does not and therefore.....

MR SPEAKER:

You should not even insinuate it and if you carry on like that I shall have to call you to order.

HON P R CARUANA:

Well, Mr Speaker, if you call me to order, I will of course come to order. Therefore, what I will say is that I think that the Chief Minister has set out to deceive in his reply to avoid the arguments that I put to him and to mislead anybody who might be listening. To go on and on and on about the sinking fund and how some further fact that he can draw monies out of the Sinking Fund for the national debt servicing, because that is a Consolidated Fund charge, when I myself said that in my address and therefore to say "and therefore, that is an answer to what Mr Caruana was saying" is, in my opinion, nothing less than deceitful debating techniques. If he did think that the Sinking Fund in itself provided the answer to the allegations that I have made, honesty in debate - and he has accused me of lack of honesty and lack of integrity in debate, he is the one with the lack of honesty and lack of integrity in debate. He did not say, did he? But now he has given in when he said that nothing had changed in relation to the Sinking Fund. He did not say that he had moved an amendment to section 20 of the Public Finance (Control and Audit) Ordinance giving himself the power to move money from one fund to another so that whereas before money in the Sinking Fund could only be used for servicing the national debt, now money in the Sinking Fund can be transferred from the Sinking Fund to any other fund that he pleases. We have therefore no guarantee at all that money in the Sinking Fund is going to be used to service the national debt because tomorrow he can move it to another fund. If he wants me to give way, I am happy to do so.

HON CHIEF MINISTER:

Only so that, on the record, the information is correct, Mr Speaker. The Public Finance (Control and Audit) Ordinance contains a schedule of special funds and every special fund has always been able to transfer money as an advance to any other special fund anyway which means you can have a hundred year interest free loan from the General Sinking Fund to the Investment Fund without the amendment to which the Honourable Member refers. That has always been possible. So that amendment has not been put in order to do anything with the General Sinking Fund because in fact it is neither here nor there and when the amendment to which the Member refers was voted in the House, it was explained in the House that this was to give the flexibility to make use where one fund was in surplus and another one was in deficit temporarily. I can tell the Member that it has never been used. He will say well the fact that it has never been used does not mean that it will never be used by a future Government. You do not bring censure motions to the House of Assembly because of something some future Government might do, but because of something that an existing Government has done.

HON P R CARUANA:

My censure motion is not based on the Sinking Fund. What I am doing is replying to his smokescreen and I am glad that he thinks it is smokescreen because that is what I am saying that it is. All his arguments in relation to the Sinking Fund were nothing more than a smokescreen, in no way addressed the issues that I had raised this morning. Mr Speaker, whilst I remember the note that I have made here, if his concern about whether I am right or wrong falls to be determined by whether the consequence of my being right being that he has got to change the accounts for the last twenty-five years, which I think is a ridiculous notion, well, having admitted here yesterday that he thinks that the Savings Bank has been operating illegally since 1973 or whenever it was, I have not seen him rush to bring anything back to correct that for the last twenty odd years. Therefore the suggestion that because something has been done wrongly for a period of time past, you now have to correct it in respect for the whole past period is, in my opinion, a red herring.

HON CHIEF MINISTER:

Would he like me to explain to him, Mr Speaker?

HON P R CARUANA:

No, but if he would like me to give way I will.

HON CHIEF MINISTER:

Having discovered this in the Savings Bank we are taking action, I have already told the Member opposite and this action is going to be taken from the 1st September this year and we have brought an amending Bill to this House which he voted against. I also explained that the implications of that is that the Savings Bank has been acting illegally since 1973 in that it has been taking deposits without a licence. There is nothing that I can do other than backdate the licence to 1973 which presumably we will not be able to do because the Licensing Authority today is the Financial Services Commission and in 1973 it was the Financial and Development Secretary as Banking Commissioner. The only thing that we can do to correct the Savings Bank situation is to say "This licence is dated the 1st January 1973", which is when we joined the European Community. That is it. With the accounts I do not think that I have a choice. If the Supreme Court rules that the whole accounts of Gibraltar have been wrong for the last twenty-four years, they have to be put right.

HON P R CARUANA:

The accounts of the Savings Bank would presumably, if the Auditor had realised that it was illegally, would have had a qualification saying, these are the accounts of the Savings Bank but in my opinion all the trade that it has done has been unlawful. So perhaps you would like to bring twenty years sets of accounts from auditors with a report qualifying the accounts.

HON CHIEF MINISTER:

I may well do that.

HON P R CARUANA:

Fine! That will be the equivalent of doing what he thinks he has got to do now in relation to the funds. Mr Speaker, it seems to me that at a political level the answer to all that I have said this morning is this. I have got 73% and you have got 20% or whatever. The Chief Minister appears to believe that the size of his mandate and the size of his votes on the multitude of issues that he put before the electorate, on the multitude of issues that we raised successfully or otherwise before the electorate, gives him the right to do as he pleases, simply because he was doing it before. He interprets his mandate as being a positive mandate in respect of everything which is a continuation of what he was doing before. That, in my opinion, is not only political dishonesty, it is intellectual dishonesty. The Chief Minister cannot, I know, if I know anything about him personally, believe that that is the case. Therefore, Mr Speaker, when he says that it is unprecedented to condemn a Government for doing what it promises to do and that I have not suggested that he is doing anything new now that he was doing before, he implies that this censure motion is unprecedented and therefore unusual and therefore, presumably, out of time and out of place. Mr Speaker, by that rather perverse logic as he has been given a mandate and as all Governments have been given a mandate for four years, the concept of motions of censure would not apply except in any parliament, except in relation to breaches of electoral promise. So that, for example, if the Labour Party in Britain wants to bring a censure motion against the Conservatives for introducing the poll tax, that is not allowed, because after all, the Conservatives did not promise that they would not bring the poll tax. The logic is just perverse. Therefore, Mr Speaker, unless I can bring a censure motion in the next four years based on something which the Government had not done before January 1992 on, then I cannot bring any censure motions at all. The logic is perverse. He accused me of being the source of people's perception about the lack of and the reduction in financial information. Mr Speaker, the fact that the House of Assembly has before it, in relation to the proposals of expenditure and revenue of the Government of Gibraltar less information, both in qualitative and quantitative terms than it had this time last year and that this time last year it had less than the year before and so on and so on until 1988 is a self evident reality. If the Chief Minister thinks that this also is a figment of my imagination then what I think the Chief Minister should do is to go out into the streets, stop listening only to the yes men with whom he surrounds himself and listen to what people are saying. If what he is saying is true, I have an extraordinary power to form opinion in Gibraltar. I have an enormous influence over the opinions of the

people of Gibraltar and if that is true, which I do not think that it is, I would have done better in the election campaign in January this year and I would do so much better in 1996 that his position is in trouble. So I do not think that that is the answer. I think the Chief Minister should look for a different one. The different answer that I commend to the Chief Minister is that it is a reality. It is a self evident reality. Every year we get less and less of a full picture of the Government's financial position. One is supposed to be flattered that the teacher in the class has told one that one has done one's homework when no-one has told me that since I was last schooled but I suppose in the environment that reigns politically in Gibraltar today, it is not surprising that I should be told in this House. But still, to the extent that it was a compliment, I accept it in a generous spirit and I am grateful to the Chief Minister for it. That he has been told by lawyers that my legal opinion on this matter is wrong is also self evident. He did not need to have said it because I said it myself in my speech on the motion, but this must have been the case because I was not attributing to the Chief Minister a desire to operate unlawfully in the face of contrary advice. Therefore, for him to announce, as if he was pulling the trump or the ace of spades out of his pockets, that point, frankly, is one that I do not understand. Clearly he has had different advice and now that he has told me that all colonial constitutions have the same defect, then I can tell him that I am not surprised that he has had the legal advice that he has had. Because if I had done three hundred years worth of legal mistakes I would do almost anything to cover up my mistakes now. Therefore, Mr Speaker, I simply do not accept that the argument as to whether I am right or wrong legally can be decided on the basis of whose legal opinion is worth more, mine or the Honourable the Attorney-General's or whoever has given it to him. I accept it all and I said also in my motion that the proper place to test that issue was a court of law. So that the last paragraph at least of the amendment would appear to be a little bit superfluous. Politically, which is what I tried to formulate my objections in, his only defence is "I have got 73%, I have got the mandate of the people and I will do as I please". Mr Speaker, the Honourable the Chief Minister referred to section 65(2) of the Constitution and said that therefore my interpretation must be wrong. All he was doing was the exercise that I had done for him in my own motion, that anyone that says that black in section 65(1) does not mean black but it means pink, has to have recourse to the rest of section 65 and conjure some argument of statutory interpretation to prove that black does not mean black, it must mean white. There is nothing inconsistent between section 65(1) and section 65(2). The fact that you have got to give me estimates of revenues and expenditure does not mean that you need the appropriation of this House to spend all the money through estimates of which you have given me. One is giving information and the other is asking permission and the fact that you have to give me the information does not mean that you must also ask my permission and

my complaint is not that you have not asked my permission. My complaint is that you have not given me the information. Mr Speaker, another broad brush attempt at a political defence is that you cannot hide disasters in an economy.

HON CHIEF MINISTER:

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HON P R CARUANA:

Mr Speaker, I am really very reluctant not to give way but what I cannot do is to convert my right of reply into sixteen different mini-debates with the Chief Minister. I will give way to him on this occasion.

HON CHIEF MINISTER:

He has just said that his complaint is that he is not getting the information, not that he needs to give his permission. Is he saying then that appropriation from a special fund is not an argument that he has put in this House?

HON P R CARUANA:

Mr Speaker, at the moment I am addressing the question of the estimates. In the question of the estimates my complaint is that I have not got the information that the estimates would have given me. The question of whether any sum of money ought not to have been paid into a special fund but ought to have been paid into the Consolidated Fund so that you would then have had to ask my permission to spend it or at least the permission of the House to spend it, is the other point in the motion and he has interpreted everything that I have just said as a withdrawal from that position, I do nothing of the kind. I think part of the smokescreen about the Sinking Fund, Mr Speaker, was that when I started shrugging my shoulders saying "How is all this relevant to the debate?" He said "Yes, let him not come and complain next year that the balances have gone simply because the depositors have withdrawn money." How is that, Mr Speaker, with the greatest of respect to him, a reply to what I have said? How does that impact as an argument that next year I must not complain if that has gone because I must not be silly. It is not that it is gone because he misappropriated it, it is gone because the depositors have withdrawn their money. With the greatest of respect to him, Mr Speaker, how is that an argument in reply to what I am saying which is that I now have (a) less information than I had and (b) less information than I am entitled to in law? It is just a smokescreen. It allows him to stand there and speak for half an hour in the hope that everyone in this room and presumably over GBC radio that is listening to him will say "What a tremendously and super-intelligent Chief Minister we have got, you see how he put that upstart Caruana in his place, of course our Chief Minister knows

what he is talking about, there he goes he was on about all sorts of complicated things about the balances and the Savings Bank, all sorts of things that we poor mortals do not understand." Well, Mr Speaker, I think that the Chief Minister and some of his other colleagues have very effectively used that trick, that device (perhaps 'trick' is an excessively harsh description of it) that technique very successfully for many years. I sense that the people of Gibraltar are now getting wise to the fact that it is a technique and what they will now be looking at is not so much the dressing and the presentation of style but the substance of what he said and whether or not it is delivered in tangible terms. Mr Speaker, the Honourable the Chief Minister says that he has not introduced a new presentation of the accounts. I accept that his use of the words 'accounts' was a slip of the tongue, he meant estimates because we are not discussing accounts and nor has there been any great change in the presentation of accounts because what we are discussing is the estimates. I think, Mr Speaker, that the great change comes in the question of the scale. I accept, because I conceded it myself, that he had not invented the device except to the extent that he allowed himself the power to pay borrowed money into a special fund and that he allowed himself the power whatever he may just have said, to just transfer monies from one special fund to the other. The fact that he may only have done it in the past in the case of surplus or may only intend to do that, that is all very nice until he changes his mind. How do I know if he changes his mind for a good or for a bad reason? The fact of the matter is that I do not know. I do not complain about what he has done with the money of Gibraltar. I am not suggesting and nothing in my motion and nothing in what I have said in support of my motion has either been intended or could reasonably be interpreted to have meant an accusation of misappropriation or embezzlement or funds being used for an improper purpose. What I have said is that I do not have the information that I want that I need and that I think that I am entitled to and that I had before. Therefore, all these constant references to what he has done in fact or what the intention is or what the intention is not and "I have told him last year that what I intend to do is only to do this and not to do that." All that is irrelevant. I do not care what he has done in the past or what he intends to do in the future. I am only concerned with what those systems entitles him to do if he wishes and how I, as a parliamentarian, think that I am worse off than I am before, ie less well equipped to do the job of Leader of the Opposition as I see it today and as the Honourable the Chief Minister saw it in 1988 and 1989 by some of the remarks that he has made and that I have quoted him from Hansard in the past. Mr Speaker, he says that how can I be right. He conceded that that is possible but how could I be right because if I was right it has been twenty-five years of negligent interpretation of the Constitution. Well, that should not really surprise him given that only twenty-four hours ago he was standing in the same place lamenting the fact that previous administrations and the Foreign Office with all their might and right and technical expertise have missed since

1973, the fact that drafting of EEC Directives, omitted Gibraltar. He has come like a knight in shining armour on his white horse to discover this and that some were even so concealed that it has taken even him four years to discover it. Mr Speaker, if people can be so negligent with our national interest that they should be so unobservant with little details of domestic accounting should not come to him as such an outlandish surprise. But you see, Mr Speaker, at a political level I hear what the Honourable the Chief Minister has said and really all that he has said to me is "This is our political judgement, I will dismiss the legal points by the fact that I have got technicians and they have advised me and insofar as Mr Caruana's arguments are political, it is a matter of policy, we have been elected, it is our judgement, we exercise our judgement and the electorate will speak four years from now." Mr Speaker, I ask why is it Government policy? If he wants to answer, I will give way to him again. Why? Does the Chief Minister believe that in order to do good housekeeping, that in order to efficiently utilise the resources of this community; that in order to satisfy his electoral promises; that in order to be the most efficient, economically competent Chief Minister that Gibraltar has ever had, why does he feel that he can only do that by use of special funds and not by use of the Consolidated Fund? What is his hang-up with giving me the estimate? What is his hang-up with coming to the House asking for permission to spend the same sums of money knowing that he has got the parliamentary majority to achieve approval at the flick of a hat and I ask him as the acid test to the merits of his political defence, why should it be necessary for the GSLP to pursue that policy? I accept that it is policy; political policy. Why do they perceive it necessary or even desirable that that should be their political policy? I thought, as I was listening to the Chief Minister reply to me, that he was going to give me an answer to that question when he started talking as he always does when he wishes to divert attention from some domestic problem. He throws in the pensions problem, the national interest, European Community. Do not ask any more questions because I am doing this in the national interests and we do not want others to get hold of our money. Fine, he knows very well that we all have a common interest in that respect but what he cannot do is just fill the argument in an attempt to discourage me from pursuing a particular line because he is not going to. At least I will go as far as I think I can safely go without doing what I consider to be damage to the national interest. Because, Mr Speaker, I thought that he was going to give me the answer when he said, "Well, the Social Assistance Fund. Import Duties goes to Social Assistance Fund, then the European Community law says it is alright." And I said does he have a point? Could this justify it? Of course, it does not justify it in relation to the subvention to the Gibraltar Health Authority. So that is the first argument. European Community law does not care whether the Gibraltar Health Authority gets its subvention or it does not. So that argument certainly would not explain why the subvention to the Gibraltar

Health Authority now comes from the Social Assistance Fund. So we do not know how much the subvention is as opposed to from the Consolidated Fund as it used to before. Well, we knew at least what the subvention was and certainly as regards the Hansard that he quoted me from, what I was saying was that there was a sum of money voted which represented x percent - if he said that I said 25% then I take his word for it - and that I knew that I was authorising the Government to spend x million pounds on the Health Authority but that I did not know - now that the Health Authority was an independent authority and not a Government department - whether how much of that money they were spending on bandages or on salaries or on all the Heads that used to appear as expenditure under the vote for the Health Authority. For him to say that my position now is no different is, with the greatest of respects to him, not the case. Then at least I knew how much he was spending on the subvention. Now I do not even know that. Before I knew how much it was but not exactly how it was being spent. Now I do not know either how it was being spent or how much is being spent in the way that I do not know how. How can he possibly believe that my position is not worse now than it was when I said that whenever it was last year, I find mindboggling and frankly a distortion of the reality? But he has said it. Mr Speaker, as to what other colloquial constitutions provide, he has told me what they provide, what he has not told me is what they produce by way of estimates. If the Chief Minister stands up in this House and says that he knows for an incontrovertible fact that every colony that has such a constitution, not only has such a constitution, but produces estimates of revenue and expenditure in the truncated and efficient manner-efficient in my opinion - that he has laid before the House, then he has the beginnings of a point. But he has no point at all, if all he says is that they have got the same constitution. Now I want to know what they think constitutes compliance with that provision in their constitution. Even if that were the case I still would not be motivated to withdraw my challenge. Mr Speaker, because, frankly, as he well knows, to the fact that something has been done wrongly for many years and of course if it is being done wrongly for many years by the same English Government department, it should not surprise him that they perpetuate the mistake. Therefore the repetition of the mistake when it is always made by the same person, is hardly evidence that the mistake is not a mistake but is correct. With the greatest of respects, if he came and told me, what is the Foreign and Commonwealth Office going to advise the Chief Minister about my motion? To say, yes, Caruana is right would be to say and we were bloody idiots, I withdraw, and we have been fools in relation to all our other colonies and all our other constitutions for the last....I do not know if this goes back three hundred years or whether it is something that they have alighted on more recently or whether we were the first in 1969. But still the fact that they now cling to the same argument, is not something, frankly, that I find impressive or even persuasive. I do not see what option they would have. Mr Speaker, I

think the Chief Minister, at least, was politically honest, if not, at least, in answer to my points on their merits, he was at least politically honest when he says "Look, Mr Caruana may not like it but I have got the mandate of the people. I was doing this before. It was an existing tool I admit it, and therefore if I can use existing tools more extensively or more effectively or for greater purpose than used before, so be it." The question to which I have not had an answer is why it is necessary to use that tool. Is he not impressed at least by one of my arguments which is this? If this existing tool is correct, it gives him the tool to remove the need for an appropriation bill, altogether. That all the sections in the Constitution relating to the need for appropriation and the Consolidated Fund fall by the wayside, become meaningless mambo jumbo without any application and that it therefore lies in the power of the executive of the day by using this tool to simply empty the Constitution of all meaning. If nothing else that I have said this morning appeals to him as being an indication of the politically outrageous character of what he is doing, surely that at least, must strike him as an unusual feature of the powers of the executive, that it should be able to render nugatory whole sections of the Constitution at its whim. Courts will interpret the Constitution, if in doubt as to what it means, by what the legislature must have meant. If what the legislature meant is not clear. I say that what the legislature meant is crystal clear, but if it is not clear and the Court has got to try and work out what it is that Parliament meant when they gave us the Constitution, I am confident, supremely confident that no court of law is going to find that what the Parliament must have meant is let us put (a), (b), (c) in the Constitution but let us give the Government of the day the right to reduce it to nil by this existing tool which we simply use to make our economic policy more efficient. Of that, at least, Mr Speaker, I am confident as to what a court of law would decide. Mr Speaker, the Chief Minister has this tendency to misquote me and I cannot say that it does not happen to me as well because it is very difficult. We do not always take a verbatim note of what he said and then when you try to reply "I did not say as he says that I said that he cannot do this politically." Of course he can do it, he is doing it, is he not? I have not said that he cannot do it politically. What I am saying is that to do it is a political abuse of the legal framework and of the Constitution and that he should not do it but as to the physical possibility of doing it, I can see all too well and all too easily that he is doing it. He asks me rhetorically "Let Mr Caruana tell me how I can do it. How I can administer the economy efficiently. How I can do all the miracles that I am presently performing without recourse to this tool." The answer is simple. I will tell him now. Why cannot he do it using the Consolidated Fund? Why not? It would not hinder him in the least. It would not mean that he gets less money than he now gets. It would not mean that he can spend less money than he now spends or that he could spend it on different things or not. The only thing that he gains by doing it as he does now is precisely what

the motion complains of. I get less information. This House gets to express the view on less of Government expenditure. This House finds out less about Government's revenue and he keeps more cards close to his chest, which is what he is obsessed with doing in general. That is what he gains and nothing else and he loses nothing else. And is he not impressed with my points, obviously not, so to that extent my question is rhetorically? By diverting all the funds as he could do to special funds from the Consolidated Fund, not only does he render nugatory the Constitution as I had just said, but that he renders this House ineffective without a role in relation to revenue raising measures, but that he would now render it irrelevant in relation to expenditure approval. How does he think, as he said in 1988, that this House should be the watchdog of public expenses? I am sorry that he thinks that I am not fit to be the watchdog of the Kennel Club. That is hardly compatible with some of the other things that he has said today but still I accept that he is irritated. I accept that he lost control and I accept that he said things that I am sure he does not believe to be strictly true. Whatever my lack of ability, as he sees it, to be the watchdog of such a brilliant economist as himself. I say that with tongue in cheek. Whatever lack of ability I may have, I certainly have less ability thanks to the way he organises Government affairs that I might otherwise have and instead of helping a poor unfortunate ignoramus like myself, what he is actually doing is making my position worse. If he were genuinely interested in assisting this unfit person to be his watchdog, what he should be doing is giving me more information and not giving me less. If he is interested only in appealing to those people that are going to be impressed when the Chief Minister comes on television and throws bits of paper at people that he is debating with; and if he thinks that people are going to be impressed by listening to him get angrier and telling Caruana that he is not fit to be the president of the Kennel Club; and if that is the level of debate in which he is interested, then I accept that I can never beat him at it. But I can never beat him at it simply because I am not prepared to indulge in that style of debating myself. If he is interested in intellectual debate, he knows very well that what I am saying is right and he knows very well what I am saying and whether he misrepresented me or not in his replies, he knows very well what I am saying.

MR SPEAKER:

Could I just ask one question to the Leader of the Opposition how much longer do you reckon you will be talking for?

HON P R CARUANA:

Mr Speaker, if you are interested in adjourning for tea I recommend it thoroughly.

The House recessed at 5.10 pm.

The House resumed at 5.40 pm.

HON P R CARUANA:

Mr Speaker, I said before the recess for tea that I thought that the Chief Minister was going to give me the answer as to why it was necessary for him to do things in this way and that I thought it was going to come when he mentioned that the European Community law allowed import duty to be used for particular purposes, for example, alternatives to the pensions schemes. But, Mr Speaker, it then did not amount to an answer because European Community law looks at what the Government is spending, not on what the Government spends through the Consolidated Fund or what the Government spends through a special fund and if it does it through the Consolidated Fund, it is caught by Community law but if it does it through a special fund it is not. That might apply to the companies and things that they do to companies like subsidising the shipyard. They can do it through a company but not directly. That is all very well but it does not amount to the explanation as to why, as a political necessity, they feel that they want to divert revenue and therefore expenditure away from the Consolidated Fund and into the special funds. The Chief Minister again in his explanations mentioning the £10m loan agreement that he had from a particular bank and that he had not used it and I can only emphasise what I said when I first spoke. That I am not concerned with what he has done or what he intends to do. I am concerned with what he might do and what he has the power to do and what I have not got the power to see if he does. Mr Speaker, he launched a tirade of personal abuse on me on the basis that he has explained about the Improvement and Development Fund and the lending to the companies. It cannot have been the seventh time because if it was the seventh time at the budget session that must have been by now the eighth or the ninth time and it is all part of his campaign. Mr Speaker, what relevance is that? I explained that to him and I did it in my own address in an attempt to prevent him from doing what he did yet he had to explain it all to me again and trying to score little brownie points on that basis. He knows very well that I understand how his borrowing was structured. The fact that that is how he has chosen to do it so far and he offers it as an explanation and therefore everything that I have said is bunkum. No. He has so far chosen to spend borrowed money through the Improvement and Development Fund in a manner that requires an appropriation bill under an Ordinance that he says that he might now change. But anyway the fact that he has done that does not mean that tomorrow he cannot do it differently and

I am not concerned with what he did last week or last year or what today is his intentions about what he is going to do the day after tomorrow. What I am saying is that he has erected a structure which entitles him to do as he pleases and I am grateful to him that sometimes he pleases and chooses to do things properly, otherwise you would be doing it improperly all the time. The question is not whether sometimes he chooses to do it properly. The fact is that he has the choice and I cannot influence his choice or influence when he can choose or when he cannot. The fact is that the structure enables borrowed money to be spent other than through the Consolidated Fund or the Improvement and Development Fund.

HON CHIEF MINISTER:

What do you mean by improperly?

HON P R CARUANA:

In what context? I beg your pardon.

HON CHIEF MINISTER:

In the context that you have just used it. It enables him to use it improperly. Improperly what?

HON P R CARUANA:

I cannot remember the context in which I have used it but certainly it was not improperly and again I have emphasised a million times in the context of misappropriation of funds if that is what he is concerned with. If I used the word 'improperly' and I cannot now recall that I did but if he says that I did I must have. What I am saying to the Chief Minister is that it is all very well for him to say what Caruana is saying about how he can spend borrowed money without coming to the House and in reply to that allegation say "But look I come, I do it through the Improvement and Development Fund. The man does not understand, I am going to explain it to him for the ninth time. The money goes to the company. It comes back. I give it to Mr Feetham for his Improvement and Development Fund and we come to the House." The question is not that that is what he did last week or next week. The fact is that he does not have to do it that way if he does not want to. He does not have to spend borrowed money through the Improvement and Development Fund or through the Consolidated Fund. He can now spend borrowed money through any special fund that he likes. Therefore, let him not come to say that to use the Improvement and Development Fund demonstrates that what I am saying about loss of the control of this House is irrelevant. What is irrelevant is his offering that as an answer to my allegation when it is no answer at all. Whether I do not understand or I do not care..... There is a third option and I will not repeat it again. The third option is that I understand and I care. The question is not that I understand or care to hear what

he has done or what he explains at nauseum, is his intention to do or not to do. The question is that the structure exists for him to do it and that is the third option. It is not just whether I care or whether I understand. I do understand and I do care. I do not know if he knows whether I care. He knows very well that I understand. The Chief Minister can take it from me that I would be most surprised if he thinks that he has the intellectual capacity to understand and think that I do not. If that is what he thinks, let him say it. I do not think that my professional training and my professional background and my educational and academic background and my qualifications to read simple accounts are necessary to know when I am having less dangled in front of me than I had dangled in front of me last year. I think that if he looks at my qualifications for that he will find that they are not worse than his, to put it not more strongly than that. He stands there pompously and asks me whether I am conducting a political attack or whether I am interested in his lecture or whether I am interested in the explanation. The answer is, Mr Speaker, that of course I am launching a political attack. I do not come to this House to be lectured by professor Bossano. Of course, I am launching a political attack. It is clear from the motion that I am launching political attack and I do not necessarily accept the explanations of the Chief Minister as if they were the gospel. I am glad that the Chief Minister raised the question of optical illusions because of course the rules of the House would not otherwise have allowed me to raise them since it would be new. The optical illusion to which I referred in the general election meaning that the fact that floors were going up in Europort and in other places did not necessarily mean that the economic activity that would create the economic wealth that we are all aiming for, was also being created. The optical illusion that office space equals or might equal or was capable of equalling economic activity to fill those office spaces has been blown out of the water, not for the first time, but for the second time. The first time was when we discovered that they were going to put a hotel in what was all going to be offices before and now there is a hospital and, therefore, this office space that was going to be the salvation of the economy is now less and less and less of the space that Europort is going to be now. From the developers point of view what the Chief Minister said publicly is quite right. From the developers point of view, they can fill the space with a hospital and with a hotel rather than leave it empty, of course, that is what they must do. Of course, that is right from their point of view. But the optical illusion begins to manifest itself. Mr Speaker, I am grateful to the Chief Minister for his explanations as to how he has structured the Social Assistance Fund and the divisions and how much he pays for each but really the fact that he had to give me that

explanation proves one of the points that I am making. That information that before I used to have the moment I opened my estimates now I need to wait until he gives me a voluntary explanation in this House, to know the Social Assistance Fund is divided into those three things and that £6m roughly is the contribution to the Health Authority; £6m is the home-ownership. I think I heard him say, that it was roughly a third in each of the three areas. Everything that we do, he says - if I have taken a note of him accurately - is to run a well run and efficient system and economy and to minimise the claims of others. That may very well be true. That is not what I complained about in my motion. What I complain is that even on the assumption that what he says is correct, he is doing it in a way in which I am less able to see it. In which I am less able to monitor that it is true and in a way that I am less able to act as a watchdog. It is true, the fact that I am less able to monitor it and that I complain that I am less able to monitor it, does not mean that he is not doing his job properly. It means simply that if he ever stopped doing his job properly my chances of finding out in time are reduced. Mr Speaker, the Chief Minister's drive for the independence of this community - let us say for now that all he meant to say was the economic independence, since we are discussing after all matters general to the economy - does not require him to not give the estimates of revenue or estimates of expenditure. I do not see why it is necessary to raise his political aspirations to the future development of this community in a reply to allegations that he is not giving me enough information. The suggestion presumably must be that the more information that he gives me the less chances are of achieving economic independence and I think that that is a logical non-sequitur, Mr Speaker. The Honourable the Chief Minister said that he has not treated my motion as one alleging a reduction in democracy but rather one based on legality. Well I am sorry that he should have done that, because to that extent really we have been at cross purposes for most of the day because I was at pains to try and make clear that what I was doing was the contrary. In other words launching an attack on a political basis because I do not see how the Chief Minister could possibly interpret the last six lines of my motion as being anything other than a political attack. As a cry in the face of what I see as a diminution in democracy in Gibraltar. How he thinks that the words "and notes with regret and concern that the financial information relating to the Estimates of Revenue and Expenditure available to this House is incomplete and reduced to the point where the role of the House in general and the Opposition in particular to act as watchdog of public money and expenditure is severely prejudiced" are a legalistic attack as opposed to one which bemoans loss of the democratic function of this House to act as a watchdog of the public purse, is really a conclusion to which I do not think the Honourable the Chief Minister was entitled to come. Not only because it was obvious from the wording of the motion that it is clearly intended

to be a political rather than a legalistic attack because even if it had not been clear, I went to the trouble of repeating that, I thought perhaps, too many times. But obviously not often enough. Mr Speaker, that concludes what I have to say on my motion. Obviously, the motion that I put to the House will not come to be voted upon because one must presume that the amended motion is the one that will ultimately remain on the table to be voted on when we finish in a moments time and I wish to say nothing in relation to the amendment.

Mr Speaker then put the question in the terms of the Chief Minister's amendment to the Leader of the Opposition's motion 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 following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The amended motion was accordingly carried and the original motion defeated.

HON LT-COL E M BRITTO:

Mr Speaker, I have the honour to propose the motion standing in my name which reads:

"This House resolves that a select committee be appointed to be designated the Select Committee of Public Accounts to examine the accounts showing the appropriation of the sums granted by the House to meet the public expenditure and such other accounts laid before the House as the Committee may think fit and to report from time to time."

Mr Speaker, let me say first of all that the wording of this motion is exactly the same as the wording that has been introduced on two previous occasions in this House when a public accounts committee has been introduced and it is also the wording that is traditionally used both at Westminster and throughout Commonwealth parliaments. The Opposition, Mr Speaker, brings this motion to the

House for two reasons. The first reason, Mr Speaker, is because there are fundamental principles at stake. The first of these is that all funds appropriated by any democratic parliament are authorised by that parliament for expenditure for specific purposes and it is therefore the responsibility of the parliament as a whole and not just of the Government to ensure that the funds are properly accounted for and have been spent for the purposes authorised by parliament and in accordance with the law and any relevant regulations. The second fundamental principle, Mr Speaker, is that the elected representatives in any democratic parliament have a duty to ensure that the public is getting the best value for money in respect of three basic principles with which Government departments and other bodies are using the resources. These basic principles are economy, efficiency and effectiveness and in furtherance of these fundamental principles most democratic parliaments and certainly all those based on the Westminster model have a mechanism for scrutinising public spending. One of these mechanisms is a public accounts committee in which Gibraltar is one of the few if not the only exception in that it does not have one although as I have said before we have had one in the past. The second reason for introducing this motion, Mr Speaker, is that at the recent general election it was the manifesto commitment by the Opposition to introduce a public accounts committee if elected into Government. We consider it an essential part of any parliament to have one, we are therefore proposing that one should be set up. Mr Speaker, some might say that to bring this motion is a waste of time because the Chief Minister in answer to Question 102 of 1991 said that it was GSLP policy not to have public accounts committees and therefore it would be reasonable to expect the motion to be defeated. However, I put it to Members opposite and to the Chief Minister in particular, that the reasons given then in answer to that question as the basis for the decision not to support, in principle, the setting up of the public accounts committee are based mainly on the experiences of the period from 1978, when a public accounts committee was first set up in Gibraltar, to 1984 and is, in a way, an outdated misconception on the way on which the role of public accounts committee has evolved and developed during this time, especially, with respect, to that in UK in the House of Commons. This has followed directly on development since the National Audit Act of 1983, which in itself took a much more dynamic view to audit in relation to the reduction of public expenditure. During the recent Commonwealth Parliamentary Association Conference in Guernsey, I participated in a debate on parliamentary scrutiny public spending in which public accounts committees, to a certain extent, feature. I have also researched what has been said by speakers from many Commonwealth countries at previous conferences including a very interesting contribution by the Honourable, as he then was, Mr Restano, at the 1981 plenary conference. Not to suggest Mr Speaker, that he is not honourable now. But honourable with a capital 'H' then,

honourable with a small 'h' now. From the experience of the conference and contact with CPA members there and from the speeches of other members from a wide variety of countries at previous conferences, three main criticisms of public accounts committees and their activities emerged. It strikes me that with a will to have this parliamentary scrutiny these main problems can certainly be overcome and I think this is the crux of the matter. This is what I put to the Honourable the Chief Minister. The crack is whether there is a political will on both sides of the House to have parliamentary scrutiny of public spending because if there is a political will, then some of the reasons that the Chief Minister gave, like, for example, the question of time consumption and Ministers being too busy and so on, is just not a good enough reason for not having the scrutiny. It is a question of finding a way round the problem and finding a way of having the time. I am not suggesting that this is one of the answers but one of the things that I came across in my research was in one particular country, which escapes me at this moment, where because they had a similar problem to us in that they had no back benchers and that only Ministers were involved, they were in fact using ancillary bodies like the Chamber of Commerce or the Rotary. I am not suggesting that that is necessarily the answer. What I am saying is that, in principle, there can be ways found round the problem of Ministers not being available or if they are available not having enough time. The main criticism, Mr Speaker, of public accounts committees is that their recommendations usually come too late to be of any practical effect and the reason for this, as Members on the other side are aware, is that the activities of a public accounts committee are directly connected with the report of the Government Auditor, Principal Auditor, whatever his name or function is in a particular territory, and on the annual accounts and his report and his comments. Usually in small territories these accounts are published quite a number of months after the event and by the time the committee has met and presented its report any action that they recommend is far too late and in essence I agree with this problem. It is obvious from the views expressed by a lot of the speakers that they were all very conscious of this problem and all trying to see how they could solve it. There was a very lucid explanation, in fact, by a former finance Minister of Malta, Mr Lino Spiteri, in Guernsey. A gamekeeper turned poacher or visa versa, in which he laid great stress on this, on the importance of the activities of a public accounts committee being on proposed expenditure rather than on exposed expenditure because by the time it is exposed then it can be too late. Therefore, the modern tendency, especially in the House of Commons, is to monitor expenditure as it is happening or as it is about to happen rather than months or even years later after it has happened. The second criticism is that the government auditors department or whatever name it goes under although independent, is usually part of the executive and most speakers of Commonwealth countries tend to feel that it would be preferably for it to have a closer link with the legislature. This is certainly the way things have developed in UK since the

1983 Act, with the setting up of the National Audit Office and making this independent of the Civil Service and having much closer links with the legislature. The third criticism that emerges is that in many small countries, the terms of reference and the activities of the public account committee are too closely linked to the Westminster model and this does not allow it to work as well as it ought to in many cases. Despite these three main criticisms and other minor ones, the most notable point that emerges is that not one single country other than Gibraltar either recommends that the public accounts committee should be abolished or that there should not be one. Every single speaker, every single speech that I have read, every single contribution made in Guernsey, every single CPA Member that I spoke to were to a man unanimous in recommending that public accounts committee should exist in any democratic parliament. Their interests, rather than in doing away with public accounts committees, is on how to improve the workings of the committee, how to do away with the deficiencies, how to help the committee to maintain the principle of parliamentary democracy and how to see that their existence continues to be an active deterrent to corruption and to the misuse of public funds. I can do no better than to quote from an article in the April issue of 'The Parliamentarian' which has just reached most of us, in which Mr Quinn, a Member of the House of Keys of the Isle of Man, in an article titled "Spending controls - financial responsibility in the democratic process", analyses precisely the problems that I have been talking about, goes into detail into the difficulties and problems of public accounts committees in doing their work and carrying out the scrutiny effectively but despite innumrating all the problems, despite saying all the difficulties, like all the other speakers I have come across, he concludes his article with the following words, and I quote, Mr Speaker, "Financial responsibility in the democratic process is a desirable but invasive objective. Parliamentarians who seek scrutiny of the Executive's expenditure programmes may well have to settle for much less than they deem desirable. Perhaps they shall end up questioning whether effective parliamentary control of or influence over public expenditure is achievable. Of one thing I am certain. It would not be in the interest of democracy for parliamentarians to stop trying to effect control of or influence over public expenditure." Mr Speaker, I draw the attention of the Government to the fact that there is no time factor implicit in the terms of the motion and in this respect I urge the Government to support the motion rather than defeat it, until they have had a chance to give further and more detailed consideration to the points that I have raised and that I am about to raise in the knowledge that even if the motion is passed, they can leave the setting up of the public accounts committee pending indefinitely. As Members opposite know, there is at least one precedent for this. In the last House of Assembly we passed a motion to appoint a committee to study the possibility of televising life the procedures of this House and such a committee has

not yet been appointed. So there is nothing to stop us approving the motion today and then leaving the matter pending until the Government has either had a chance to carry out further studies or alternatively for the Government to amend the motion so that a select committee or a committee of the House is set up to study the whole question further. Mr Speaker, I am asking the Government to support the motion rather than defeat it for three main reasons. Firstly on the contention that the basis for the Government's decision not to support the public accounts committee has been made obsolete by developments in UK since the 1983 National Audit Act. Secondly, on the contention that the main criticisms that emerge throughout the Commonwealth about the workings of public accounts committees, can be overcome by producing a custom made local version of the UK developments since the 1983 Act and thirdly on the contention that it does little credit to Gibraltar's efforts to establish itself as a modern democracy and to its credibility and financial stability when doubts are cast about the effectiveness of scrutiny of its public spending. Mr Speaker, it would go beyond the scope of this motion to substantiate in detail the basis of the three contentions that I have made. I will simply try to summarise the arguments by quoting from correspondence I have received from the Journal Office of the House of Commons. This is from a letter from the Clerk of Journals from the Journal Office from the House of Commons in which in answer to my request has provided me with a lot of information but this is a letter based on some of his own additional information on how public accounts committees work. I quote from the letter. The first quote is "The Controller and Auditor General's powers were substantially (this is of course the equivalent to our Principal Auditor) revised by the National Audit Act 1983 which established the National Audit Office and separated its staff from the mainstream Civil Service and its hitherto close relationship with the Treasury. The Controller and Auditor General has long been an officer of the House of Commons. He is now also the head of a distinct department. It is notable that the extension of the powers of the Controller and Auditor General were a Government and not an Opposition initially, though it is fair to say that there had been for some time debate going on in political circles and in the Civil Service about bringing in the Controller and Auditor General's work closer to contemporary auditing requirements." The second quote says "The Public Accounts Committee's work is closely linked to the Controller and Auditor General and his department, the national audit Office. It is fairly unusual for the Public Accounts Committee itself to initiate an inquiry. Perhaps only once or twice a year. Most of its reports are based on value for money and audit inquiries carried out by the National Audit staff acting on their own initiative. Indeed the link between the Public Accounts Committee and the National Audit Office is so close that it has for some time been the practice of the Controller and Auditor General's Department to draft the reports of the

Public Accounts Committee. The evidence taken by the Public Accounts Committee is directly in respect of any one inquiry is sometimes not more than an hour's questioning of the Permanent Secretary on the report made to them by the Controller and Auditor General." The third quote "The Public Accounts Committee does not deliberately set out to question Government policy. Its eyes are firmly focused on administrative property and efficiency, though, like the National Audit Office, the Public Accounts Committee considers value for money and on this ground may in fact criticise policy decisions. It is rare for members of the Public Accounts Committee to act in a party political manner though they sometimes score political points of one another when questioning witnesses. However it is tacitly recognised that politicisation would discredit the committee's findings and for the same reason there is no ministerial pressure." The final point, Mr Speaker "An audit report sent to the Public Accounts Committee is first agreed with the Permanent Secretary of the department concerned. Some negotiations on an agreed text are lengthy but a final text is invariably agreed and when the Permanent Secretary gives evidence to the Public Accounts Committee, which nowadays usually meets in public, remedies to avoid the repetition of shortcomings are usually in place. A public accounts committee is, therefore, in many ways a long stop to an extensive auditing operation. The specialist role of the Public Accounts Committee should be remembered. It does not monitor departments from day to day. This would be quite impossible." Mr Speaker, I can think of no better way to finalise my intervention on this motion and no better way to stress the importance of a public accounts committee to underline the advantage to the Government, rather than to the Opposition, of such a committee and to make a final attempt to convince Members opposite to support the motion than to quote for the last time from the correspondence with the Journal Office of the House of Commons. The quote says "I think our Public Accounts Committee and National Audit Office system is very successful, not only in deterring corruption and maladministration but also in promoting efficiency. It should not be seen as an instrument of the official Opposition. On the contrary, possessing a machinery which removes it somewhat from party political and administrative influence operates overall to the benefit of the Government of the day. Government cannot be credibly challenged for maladministration on aspects of its functions if these have been given a clear bill of health by bodies of the standing of the National Audit Office and the Public Accounts Committee." Mr Speaker, I commend the motion to the House.

HON CHIEF MINISTER:

Mr Speaker, this will not take very long. The answer is no. It was no in 1992. It was no in 1988. It was no in 1984. It was no in 1980 and it was no

in 1978. That is to say we have never supported a public accounts committee. None of the arguments that the Member has used are new and it is not that we have not supported it in Government, I was offered the chairmanship of the Public Accounts Committee in 1978 when it was set up and not only did I not take it up, I refused to have any part in it at all and I did not support its setting up. Our policy is that we do not believe that there is any useful purpose as far, as we are concerned, in our political philosophy when we were on that side of the House. We had nothing to do with it. The Member may go back through the Hansards and the correspondence if he is interested on what went on when the matter was first raised by Mr Maurice Xiberras, I think it was, and originally resisted by the then Chief Minister, Sir Joshua Hassan, who did not think it was a good idea, but eventually he came round to doing it. I think the first Public Accounts Committee, if I remember, was chaired by Peter Isola and had Gerald Restano in it and Brian Perez, who was then a backbencher in the AACR Government on the grounds that it should not include a Government Minister. The experience that they had was not particularly impressive - not that that, of course, is an argument for saying a future public accounts committee would not perform better with different people than the last one did. Certainly they became dissolutioned with the performance of the Public Accounts Committee, but in any case, we were against the idea from the beginning. We continued to oppose it throughout its existence. Eventually in 1984 when we were the seven Opposition Members, the AACR dropped it because obviously we would not support it. We would not support its continuation and there was no point in them carrying on with the Public Accounts Committee which has the Government in it. In 1988 when we came into office we made no attempt to revive it and Mr Canepa by then was not pushing for it either because in any case I do not think they were all that keen on it when they were in Government. I am well aware of all those arguments but we will have nothing to do with a public accounts committee in Government or Opposition because we do not believe in it and therefore it will be pointless to say we will vote so that we have more time to think of it. We have been thinking about this one since 1978.

MR SPEAKER:

If there are no other contributors I will ask the mover to reply.

HON LT-COL E M BRITTO:

Mr Speaker, I am naturally disappointed at the answer from the Honourable Mr Bossano, not entirely unexpected, but I had hoped that I might have said enough to have persuaded him at least to have given it a little bit more time, especially because, with respect to what he has just said, respect to him not to what he has just said,

what he has just said is not entirely accurate because when in 1978 the first Public Accounts Committee was set up, and I have the copy of the Hansard here, the Honourable Chief Minister at the time Sir Joshua Hassan was saying, I think he was speaking about the Honourable Mr Bossano, "I think he might have made a very good contribution to the Committee having regard to his knowledge of the budget and so on, but he said that his commitment to his trade union work prevented him from dedicating the time that was required to carry out his work." There is no contribution from the Honourable Mr Bossano in this debate about being against public accounts committees and in fact voted in favour of it when it was set up. It was not that he said no as he said earlier. He actually voted in favour and when the next Public Accounts Committee was set up in March 1980, again there is no contribution from the Honourable Mr Bossano speaking against the Public Accounts Committee and once again he voted in favour. So he did not say no as he told us when he introduced his speech. I also cannot agree with him that the experience of previous committees was not "particularly impressive" because reading through, which I have no intention of doing, Mr Restano's contribution in the 1981 CPA plenary session, it is quite obvious that the Committee was working very satisfactorily and he reports in glowing terms from the workings of the Committee to the CPA, so much so, that those other members who had expressed reservations previous to him speaking took on board some of the points that he had made and said that he would be very interested in bringing them up in their own legislatures when they got back. In fact Mr Restano speaks about the cooperation of Government Ministers on the Committee. He says that as Chairman he had been worried about Ministers not being able to cooperate effectively and in fact he says "My fears were unjustified and the Ministers who sit in the Committee had been very cooperative". So I cannot agree that Committees have not worked in the past. Obviously they have. In conclusion, Mr Speaker, I must go back to the point that I made half-way through my speech. With respect to the Honourable the Chief Minister I am not at all convinced by the reasons that he has given. At the end of the day it is a question of political will whether there should be parliamentary scrutiny of public spending or not and it is obvious that on that side of the House there is no political will to have the parliamentary scrutiny. From what I said initially he did not feel that strongly about it himself because he supported the principle on two occasions in 1978 and 1980 and I cannot but reach the conclusion that now on the other side of the House, now in Government it suits the Government policy not to have public scrutiny just as in the previous debate that we have had today it suits them to adopt measures which we have tried to censure in a motion earlier on today.

Mr Speaker then proposed the question in the terms of the motion moved by the Hon Lt-Col E M Britto and on a vote being taken the following Hon Members voted in favour:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The following Hon Members voted against:

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

The following Hon Member abstained:

The Hon P J Brooke

The motion was accordingly defeated.

HON LT-COL E M BRITTO:

Mr Speaker, I have the honour to propose the motion standing in my name which reads:

"That this House is concerned that

(a) The contents of the report from The Timber Research and Development Association of Great Britain (TRADA) express the opinion that tests carried out on a door from Westside Development (Phase I) show that it would fail to achieve a fire resistance integrity performance of thirty minutes as required by law;

(b) There is a possible threat to the safety of occupants of flats in the Westside Development (Phase I) if the contents of this report are correct;

(c) There is an apparent contradiction between the contents of this report and those certificates in the possession of the Chief Fire Service which certified that the doors are of the required standard;

and calls upon Government to commission independent technical investigation and testing to establish whether the doors and accessories installed in Phase I of the Westside Development satisfy those sections in respect of fire safety of the Building Regulations and of the British Standard Code of Practice which are applicable to Gibraltar."

Mr Speaker, when all is said and done, this motion is about life and death, or should I say, the increased risk of death to the occupants of a flat or of a building if a fire starts and fire prevention measures have not been adequate. I urge Members opposite and indeed those officials with responsibility in the field of fire prevention to understand that this is the spirit in which this motion is presented to this House and to accept that if there is reasonable doubt, then there should be investigation to remove that doubt. Mr Speaker, in a motion of this nature, it is unavoidable that some degree of technical detail will find its way into the speeches at some stage. I have tried, in preparation for this motion, to do my utmost to keep this to an absolute minimum but some will be unavoidable. I appreciate that this can cause confusion and can even be boring and uninteresting to Members on the other side. To try to establish the scenario, as it were, I will try to summarise the situation succinctly without going into taking of details and then I will develop these individual facts that I will now bring out individually later on to make the situation clear. Mr Speaker, the situation is as follows. There are a number of facts that we have to take into account. Fact No.1 is that by law in any new building, any new development, including housing, all rooms, with the exception of bathrooms and toilets, must have self closing doors which are at least thirty minutes fire resistant. Fact No.2 is that there is a law enforcement requirement for this and that therefore before a certificate of fitness can be issued to allow the building to be used, there has to be an inspection by the relevant authority, in our case, the Fire Brigade, who must be satisfied that certain regulations and parts of the code of practice which are their responsibility have been met. This applies to all buildings in general. We now come to one particular item - the nigger in the wood pile - the direct cause of this motion which is the existence of a report from - it has been mentioned in the actual detail of the motion - a body called TRADA, The Timber Research and Development Association, a very reputable company within the British Construction Industry which has carried out tests on a part of a door taken from a flat in Westside Development (Phase I) and sent to UK. They have presented a report which shows that their opinion is that if a complete door in its frame were tested fully in a proper test, which has not been done yet, that this door would fail the full test that needs to be carried out. In other words that it would not be thirty minutes fires resistance. Fact No.4 is that, according to a letter that I have received from

the Minister for Government Services, the Fire Brigade is in possession of certificates that say that doors at Westside are thirty minutes fire resistant. Obviously, Mr Speaker, the situation is, and in fact No.5, that we have a direct contradiction. There is a report that says that one door has been looked at by a reputable UK testing centre and they feel that similar doors would fail the test and there are certificates in existence that say the contrary. One thing is obvious. They both cannot be right. One of the two must be wrong. That implies, the sixth fact which is that if the doors are not fire resistant to thirty minutes, as required by law. Then there is obviously a threat or shall I say an increased threat, to the safety of the occupants of those flats. Increased over what the threat would normally be if fire precaution measures were what they ought to be. Finally, Mr Speaker, fact No.7, is the insurance position which is a hypothetical one at the moment, but it is obvious that long term, if this situation were to remain unclear or unsolved, future claims on fire insurance companies might well become very complex matters and might well become very difficult to solve if there is some doubt about the fire precaution side of the doors. Mr Speaker, before we look at some of these individual facts in more detail, I would like to put on record the various actions that the Opposition has taken to try to establish the facts before resorting to bringing this motion to the House. I have to say, Mr Speaker, that at the various stages, we have found little cooperation either from the Government or from other entities involved and we have therefore had no option than first of all to bring the matter to this House at question time in the earlier part of this meeting and now in this motion because at question time did not bring out the answers that we were seeking. It all started back in late January early February of this year when unconfirmed reports began to reach Members of the Opposition about the degree of fire resistance or lack of adequate fire resistance, of the doors at Westside. I stress unconfirmed reports of reluctance by the Fire Prevention Department of the Fire Brigade to certify that these doors were thirty minutes fire resistant. In the view of this persisting rumours and approaches and questions by members of the public, on the 27th February, as Opposition spokesman for Government Services, I wrote to the Honourable Minister for Government Services asking for confirmation that the Chief Fire Officer was satisfied and I quote from my letter "That those Building Regulations and sections of the British Standard Code of Practice which are applicable to Gibraltar and relevant to the responsibilities of the Fire Brigade have been complied with as hitherto interpreted and enforced by the Fire Brigade in respect of Phase I of the Westside Development". Whilst waiting for a reply from the Minister, which incidentally never arrived, on the 3rd March, I sent a faxed message to Procon Limited, the project management and design consultants of the Westside Development and my fax read as follows: "It would assist me in allaying the fears of those concerned about the degree of fire resistance of the doors installed

in Phase I of Westside I, if you would send or fax me a copy of the manufacturer's certificate to which you referred during our telephone conversation last Friday, as confirming these doors were thirty minutes fire resistant. Anticipated thanks". And to this fax I received the following answer from Procon and once again I quote, "Thank you for your fax of the 3rd March, 1992, concerning the fire resistant doors on Westside I. I regret that I am not authorised to copy contract documents to third parties. However, I can assure you that the Chief Fire Officer has a copy of the relevant certificate and he is satisfied with it. I suggest that if you wish to pursue the matter further you take it up with the Chief Fire Officer." Which of course by convention, Mr Speaker, I am not able to do. As I said, Mr Speaker, I am still awaiting a reply from the Minister for Government Services. During the course of April, I was given a copy of the report of TRADA, The Timber Research and Development Association. In the absence of a reply to my letter from the Minister for Government Services, I tabled a question (No.52 of 1992) for answer at this meeting of the House which started on the 30th April. In essence this question asked for the same information that I had asked for in my letter. During the course of supplementaries to that question, Mr Speaker, I informed the House of the existence of and, as far as I was concerned, the serious implications of the contents of the TRADA report. Since the Minister's answers were to a great degree uninformative, at least of the information that I was seeking, and in fact the whole attitude on the Government benches, were not particularly helpful in allaying the worries that had been raised on this side of the House by the opinion expressed in the report that the door would fail a thirty minute fire test, on the 5th May I once again wrote to the Minister in the following terms and I quote, "As promised at the House of Assembly last week, I am pleased to enclose a photocopy of the report from The Timber Research and Development Association (TRADA), of The United Kingdom, in respect of tests to a door from Oak Tree Lodge, Montagu Gardens, Gibraltar. In view of the contents of this report, I would be grateful if you would let me know before the resumption of the meeting of the House of Assembly what action, if any, is being taken." In his reply dated 13th May, amongst other things, the Minister for Government Services replied and I quote, "I have gone back to the Fire Brigade and assured myself that the treatment afforded to this development in respect of fire prevention standards is exactly the same as is the case with every other development in Gibraltar. The Chief Fire Officer assures me that he is satisfied that the doors in question are of the standard required and that he has in hand a certificate which needs to be produced by the developer in such circumstances. You ask that I should supply you with copies of the certificates held by the Fire Brigade. These certificates are required to be provided by developers in order to satisfy the standards required by the professionals in the department prior to the certificate of fitness being issued. The scrutiny of these documents is not a matter for political

decision. I therefore do not ask to be shown the certificates myself and I do not agree that you as a Member of the House are entitled to be given copies by the department of information provided by the developers to them." That, Mr Speaker, is the historical background to the presentation of this motion. I now come into some greater detail to the various facts that I started off by painting the overall picture at the beginning of my presentation. I have no doubt that Members will be relieved to hear that I do not intend to quote chapter and verse from the Building Regulations and the British Standard Code of Practice. If I did it would take a fair amount of time. I will assume that the statements that I have already made that all doors except bathroom and toilet ones in new developments, such as Westside, are required to be thirty minutes fire resistant and that this will not be challenged. If it is I will have to refer them to the point when I exercise my right to reply. It is, however, relevant to explain what is meant by thirty minutes fire resistant. Let me say straightaway that it certainly does not mean fireproof or incombustible for a period of thirty minutes. It means that under rigorous testing conditions, under British Standards 476 Part 22 of 1987, the door set in its frame, as you would normally find it in the building, has resisted the passage of flames for a period of thirty minutes. Mr Speaker, this is a test that cannot be carried out in Gibraltar. There are simply no facilities for it and certainly it cannot be carried out by the Fire Brigade. It needs specialist facilities found, not just in the UK, but in specialist centres like TRADA. Let me stress that it is not simply a question of a door, out on the beach or in the middle of a waste piece of ground, setting it on fire and timing how long the door takes to burn. It is a scientific and carefully carried out test that sets the standard for the industry. Before dealing in detail with the report from TRADA, I think it is relevant to explain who the Timber Research and Development Association are. As I have already said, they are a very well known and reputable company within the British construction industry and as the name of the company itself suggests, it deals with research and development of the use of timber in all facets but especially within the construction industry. The company administers formal quality assurance schemes in accordance with British standards for such items as the fabrication of timber trusses, timber doors and windows etc. In respect of fire resistant, resistance of elements of construction such as doors, TRADA is one of the few laboratories of fire consultancies accredited by NMAS, that is the National Measurement and Accreditation Service for conducting assessments and tests. The building research establishment and other approving bodies such as the British Board of Agreement might also be expected to have the necessary expertise to do this. Mr Speaker, in order that the TRADA report appears on the record in Hansard I am afraid that I am obliged to read it in full. Members will no doubt be happy to learn that it is only just over a page and a half long. Before doing so, I must stress once again,

so that Members are aware of this as I read the report, that TRADA did not carry out a full British Standards 476 Part 22, 1987 fire resistance test. To do this they would have needed a complete door and door frame. My understanding, Mr Speaker, is that of a door taken from a flat at Oak Tress Lodge, Montagu Gardens, a section of this door complete with the hinges was sent to TRADA in UK for preliminary tests and an opinion to be carried out. These tests are enough to allow TRADA to form and to express an opinion on what would be the result if the full test were to be carried out and when I read the report now you will see what that opinion is, Mr Speaker. The report is dated 9th April, 1992, and it is in letter form and it is headed "'Fire Doors at Flat Oak Tree Lodge, Montagu Gardens, Gibraltar'". We thank you for your letter of the 26th March, 1992 and enclosures. We have examined the door and hinge sample you sent. Our findings are as follows: The door core consists of a 34.5 millimetre thick chipboard having a density of about 600 kilograms per metre cube. The door leaf is lipped all round with hardwood size 34.5 millimetre times 22 millimetres to 25 millimetres tongued 8 millimetres times 20 millimetres into the edge of the chipboard core. Both sides of the door are geared with hardwood approximately 0.5 millimetres thick. Voids up to 1 millimetre wide exist between the tongue of the lapping and the bottom of the groove and extend across 20 millimetres of the door thickness. We have not been able to determine the length of these voids from the sample available. There is no evidence of the door edges having been fitted with intumescent strips. Two pairs of hinges have been provided per door leaf. The hinges are 100 millimetre long of a soft metal probably aluminium having a bronze effect finish. Steel pins are set in thermoplastic sleeves. Door closing is effected by a coil spring door closer. It is not known if this would be on the risk side of the door or whether when shut will the door be latched. The door frame consists of 29 millimetre times 110 millimetre veneer chipboard rebated 9 millimetres. This is mounted in a lining out of 110 millimetres by 35 millimetres softwood. The joint between the inner and outer frame is covered on both sides of the wall by veneer chipboard architraves approximately 5 millimetres thick at the frame interphase position. Your drawing number "blank" indicates a gap of approximately 5 millimetres at the joint between the two frames. Your drawing shows no indication of any intumescent seal in the frame rebate nor any indication of a seal between the two frames. As we do not know the size of the door, whether they are single or double leaf, nor the method by which they are to be retained in a closed position or which is the risk side, we are unable to estimate the likely performance they would achieve if they were subject to a BS 476 Part 22, 1987 fire resistance test. We are confident however, they will not achieve FD30 performance. In our opinion these door sets are deficient in several respects:-

(1) A rate of charring of chipboard in the order of about 0.75 millimetres per minute can be expected with this density of chipboard. Without the support of a structural veneer the residual and charred chipboard may well collapse in under thirty minutes.

(2) Burning of the door particularly at the head could be expected where voids between the lipping and core exists if they were to exceed 2 millimetres wide.

(3) Similarly the void between frames protected by only a total of 10 millimetres chipboard will induce premature failure.

(4) Early melting of the plastic hinge pin booster will allow the door to drop by up to 3 millimetres producing an unacceptable large gap at the top of the door.

(5) If the hinges are of aluminium they can be expected to melt at about ten minutes into the test. The resulting gaps created will lead to early integrity failure at the hinge positions.

(6) The absence of an intumescent seal round the stiles and head coupled with the increase in door gap size due to the door dropping and the inevitable bowing will allow flame penetration round the door particularly at the head; and

(7) The door closer spring if mounted on the risk side will lose its temper and fail to exert a closing force on the door which if unlatched could well fall open.

As stated, it is our opinion that a full size door set to the details submitted would if subjected to a British Standard 476 Part 22, 1987 fire resistant test fail to achieve an integrity performance of thirty minutes. It is signed: Yours faithfully, John Pilkinton, Fire Engineering Department." Mr Speaker, I draw attention of Members to the thickness of the door as measured in this report, which is 35.5 millimetres. I am advised by experts in this field that doors manufactured in UK which are required to meet the British Standard of half hour minutes fire resistance all have a minimum of 44 millimetres of thickness not 35.5 millimetres, as has been measured in this case. I have here two or three catalogues of British doors. The first one is by a firm called John Carr and I will not attempt to quote from the whole catalogue but there are various thicknesses of doors 35 millimetres, 44 millimetres, but under the heading of the 44 millimetres there is always the note that they are half hour fire resistance doors 44 millimetres. Similarly down the page, half hour 44 millimetre. Another catalogue by a British firm called Hills. Once again half an hour fire shield doors - 44 millimetres thickness. One hour, as a matter of interest, 54 millimetres thickness. I also have a catalogue from Mitchells Building Construction for Components and Finishes where once again they say half hour type doors minimum finish thickness 44 millimetres. So what we are saying

in effect, Mr Speaker, is that we have a door which has been tested having been taken from a flat in Westside which is only 35.5 millimetres thick which we are told from what I am going to say in a few moments, is fire resistance to thirty minutes. A door, which I understand to be of Spanish manufacture whereas in Britain apparently no British manufacturer is able to achieve this with the door of a thickness less than 44 millimetres. I find it difficult to understand that with such a wide degree of thickness that no British manufacturer would be able to achieve the degree of fire resistance required with doors of a thickness less than 44 millimetre and yet it is able to be done somewhere else. This brings me on neatly to the certificates which in his letter of the 13th May, the Honourable Member opposite the Minister for Government Services, told me and I quote "The Chief Fire Officer assures me that he is satisfied that the doors in question are of the standard required and that he has in hand certificates which need to be produced by the developer in such circumstances as I quoted previously." As I quoted previously, he then went on to say that he was not prepared to show me the certificates which if they are available and he had done so maybe I will not be standing up now with this motion and the whole matter could have been settled there and then. However, Mr Speaker, one of the certificates was leaked to me unannounced by mail and it makes interesting reading, especially compared with the TRADA report. The certificate in my possession is issued by a Spanish entity called AITIM - that I understand is an abbreviation and I do not know the full name - of Madrid in Spain and the certificate certifies that a door, model T -30/4 which is manufactured by a Spanish firm Empresa JL JHER Sociedad Anonima is thirty minutes fire resistant. I would remind you, Mr Speaker, and I would remind Members opposite of the contradiction that we have but the TRADA report which says that the door would fail the fire resistance test of thirty minutes was carried out on a section of the door which was taken from Westside and sent to the UK. I would highlight five differences, and there may be more, between the report made by TRADA and the Spanish certificate. It would indicate a number of things to which I would come later. The first difference, Mr Speaker, is that the TRADA report gives the thickness of the door core, not the door, of the door core as 34.5 millimetres, whereas the Spanish certificate gives a thickness as 32 millimetres. The second difference is that the TRADA report says that the door leaf is lipped with hardwood size 34.5 millimetres times 22 millimetres to 25 millimetres. In the AITIM certificate the corresponding measurement is 38 millimetres times 32 millimetres. The third difference is that the TRADA report says that the door is veneered with hardwood 0.5 millimetres thick whereas the AITIM certificate says 1.2 millimetres plus an external covering on the exterior face of unspecified thickness. The fourth difference is that the TRADA report says that the door frame is mounted out in a lining of 110 millimetres by 35 millimetres softwood whereas the Spanish certificate says 140 millimetres by 40 millimetres. The fifth and final

difference is that TRADA says that the hinges supplied are of soft metal probably aluminium whereas the Spanish AITIM certificate says that they are of stainless steel. Mr Speaker, I do not for one moment question the integrity of either TRADA or of AITIM. Let us be quite clear about that. But it is quite clear that if one of them says that a specific door which they had tested is fire resistant to thirty minutes and the other ones says that it is not, then they both cannot be right. That is a clear contradiction. So we are left with two options, Mr Speaker, either they did not test the same door or alternatively they are testing to a different standard. Under the Gibraltar Building Regulations testing must be to British Standards 476 which is what we know that TRADA in UK uses. I put it to you, Mr Speaker, and to Members opposite that if the Spanish testing centre did test the same door and they do not test to British Standards 476, then the validity of the certificate, to say the very least, is questionable because we do not know what standards they test. The second possibility is that TRADA and AITIM did not test the same model of door which is a distinct possibility. However, both the report and the certificate give detailed measurements and descriptions of the doors for sections of the doors that they tested. So it would seem to me and it should be the same to Members opposite that it should be a very simple matter to engage the services of an independent professional to say whether the report or the certificate applies to the doors actually installed in Westside. Mr Speaker, neither am I questioning the integrity of the Fire Brigade or of its officers but I do question the validity of a system of fire prevention which so readily accepts and continues to accept and defend a certificate when doubts on its validity have been cast in this House by an elected Member backed by a technical report from a well known and respected British testing agency. I do also question the attitude of the Government and their reluctance to initiate any investigation or if they have done so, to make a public announcement of the results of such an investigation after they were made aware of the serious implications of the contents of the TRADA report which the Opposition made available to the Government on the 5th May. Indeed in his reply to my letter, in which I enclosed a copy of the TRADA report, the Minister does not even acknowledge having received the report or indeed indicate whether he intends to take any action on its contents. The Government's attitude, Mr Speaker, I regret to say, almost shows contempt for the workings of this House, the integrity of its Members and the constructive motives of the Opposition in bringing this matter to light in the public interest. Indeed it also shows a total disregard of the feelings and worries of those who live or will live at Westside and who are understandingly worried and they tell Opposition Members that they are worried by the reports that have been made on this matter and which they have read or seen in the media. I opened by saying that in essence this motion

was about life and death. If the contents of the TRADA report are correct there can be no doubt that in case of fire there is an increased threat to the safety of people living in Westside. The solution once again seems to me very simple. A door which is independently and professionally certified to be the same as other doors in Westside (Phase I) should be sent to UK. If not to TRADA, then to any other similar British testing centre for a full British Standards 476 test to be carried out. I, therefore, call upon Government, if it has not already done so, to commission such an independent technical investigation and testing to establish whether the doors and accessories installed in Phase I of the Westside development satisfy those sections in respect of fire safety of the Building Regulations and the British Standard Code of Practice which are applicable to Gibraltar. Mr Speaker, I will conclude with the introductory words of the section on fire resisting doors in the chapter of precautions against fire of the British Standard Code of Practice. I quote "Fire resisting doors are one of the most important links in the chain of fire safety precautions and care in their selection to ensure that they are adequate for their purposes cannot be over emphasised". I commend the motion to the House.

MR SPEAKER:

Honourable Members who wish to speak on the motion may do so now.

HON J C PEREZ:

Mr Speaker, first let me deal with two or three issues which the Honourable Member has raised. He said that the original letter that he sent me, I did not reply to, and I told him on the 30th April in this House, that both the City Electrical Engineer and the Chief Fire Officer were both at different intervals away from Gibraltar and their letters to me to enable me to reply to him did not reach me until very near the meeting of the House. By then the Honourable Member had already given notice of the question and that is why I did not reply in writing to him. He then said that I did not give him a definite reply, which I did. In this House, I told him that I had contacted the Chief Fire Officer and that I put the question that he had put to me to him and that he could confirm that in this particular case all the regulations and all the codes of practice of British Standard in chapter 4 - 1971 were being met in the case of Westside I. That was the view of the Chief Fire Officer and it continues to be the view of the Chief Fire Officer which I am not doubting. The Honourable Member is doubting. Let me also say that he has made a lot about the thickness of the door and he is completely wrong on that premise. You do not measure fire resistant by thickness because it very much depends on the material that you are using and you can use steel and you can have thirty minutes fire resistance with an inch or half and you can use timber and then it is a different width. So it depends on the wood that you are using, on the type of wood, on the inside

of the wood and the thickness. Fire resistance has nothing to do one with the other. Let me correct the Honourable Member when he says that these scientific tests are carried out with one door. They are not carried out with one door. They are carried out with two doors, with the frames and with the hinges. They are mounted and they are subjected to scientific tests. Something which TRADA has not done. Mr Speaker, it is quite evident that the Government cannot and will not support the motion moved by the Honourable Member. As it is worded the motion puts into question the procedures used by the professionals in the field, in this case those in the fire service as to the way they have gone about approving the Westside development in respect of fire safety and the way in which they have determined that this development complies with the British Standard Code of Practice. When the Honourable Member last raised this in the House, my colleague the Honourable the Chief Minister, made it abundantly clear that the only area of political responsibility involved on this issue was to check whether the City Fire Brigade had acted in the same manner as it would have in any other development and use the same yardstick as in other developments in the application of fire standards. That enquiry has already been conducted by the Chief Fire Officer at my request and the Honourable Member will know this from my letter to him of the 30th May. The Chief Fire Officer investigated with the TRADA report the allegations made by the Honourable Member and I replied to him saying that there was nothing to worry about, that the professionals had said that they were complying with the relevant regulations. It has been found, therefore, that those persons in the Brigade involved have acted in the same way in respect of Westside as they would have done in any other project. The motion therefore, Mr Speaker, in calling for an independent technical investigation is putting into question the professionalism and integrity of those involved in the application of fire safety and of the whole of the City Fire Brigade, given the inquiries already carried out and the results of these inquiries. It also puts into question the documentation received by the Brigade from the developers some of which is documentation received from specialised laboratories. I do not know whether it is AITIM or anything else. I do not involve myself at that level. I ask whether they have done anything different in the project to what they would have done in any other project. The answer is no and we are sure that it is thirty minutes resistant. I do not go into the detail, I am not a professional. Mr Speaker, giving the information that the Honourable Member has already been given in respect of the inquiry that has been carried out, one would perhaps understand that he should be questioning the whole system used in appraising all developments as to fire safety. But he is not saying that. He is specifically referring to those involved in appraising Westside and suggesting that they treat something different. That has already been determined as not true. Therefore, he must be questioning the validity of the information I received from the Chief Fire Officer. Had he questioned the whole system presently in place, then we would have had to go

back and check every single development in Gibraltar since all have been dealt with by the same criteria and the same yardstick and surely the same concern and consideration must apply to any other development as is the case with Westside. But the Honourable Member confines himself to the Westside development, thereby insisting that what he has been told by the professionals through me is wrong. Let us now examine what the Honourable Member is basing his arguments on. On a document which has been passed on to him by a third party who sent a piece of a door and a design of a door to a company or an organisation in the United Kingdom called TRADA for them to give an opinion as to what would be the result of a test of such a door were it to be scientifically tested. With the information provided, TRADA, admitting that they know not the size of the door or whether the doors are single or double leaf, nor the method by which they are retained in a closed position, say they are unable to estimate the likely performance the doors would achieve if they were subject to a BS 476 Part 22 1987 fire resistance test. They then contradict themselves and say that they are confident they would not achieve a nifty performance which is a half an hour fire resistance notwithstanding that they had already stated they were unable to estimate the likely performance. Mr Speaker, we are asked by the Honourable Member to presuppose that the piece of the door sent to TRADA was of an actual door at Westside, that the design was the correct one and that the description and information sent was accurate. We are then given by TRADA an opinion on what could possibly be the result of a scientific test if it were carried out and that opinion in itself is contradictory and here the case of the Honourable Member rests. He is prepared to question the professionalism and integrity of these servants employed by Government on the basis of what? Of an opinion which could possibly be the result of what? Based on information sent to TRADA by a third party none of which have been verified to be correct. TRADA, I may add, in all the company's headed paper at the bottom and in small print has the qualification as to the information supplied which is most important. It states "Whilst every effort is made to ensure the accuracy of advice even the company cannot accept liability for loss or damage arising from the use of the information supplied." Let me correct the Honourable Member on another issue. Twenty minutes fire resistance for internal doors is sufficient to comply with Building Regulations in Gibraltar. External doors are required to reach a thirty minutes resistance and that is not, at this stage, in question given that the door that is supposed to have been sent to TRADA is of an internal design. Nevertheless although the requirements for internal doors is twenty minutes, those at Westside have successfully undergone laboratory tests for thirty minutes resistance. Such documents have been provided by the manufacturers of the doors to the developers and in turn to the Fire Brigade. Over and above that there is independent documentation which verifies that supplied by the manufacturer. Since the whole issue was raised British Standards have been revised and now only twenty

minutes resistance is required for external doors after the Honourable Member had raised the issue, but the external doors again is not being questioned. Mr Speaker, given all the things that I have said I am proposing to move an amendment to the motion which reads as follows:

"Delete all the words after 'This House' and substitute as follows:

(a) Is satisfied that the treatment afforded to the Westside Development by the City Fire Brigade in respect of fire prevention standard is exactly the same as the treatment it has afforded every other similar developments in Gibraltar;

(b) Regrets any aspersions that may have been cast on the professionalism and integrity of those fire officers involved in fire prevention;

(c) Accepts fully that the work carried out by those officers has been done without any political interference whatsoever;

(d) Is satisfied that those doors checked by the City Fire Brigade comply with the relevant requirements, namely the Building Regulations 1991,

and calls upon the Opposition to properly verify the information it uses in this House before questioning established procedures and allow the professionals to continue to conduct their technical work without any political interference."

Mr Speaker, in moving this amendment I must stress once more how irresponsible it is for Members of this House to question professionals without what the Government considers is a proper documentation of the facts. Indeed the wording of the Honourable Member's motion itself is contradictory, when it first refers to an opinion by TRADA and secondly two lines down actually says that the report shows etc etc. First of all, it is hardly a report. It is a letter. Secondly, it cannot show or prove anything if it is only an opinion. Mr Speaker, whether it was or was not the intention of the Honourable Member of casting aspersions on those involved in fire prevention in the Fire Brigade, the way the motion has been worded does this. Indeed the way the Honourable Member has moved it in putting into question the judgement of the City Fire Brigade, continues to do that. It is an escapable conclusion which the Honourable Member must arrive at if he is not satisfied that the results of the inquiries carried out by the Chief Fire Officer are sufficient. The Government and indeed the whole House has a responsibility and obligation to protect those professionals it employs if it cannot be proved that they have acted incorrectly. Nothing that the Honourable Member has said proves this in any way, Mr Speaker. I commend the amendment to the House.

Mr Speaker proposed the question in the terms of the Hon J C Perez's amendment.

HON P CUMMING:

Mr Speaker, yesterday the Minister for Trade and Industry, the Honourable Mr Michael Feetham, on the question of the Port.....

MR SPEAKER:

We have to be careful. It has to be relevant to the motion. I will point this out. I was very liberal before both with the relevancy and repetition because it was a motion of censure and normally one gives a lot of scope to that. We are now technically talking about a kind of door whether this is permissible or it is against the regulations or whatever. So we have to stick to that.

HON P CUMMING:

Thank you, Mr Speaker, I am directly relating to the issue and the point is that the Government graciously accepted a point from this side and that does them credit. There is new evidence here. Can they not just look again at the problem? There is safety of our people here. Even if there were a slight doubt, all it takes is a willingness to look into it. This matter could have been defused before even the question came to the House. If there is some technical misunderstanding on one side or the other, this could have been clarified easily. So why then is it that although some Ministers seem willing to look at matters, the minds of others seem to be completely closed on accepting any point or any suggestion that comes from the Opposition? Naturally, it is very important for us to think what the reasons might be because it could be rigid thinking on the matter. Their minds are made up before. It could be that this is a psychological - a sort of pseudo macho - thing. Nobody makes me do anything I do not want to do sort of thing. That is bad enough, but of course, Gibraltar is a place rife for rumours and this sort of attitude on the part of Government Ministers gives great power to rumour-mongering. It may be totally unnecessary because obviously there is the human temptation to think that in fact, as we say in Spanish, there are cats locked up here in this matter. This is a cover for some corrupt practice and this does us harm. It does us harm not because the Opposition brings it up but because of the attitude the Government takes when we bring up this sort of thing. We have already had this before, in the last meeting from the Honourable Juan Carlos Perez when we pointed out, again, the danger of the gutter across the airport. A totally irresponsible attitude came from that. Obviously, where there is no suspicion, there is no grounds to suspect that that is a cover up of plot of some hidden corruption. That does not apply. It must have been the pseudo macho thing, nobody makes me move

my opinion. This is political irresponsibility which would give me a lot of worry if I was the public relations officer of the GSLP. Some years ago in the Garrison Library, some old gentlemen fell over a structure which was said to be unsafe and injured himself badly and there was a court case leading to the Garrison Library having to fork out an enormous compensation and having to sell books which were historical treasures to the highest bidder, which was very low, quickly to make funds. If somebody crosses the airport and does themselves an injury and chooses to take the matter forward and compensation has to be made, it has to come either from those funds which the Government prides itself in such efficient administration of. It is a total political irresponsibility and now if we translate that from the gutter across the airport to the houses at Westside, the political irresponsibility of that macho attitude is practically incredible. I cannot see Governments in other places doing that, unless we go to look at the Government of Idi Amin or something like that.

HON CHIEF MINISTER:

I know Idi Amin as well as General Franco. The Government of Idi Amin is presumably at the head of that Government.

HON P CUMMING:

With a bit of goodwill this matter could have been fused long ago. It is a matter worthy of being looked into or being investigated and treated with a bit more than just arrogance and defiance. Thank you, Mr Speaker.

HON J L BALDACHINO:

Mr Speaker, I think I am going to answer a few points made by the last speaker. I was not going to speak. I do not want to get involved in what is my profession because it is well covered by the professionals that we employ from whom the Government has had advice. The Honourable Member is very quick on using his words. I was hearing him speak on the previous motion and he keeps on bringing these words 'corruption' and 'irresponsible'. What is irresponsible is the way that they have presented that motion because that motion scientifically does not have any backing whatsoever. The test that the Honourable Member was speaking about before in his contribution is with a piece of wood that was sent there. We do not know if that was a door from Westside.

HON LT-COL E M BRITTO:

Mr Speaker, will the Honourable Member give way? What he should be more concerned is not whether the piece of door that was sent from Westside was from Westside. He should be more concerned whether the certificate on which everything has been based applies to the doors that are actually in Westside. That is what they should be concerned with.

HON J L BALDACHINO:

Mr Speaker, I am basing myself on the advice of the professionals that are employed by the Government and he is basing his arguments on a piece of paper which, like my Honourable colleague said, has underneath on small print that it is only an opinion and if used outside they do not make themselves responsible for whatever is expressed in that piece of paper. That is irresponsible. What is irresponsible is to come here to this House and say that it is a life and death matter when he does not know the real cause of death in a fire. The most scientific reason shown by statistics is that there are more deaths by smoke than by burning. The Honourable Member is saying that it is a life or death matter. Mr Speaker, what happens is that in a normal dwelling, in the twenty minutes, there is always somebody to raise the alarm quickly. In an office it is a different thing. A fire may occur after-hours and therefore you need more protection on the fire doors. That is why there is no requirements to have fire doors on the bathroom because there is a less likelihood of a fire occurring in the bathroom than anywhere else in the building. But he also mentions the latches from the report.. He said that if the door was unlocked then that would reduce the fire capacity of the door by twenty minutes. If you have a fire door then you should have a latch providing a self-closing door. It cannot be any other door. It has to be a self-closing door. A self-closing door means that it has the power or the equipment to close the door properly. If that is the case, then it cannot be what the Honourable Member was reading, that it would be unlatched. If it would be unlatched it will probably not be the door, it would be the equipment that closes the door. Mr Speaker, in all fairness, I think that he is referring to Westside I (Phase I) not to the whole of the Westside. It is not clear here. There are two projects and people might get confused.

HON LT-COL E M BRITTO:

Can I clarify that for the Minister? I have been talking specifically about Phase I of Westside I. Maybe in speaking I may have missed out the words 'Phase I' in part of the speech. But if I have done so let us be clear for the record that I am speaking exclusively about Phase I of Westside I, if nothing else because that is the only information I have.

HON J L BALDACHINO:

I just wanted it for a point of clarification in case other people were listening so that they know he is referring to Westside I and not to Westside 2 which is another project completely different. Mr Speaker, the only thing is that really the arguments that have been

presented by the Honourable Member really does not warrant the Government having a second look. There is nothing of substance in that argument and it is not based on anything that is scientifically approved. We can only go on something from a third party that says that they carried out the tests. The Chief Fire Officer is satisfied. We have had professional advice and we think that we have to support that advice because the Honourable Member has not presented anything to this House in his argument that proves the contrary.

HON P R CARUANA:

Mr Speaker, I only want to say two things. First of all I should say that I am sorry that the Honourable Minister's initial position should have been that he did not want to get involved in this because he is Minister for Housing and he does have a degree of political responsibility for matters in relation to semi-subsidised public housing but be that as it may, I accept the concept of collective responsibility and his colleague the Minister for Government Services dealt with it. The Honourable Member did, however, say as if we did not know, that more people die from smoke inhalation than from flames. Well I think that is common knowledge for those of us who do not have this experience in this field, but that is one of the reasons why we are concerned because one of the things that TRADA says is "Never mind whether the door itself is thirty minutes fire resistant or not". If they have hang on hinges like the ones that have been sent to us, never mind whether the door will resist fire for thirty minutes, it will not stand up on its hinges long enough to find out whether it would stand for thirty minutes and there will be a collapse of the door at the hinges and that would let the smoke penetrate through the collapsed door that has resulted, not from the fact that the door is not thirty minutes fire resistant but from the fact that the hinges tested appear, according to TRADA, not to be of the required standards. Therefore, they will not hold up the door long enough to find out whether it is thirty minutes fire resistant or not. That is why he is quite right when he mentions the statistics of smoke inhalation and they were not just talking about flames here. In fact we are not hardly concerned, as the motion suggests about death. Very few people, as he quite rightly says, get burned to death. Most people are choked to death long before the flame even reaches them and for him to say that there are people at home to raise the alarm, well he knows very well, because I know that he knows about these things that most people die in their beds long before they know that the fire has even started, let alone have long enough time. In a small flat with open doors most people die in their beds and they do not even get up to see what the smell is about. That is all arising from what the Honourable Member has said. What I wanted to say for myself, regardless of what the Honourable Member has said, is this, that it is surprising that having said that they do not consider that they have

political responsibility except to take the advice of the Fire Officer or a Civil Servant in any other context, that they should defend this motion with the degree of vehemence that they do as if what we were trying to do is to launch a political attack on them as I was doing before, which is not the case. I think, Mr Speaker, that the motion is obviously drafted in terms which shows that what we are concerned to do is to put the matter before the Government in an official sense so that those that have given us the information and have asked us to do what they consider to be our public duty in relation to this matter, will be left in no doubt that we have done all that we can. This motion does not chastise the Government. It does not chastise anybody. It is not an attack on the discharge by the Members opposite of their political duties. It is a statement of fact that there is this piece of paper, call it a report, a letter, small print or big print, which appears to say what it appears to say, I know nothing about fire resistant doors, but I read the report and I say, excuse the pun, there is no smoke without fire, and on that basis if no other, it appears that this report at least raises some doubt as to whether these doors do comply or indeed whether the same doors as are the subject matter of the fire certificate that the Fire Brigade hold are indeed the doors that have been installed. Anything is possible. That there is a possible threat to the safety of occupants in the flats, is a fact which follows inevitably if there is doubt as to whether they are fire resistant or not and that there is an apparent - an apparent even we have said, we have not said that there is a contradiction. We have said, because we are ignorant laymen on the matter, that there is an apparent contradiction therefore leaving the door open for the experts to say and show that there is in fact no contradiction. That is why we have used the word 'apparent', between the contents of this report and those certificates. We call upon the Government to commission an independent. Mr Speaker, I sincerely hope that all that we have said and done here today which the Honourable Members opposite appear to reproach us for, I would urge them to accept my assurance that this motion is not a political attack. I sincerely hope that all that we have done here turns out to be completely unnecessary.

MR SPEAKER:

If there are no other Members who wish to speak I will call on the mover of the amendment to reply.

HON J C PEREZ:

Mr Speaker, indeed there is no smoke without fire, but when that smoke is being put out by Mr Cumming pulling from one side of the blanket and Mr Britto from the other, on top of Mr Caruana lighting the match, then the smoke I accept that in essence the technical data being presented here and a call for a technical inquiry is not a political attack. It is an attack on the professionals and it is our obligation to defend those professionals

when the proper documentation or verification of the facts are not there to sustain an attack on them. If you want to come here and question the work that the City Fire Brigade and that the Fire Officers have done on Westside I project when the Chief Fire Officer has already, as a result of questions gone back and verified himself that the work has been done properly, verified himself that the certificates in the possession of the City Fire Brigade are proper ones, then without a proper scientific test, some of the certificates, of which the fire service holds are of proper scientific tests already carried out. What we have is an opinion of a door that has been sent to an organisation on a design that has been sent by a third party who no-one knows who he is except Mr Britto. I do not know whether what has been leaked to Mr Britto is what the Fire Brigade has because it is not my responsibility to look at it. I do not know how to interpret that. It is up to the professionals to interpret that and I think what Mr Britto has got wrong is in trying to interpret something when he is not a professional in the field and he has got the wrong end of the stick and has thought that there is something great and big in it without having the proper facts with him. So if you look at the amendment to the motion, and I am talking specifically, Mr Speaker, to the Leader of the Opposition, he will see that the amendment to the motion is not a political defence. It is a defence of the professionals and of the work that has been carried out by the professionals because nothing that has been said this afternoon here really tells us that the professionals have acted wrongly. If there had been any evidence of that, Mr Speaker, then it would have been the Civil Service machinery that would have taken care of any default in the area. The Civil Service machinery would have had to be put into operation to look at where the professionals were wrong, why they went wrong and an internal inquiry would have had to take place. But no information that has been put in this House, Mr Speaker, can actually challenge the work that has been done by the Fire Service in Westside I.

HON P R CARUANA:

Will the Honourable Member give way?

HON J C PEREZ:

Yes.

HON P R CARUANA:

We cannot support the amendment really for the very reasons that the Minister is commending it to us. That is that it admits that we have cast aspersions on the professionals which we think that we have not. It suggests that the House is satisfied that those doors checked by the City Fire Brigade comply with the relevant requirements, namely, the Building Regulations 1991. It accepts that we are

satisfied with the fire treatment and if we are not, we are casting aspersions on the Fire Brigade when we know that the Fire Brigade in Gibraltar lack there is no reason why they should have it - the technical means to test for themselves whether these doors actually comply with British Standards. Presumably, therefore, what the Fire Brigade have is a system where they require certificates and things to be produced to them. To suggest that those certificates that have been produced to the Fire Brigade and that have been accepted by them in good faith may be mistaken or may relate to a door other than the one, is not, I am sorry, to cast aspersions on the Fire Brigade. Therefore, I will not accept that we are necessarily and inevitably casting aspersions on the Fire Brigade. I know that that is the role in which the Honourable Minister wants to cast us. That is not the reality.

HON J C PEREZ:

Mr Speaker, it is not what I want to do. These are the facts. On the 30th April this year when the Honourable Member raised the matter and I quote from Hansard. I asked for the Hansard to be prepared in order that I may have all the information available. Mr Speaker, I told the Honourable Mr Britto "I would refer you in particular to Building Regulations E15E11 and table 1 to regulations E1 and to sections 223, 211, 431 and 432 of the British Standard Code of Practice Chapter 4 Part 1 of 1971." The Chief Fire Officer has said that, yes, he is complying with all the sections and all the standards mentioned by the Honourable Member. This is the Chief Fire Officer writing to me telling me he is complying with all those sections and then the Honourable Member puts a motion saying that he is not satisfied with that, that he wants an independent technical advice because he has got a letter that has an opinion which on top of it is contradictory. What the Chief Fire Officer has not perhaps only the certificate - I am not sure that that is the right certificate - but he has got the result of scientific tests by organisations which prove that the British Standard Code of Practice is being adhered to. I have not asked the Chief Fire Officer to give me a copy of that because I would be questioning his professionalism and his integrity if I were to do that. It is enough for me that he has checked that those in fire prevention (a) have not done anything different to the Westside project that they would have done to any other project in Gibraltar, and (b) that they are all satisfied, as professionals that they are, that the certificates that they have in hand are sufficient to satisfy them that the doors comply with the British Standards. Whether the intention was that or not, Mr Speaker, the result of it is that aspersions are being cast on the work that has been carried out and of the investigations that the Chief Fire Officer has already undertaken, as a result of which I have already wrote a letter to the Honourable Member saying that no, nothing different has happened to what has happened in other projects and yes, on the

30th April I told him, he was complying with all the standards raised in his letter to me. So if he is not satisfied (a) with what the people in the Fire Service tell me, (b) with what the Chief Fire Officer tells me after the investigation he has carried out, then he must be questioning the professionalism or their integrity or both.

HON P R CARUANA:

Or the adequacy of the procedure which they have available to them to satisfy themselves with things that they are required to satisfy themselves with.

HON J C PEREZ:

The motion does not question the procedure. If the motion had questioned the procedure then we would have been looking at it in a different light. The motion questions Westside 1 project only. And if we are going to question the procedure then the same considerations on safety would apply to all the other developments and the same concern must be applied and then we would have to go and check back all the developments that we have done in Gibraltar.

HON P R CARUANA:

We do not have evidence that the procedure has failed in previous cases.

HON J C PEREZ:

You do not have evidence that the procedure has failed in this one. That is basically the whole issue. Mr Speaker, I think that that is irresponsibility not what Mr Cumming accuses us of. Of having insufficient evidence and raising something and putting into doubt the integrity and the professionalism of people with insufficient evidence to prove your point. No. I am not giving way to Mr Cumming. He talks about corruption as if he were talking about ice cream and he thinks that because he does not actually make the accusation that the Government is corrupt and mentions the word 'corruption' enough times that that is going to cast an aspersion on us. Well if he thinks that he is got something coming. I would like to certainly see him making more contributions in the House like the two that he has done today because he certainly demonstrates and go to the core of what the GSD is all about. Gutter politics, insinuations and the kind of politics which have gone by the wayside in Gibraltar a long time ago. He can only do harm to himself and to the party so I encourage him to make more contributions of the nature that he has done in this House because he can only do harm to himself. And since I believe that, instead of offering himself as a PRO of the GSLP, I suggest that the Honourable the Leader of the Opposition considers putting him as the Public Relations Officer of the GSD. I think he will do a very good job for the Government there. Mr Speaker, he talks

about the rumours that are abound. The rumours that are abound, Mr Speaker, are there because of the way that the Honourable Member has raised the matter. If the Honourable Member had not raised the matter in the House without the necessary documentation to support his case, then there would not be rumours and there would not be concern. We come back to the issues raised in the election. The perception of what he believes or they believe that people feel and think and the perception of what we believe is true. They say that there is dissatisfaction amongst different levels of people in this and that and they are the ones creating that dissatisfaction by the question that they raise and in the manner that they raise it. Fine, he can carry on doing it, but do not expect any applause from us and do not expect any kind of concrete constructive response from us because you are not being constructive at all, I am sorry. I accept that maybe the Honourable Member did not, in my view, intentionally want to cast aspersions on the professionals, but the way he has raised the motion, he has. I accept perhaps that the Honourable Member might have thought that the documentation that he has got in his hand is more than what he has, but that is no reason. Where Honourable Members fail is that if you have a policy should you want to be a policeman, you have a fire issue you want to be a fireman. If I were to do all the trades of all the people of all the departments that I am under, then I would be a jack of all trades. I do not indulge myself in questioning whether the certificates that they receive are the right ones or not or whether they are doing their job. As long as the system continues to operate satisfactorily, that is it. There is nothing that has been raised here on a concrete level or a substantive level to put in question the work done by those fire officers and I am afraid that we have the responsibility to defend them and that is gist of the amendment, Mr Speaker.

MR SPEAKER:

I will call on the mover to reply.....you should have spoken before.

HON F VASQUEZ:

I have not spoken yet.

MR SPEAKER:

But I said so. I made it very clear that Members could speak and then finally there would be the winding-up.

HON P R CARUANA:

Do I understand, Mr Speaker, you are ruling that my Honourable colleague, Mr Vasquez, may not speak on this motion?

MR SPEAKER:

He cannot. I said so, I explained the rules.

HON P R CARUANA:

I accept the explanations that have been given, Mr Speaker, but we are discussing....

MR SPEAKER:

All I can say is that if the Minister would like to stand up again and give way, perhaps the Member can speak.

HON J C PEREZ:

Fine. At least I will be able to reply to him which he probably did not want me to do and that is why he did not stand before.

MR SPEAKER:

The point is that I cannot allow the Member who put the motion on the amendment to have something said now to which he cannot reply. We are debating this as it were one motion. So it is the Honourable and Gallant Lt-Col Britto.

HON LT-COL E M BRITTO:

Mr Speaker, it is a matter of considerable personal regret, never mind party regret, for me to see the tone and the content of the Minister for Government Services's contribution on this motion. I have purposely tried from the very beginning, from the opening words, when I said "I urge Members opposite and those officials to understand the spirit in which this motion is presented" and throughout the whole motion, including later on, when I said "I am not questioning the integrity of the Fire Brigade or of its officials", I have tried throughout to defuse the political contents because of my genuine concern which I stressed at the beginning, that this motion when all is said and done is about human life. Therefore I find it regrettable and reproachable that the Minister has sought to make political capital and political points by trying to make accusations which are unfounded and warranted. I think that the whole attitude of the Government is ostrich-like. We have a situation, whether the Government likes it or not, whether they question the scientific value of the TRADA report or not, we have a situation in which doubt has been cast upon the certificates which are in the hands of the Fire Brigade. It simply cannot be correct that the opinion in the TRADA report and the certificates can both be correct and in the light of that contradiction, that is the basis for asking the Government to take further action to establish

whether there is or there is not a basis for that contradiction. To try to turn the whole thing into saying no, because the professionals have done this or have done that and if anything that we do now is casting aspersions on the professionals or acting against the professionals, is simply to hide behind technicalities in order to do nothing. I cannot accept, Mr Speaker, that there is.....

INTERRUPTION

Mr Speaker, I did the courtesy of listening to what the Honourable Minister was saying, I hope that if he cannot listen, at least be quiet whilst I speak. I cannot accept the Minister's point that there is a contradiction in the TRADA report. The alleged contradiction that he pointed out was that on page 1 the TRADA reports says "That we are unable to estimate the likely performance", is the words that he quoted from the report and indeed that is what the report says. But "We are unable to estimate the likely performance" means we are unable to say how many minutes the door will stand up to the passage of flames and it is not a contradiction with the final paragraph, which says that the door will fail. In order that it will not achieve the thirty minute integrity performance that is required. So it is not true to say that there is a contradiction in the report. To further say that it is not a scientific test and that it is not the basis for worry and for further investigation is also ostrich-like and untrue. I have a second letter from TRADA which repeats the opinion. The fact that I understand because I was not directly involved - a full test on a door was not carried out was simply one of cost. Apparently, to have sent a full door to UK would have meant fairly substantial costs which the philanthropy of the third party concerned did not reach. That is why I am suggesting to the Government that they bear the cost of a further test in order to establish what the results would be. It is quite clear that from the experience of TRADA they are saying that by looking at the door - and they repeat it in the second letter that I have, which I obviously cannot introduce because I have mentioned before - "Do not waste your money, if you sent a full door it will fail the test." Mr Speaker, the fact that the professionals may have acted in the same way in this development as in any other development does not make them infallible. I made it a point in my report that I am not casting aspersions on the professionals. I do not want to do so and it is not my intention to do so, but I did say in my original speech and I repeat it. I question the validity of a system of fire prevention which readily accepts and continues to accept and the Minister continues to defend in this House a certificate when doubts on its validity have been cast, backed by technical reports. If there is genuine doubts that have been raised there ought to be some sort of willingness on the part of the Government to do something about it. Mr Speaker, I totally refute the Minister's allegation

that the rumours that are circulating are as a result of what has been said in this House either at question time or at the bringing of this motion. The rumours started in January or February of this year. The rumours were a direct cause of me writing to the Minister and to raising the questions in this House.

INTERRUPTION

MR SPEAKER:

Will you give way?

HON LT-COL E M BRITTO:

No, Mr Speaker, I will not give way because he did not give way to my Honourable colleague. The Minister said that the rumours that were circulating were as a direct cause of what the Opposition was saying and that is what I am repeating. I am saying that the rumours started in January or February of this year. Rumours reached, not just me, but other Members of the Opposition and as a result this is why we started the whole investigation. Mr Speaker, just one more point. The Minister started-off by saying that he had not replied to my letter because the Chief Fire Officer was not here etc etc and then because he had provided information in the House he felt it unnecessary. I would refer him back to the letter which I stress I have not yet received a reply to and I would refer him to the last paragraph which I will not bring up because it is a new matter. I would refer him to the last paragraph of the letter I sent him on the 27th February which he has not answered and which has nothing to do with fire doors and which has not been answered. I will not venture the subject because it would be a new subject. Mr Speaker, a reply is not in my possession. If the Minister has sent me a reply I would appreciate a copy. I do not have a written reply. Mr Speaker, it is not a question of fire standards, if the Minister refers to my letter I cannot raise it because it is a different subject, it is nothing to do with fire, it is to do with electricity.

HON J C PEREZ:

If he will give way I will tell him?

HON LT-COL E M BRITTO:

I will give way.

HON J C PEREZ:

On the electricity, the Honourable Member told me outside when he raised the question of fire standards that he had not raised the question of electricity here because there was no premise for it. That is what you told me outside.

HON LT-COL E M BRITTO:

Mr Speaker, I have no recollection.

HON J C PEREZ:

If he wants the reply of the electricity, which is the same as the one of the Fire Officer, by the City Electrical Engineer, I shall copy him the copy of the City Electrical Engineer as soon as I get to my office. But he already said that the question of electricity he did not raise here because he had already been satisfied by some other quarter, I do not know. It might have been another anonymous thing in the mail that he has received.

HON LT-COL E M BRITTO:

No, Mr Speaker, I am sorry but I do not have any recollection. I have recollection of talking outside with the Minister but not of saying that I was satisfied with the question of electricity and I may have said that I was bringing up one subject at a time but it is a bit of red herring. I would appreciate an answer from the Minister and we can leave it at that. Mr Speaker, I will not carry on. It is obvious that the Government intend to do nothing more about it. It is obvious that they intend to leave matters as they are. I will rest easy on my conscious that I have done what I have seen to be my duty under difficult circumstances because it has been alleged that it raises the possibility of questioning professionals which I did not want to do and it was not my intention to do. I have felt it a duty as an elected Member when the information that was provided to me in the TRADA report, to bring this matter to the House and to try to get the Government to act. It seems that I am going to fail from the amended motion that will no doubt be passed by Government majority. All I can say, Mr Speaker, is that I hope I am wrong. And I say that sincerely. I hope that I am wrong and I hope that the TRADA report is wrong because if the reverse is true and the TRADA report is right and at some time in the future we have cause to regret some fatality, then the onus will not be on me. It will not be on Members on this side of the House but it will be on somebody else's head. Thank you, Mr Speaker.

Mr Speaker then put the question in the terms of the amendment of the Minister for Government Services and the following Hon Members voted in favour:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Peetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J L Moss
The Hon J C Perez
The Hon P Dean

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon F Vasquez

The following Hon Members were absent from the Chamber:

The Hon P J Brooke
The Hon J E Pilcher
The Hon M Ramagge

The amended motion was accordingly carried and the original motion defeated..

HON P R CARUANA:

Mr Speaker, may I raise what I hope is a point of order? If it is not a point of order, Mr Speaker, will tell me. Mr Speaker, the Government has made certain regulations. They are under Legal Notices No.16 of 1992, No.17 of 1992, No.18 of 1992, No.21 of 1992 and No.22 of 1992, all of which, as I read the appropriate sections in the Income Tax Ordinance require to be laid before this House. Under the provisions of Section 28 of the Interpretation and General Clauses Ordinance, that means to be laid before the House at the next sitting which is about to finish in thirty seconds time. I do not know what the practice is for laying regulations before the House. I assume it is the practice as for laying all other documents before the House. If you go through the motions and they get thrown on the table. All I ask the Chief Minister at this stage to do is to have somebody look at legal notices that I have mentioned and if he is able now to give us an undertaking that if he finds that what I am saying is true, that those regulations will be laid before the House. As I say if he finds that I am right, that those regulations will be laid before the House, at least at the second opportunity if not the first, as raised. Mr Speaker, I have not heard them laid. If I have missed perhaps an agenda and I have arrived late and have not heard them laid, obviously I will withdraw unreservedly, but I think I will like that procedure adhered to whatever it means just putting them on the table if so.

HON CHIEF MINISTER:

I will certainly give the assurance to the Leader of the Opposition that if in fact it has been an oversight, it will be corrected at the first opportunity. I really have to have it investigated because I have not got the slightest idea what it is all about.

MR SPEAKER:

Is the Leader of the Opposition satisfied?

HON P R CARUANA:

I am satisfied with the undertaking that I have sought has been given. I am not satisfied with Section 28 of the Interpretation and General Clauses Ordinance has been complied with, but I am satisfied that it will be remedied at the next opportunity if I am right.

MR SPEAKER:

I think what has been established is that as there is no deliberate act on the part of the Government not to lay them on the table as it is required. If it is an oversight I have no doubt that the Chief Minister will make sure that they are laid on the table at the next meeting.

HON P R CARUANA:

I accept, Mr Speaker, that if it happens it is an oversight. Of course the Chief Minister has yet to satisfy himself that he is required to lay them before the House, but I think if he finally looks at them, he is.

ADJOURNMENT

HON CHIEF MINISTER:

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

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

The adjournment of the House sine die was taken at 8.20 pm on Tuesday 30 June 1992.

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

23rd NOVEMBER 1992

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Third Meeting of the First Session of the Seventh House of Assembly held in the House of Assembly Chamber on Monday the 23rd November, 1992, at 2.30 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 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 J Blackburn Gittings - Attorney-General
The Hon P J Brooke - Financial and Development Secretary

OPPOSITION:

The Hon P R Caruana - Leader of the Opposition
The Hon Lt-Col E M Britto OBE, ED
The Hon F Vasquez
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge

IN ATTENDANCE:

D Figueras Esq, RD* - Clerk to the House of Assembly

PRAYER

Mr Speaker recited the prayer.

ADMINISTRATION OF OATH OF ALLEGIANCE

Mr Speaker administered the Oath of Allegiance to the Hon John Blackburn Gittings, Attorney-General.

MR SPEAKER:

It gives me great pleasure to welcome the new Attorney-General, the Hon John Blackburn Gittings to the House. It will be of interest for him to know that on a day like this, forty-two years ago, the first Legislative Council was ceremonially opened by His Royal Highness, the Duke of Edinburgh. A royal coincidence, I think, the hon Member will remember. Within a few minutes he will find out that the confrontational parliamentary system we follow is very similar to that of the House of Commons. It treasures the liveliness, the rivalry, the passion, the humour and the warmth of our Mother of Parliament. I hope he finds it interesting, exciting and professionally satisfying. Let me add that I am in the Chair, not only to see that the business of the Assembly runs smoothly but also as a servant of the House to be of assistance to hon Members if they so require it. May I take this opportunity to wish him, and his wife, a pleasant and happy time amongst us here on the Rock.

HON ATTORNEY-GENERAL:

Mr Speaker, thank you very much indeed for those kind words. They are greatly appreciated. I would like to say that I am extremely happy to be here with the Chief Minister and all my hon colleagues on both sides of the House. Everyone has been totally kind and as nice as they possibly could be to me and my wife since the 14th July. I am greatly honoured and greatly flattered to be here and I said, at what masquerades as breakfast, this morning to my wife that it is almost thirty years to the day since I took an oath last in connection with anything to do with Government. Thirty years ago, in fact, it was me being sworn in as a councillor for the City of Cardiff and the only difference between then and today, Mr Speaker, is that on that occasion - thirty years ago - the people wanted me and today I am rather pushed upon you whether you do or not. But thank you very much.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 30th April, 1992, were taken as read and confirmed.

COMMUNICATIONS FROM THE CHAIR

MR SPEAKER:

I also wish to extend a welcome to Mr Dennis Figueras, our newly appointed Clerk, who will be going through his baptism of fire today. Mr Figueras joins us after thirty years in the Civil Service and comes to us with a commendable record and fully determined to serve the House

and all its Members with the loyal, statutory independence of his office. I am sure he can count on the traditional support and cooperation of all hon Members, from both sides of the House, in carrying out his delicate and complex duties as much as he can count on mine. I am sure the House wishes him as much success in carrying out his new responsibility as he has had in his previous appointments.

I am afraid I am going to have my own back on you, I have got to do a little bit more talking. I think it proper to put on record my congratulations to our former Clerk, Mr Clive Coom, on his appointment as Housing Manager. I would like to take this opportunity to praise him for his invaluable service to the House. For the interest he took in matters concerning all hon Members; for his fruitful endeavours as Secretary of the Gibraltar Branch of the Commonwealth Parliamentary Association; for his commendable work on the Register of Electors; for his efficiency as Returning Officer at the election; for the attention he always paid to the welfare of the staff of the House of Assembly. And last, but by no means least, for the great help he was to me at all times. Mr Clive Coom was very conscious that the House of Assembly is the most precious possession of the people of Gibraltar and with all his heart and mind he dedicated all his energies to enhance it. He was a truly loyal servant of the House and very worthy of having held the venerable office of Clerk of our Parliament. For his consistent devoted service I thank him profusely.

I have one more comment to make. You will have noticed that the roof of the House of Assembly has been made waterproof, the balustrade made safe and the building externally painted to its original colours. I am pleased that it now looks worthy of Gibraltar's greatest heritage in an architectural no less than in a governmental political sense. I take the opportunity too to thank Gibraltar Joinery and Building Services Limited for the good job they have done and, of course, the department that authorised and supervised the work. Let me add, that the Electricity Department is at present repairing the clocks on both sides of the building and that, hopefully, it will not be long before they will be keeping the time punctually. They will no doubt enhance the building that much more.

DOCUMENTS LAID

The Hon the Chief Minister laid on the table the following document:

The Census of Gibraltar 1991.

Ordered to lie.

The Hon the Minister for Medical Services and Sport laid on the table the following document:

The audited accounts of the Gibraltar Health Authority for the year ended 31st March, 1991.

Ordered to lie.

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

The Employment Survey Report - October 1991.

Ordered to lie.

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

- (1) The Amendment to the Schedule to the Licensing and Fees Rules.
- (2) The Financial Services (Accounting and Financial) (Amendment) Regulations 1992.
- (3) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.15 of 1991/92).
- (4) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.16 of 1991/92).
- (5) Statement of Improvement and Development Fund Re-Allocations approved by the Financial and Development Secretary (No.2 of 1991/92).
- (6) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.1 of 1992/93).
- (7) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.2 of 1992/93).
- (8) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No.3 of 1992/93).
- (9) Statement of Supplementary Estimates (No.1 of 1992/93).
- (10) The Gibraltar Heritage Trust Report and Accounts for the period ended 30th April 1992.
- (11) The accounts of the Government of Gibraltar for the year ended 31st March 1991, together with the report of the Principal Auditor thereon.

- (12) The annual report and accounts of the Gibraltar Broadcasting Corporation - 1990/91.
- (13) The accounts of the Gibraltar Development Corporation for the period ended 31st March 1991.
- (14) Legal Notice 16 of 1992 - Income Tax (Allowances, Deductions and Exemptions) Rules, 1992.
- (15) Legal Notice 17 - Qualifying (High Net Worth Individuals) Rules, 1992.
- (16) Legal Notice 18 - Rates of Tax (Amendment) Rules, 1992.
- (17) Legal Notice 19 - Income Tax (Permitted Individuals) (Amendment) Rules, 1992.
- (18) Legal Notice 20 - Income Tax (Pay As You Earn) (Amendment) Regulations, 1992.
- (19) Legal Notice 21 - Home Purchase (Deductions) (Amendment) Rules, 1992.
- (20) Legal Notice 22 - Rates of Tax (Relocated Executive Possessing Specialist Skills) Rules, 1992.

Ordered to lie.

HON P R CARUANA:

Mr Speaker, hon Members may remember that just before the adjournment of the last meeting of the House, I raised the point that the last six items mentioned by the hon Member had not been laid before the House at the next meeting after being made, as required by section 28 of the Interpretation and General Clauses Ordinance, and I am grateful to the hon Member for having corrected the omission at the next possible opportunity. Nevertheless, Mr Speaker, I think, as a point of order, it is worthy of comment that this House, and in particular Opposition Members, would welcome from the Government a commitment to ensure that papers are laid before the House at the time and in the manner required by the laws of Gibraltar.

HON CHIEF MINISTER:

Mr Speaker, I do not think it is right to suggest that we need to give a commitment to comply with the law. It is quite obvious that it was not tabled, not because of a political decision to break the law but because it was overlooked and when the omission was brought to the notice of the Government officials were asked to look into it and since, in fact, the hon Member was correct, it has been put right. What I can say is that we are committed to try7 and get people not to make mistakes.

ANSWERS TO QUESTIONS

The House recessed at 5.10 p.m.

The House resumed at 5.30 p.m.

Answers to Questions continued.

The House recessed at 8.05 p.m.

TUESDAY 24TH NOVEMBER, 1992

The House resumed at 10.00 a.m.

Answers to Questions continued.

The House recessed at 12 noon.

The House resumed at 3.00 p.m.

Answers to Questions continued.

BILLS

FIRST AND SECOND READINGS

THE PUBLIC UTILITY UNDERTAKINGS (AMENDMENT) ORDINANCE, 1992

HON J C PEREZ:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Public Utility Undertakings 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, the amendments that are being sought in the Ordinance are oversights as a result of both the OESCO Agreement and the Nynex Agreement and it is in order to provide a legal framework by which Nynex can collect its debts, whereas before it was using the powers of the Government, by amending the legislation and thus transferring those powers in contract to them. They are now able to collect debts from their clients directly. The other thing that the Bill does is to extend the indemnification that the Government has in the supply of electricity to the supply that we buy from OESCO. The third amendment, Mr Speaker, is that it takes out the

provision by which the recovery of the bills by Nynex was able to be done only through the increase of a 5% levy on unpaid bills and that is taken out and left on a commercial basis. Those powers are not transferred to the company. 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 LT-COL E M BRITTO:

Mr Speaker, there is some concern on this side of the House about what this Bill sets out to achieve. The main concern is that under the existing system, Mr Speaker, the person who is in debt with Government is required to appear before the Magistrates' Court and to explain the reasons for his debts or the difficulties in which he finds himself in. The Magistrates' Court has the power to either defer payment or to arrange for payment to be made over an extended period. Under the proposed arrangements, Mr Speaker, such claim for payment would come before a civil debt court. In a civil debt court inability to pay is not a defence. So therefore there could arise a problem with people who have difficulties in paying. Secondly, Mr Speaker, we would appreciate from the Minister an indication whether it is the intention of Government to use these powers themselves to collect arrears or debts due to Government prior to the handover to Nynex or whether it is purely to allow Nynex to do so. If Government intends to use these powers for their own debts, whether Government intends to do it itself or whether it intends to hand over the collection of debts into a collection agency like, for example, Gibraltar Procurement Limited? If this were to happen, what powers will Government reserve in order to exercise, in cases of hardship that may be brought forward?

MR SPEAKER:

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

HON J C PEREZ:

Mr Speaker, the anxiety expressed by the hon Member is not shared by the Government, particularly when it arises out of the telephone service which, although some people find it necessary to have a telephone, it is not generally a necessity in the strictest sense of the word when we look at cases of hardship. But cases of hardship where

a telephone is necessary, are being taken up by the Labour and Social Security Department and people are being catered for in that manner so that the commercial viability of a commercial entity such as the one that we are talking about that is providing telephones, can continue in the same way as any other commercial entity that attracts the kind of capital in its formation that Gibraltar Nynex did from its American shareholder. One cannot expect the American shareholder to come in and invest the sum of money of £6½m and then restrict it from collecting the debts that are owed because of cases of hardship. I am sure Opposition Members do not take that criteria in their own businesses and would not wish that criteria on other commercial businesses operating in Gibraltar. The hon Member raised whether this is for the Government to collect its debts. No, Mr Speaker, we are not talking about these powers being transferred to Nynex for Nynex to collect the debts of the Government. The debts of the Government are a matter which, as the Financial and Development Secretary informed the House yesterday, we are looking at in terms of contracting the whole of the debt but no firm decision has yet been taken. That was the subject of a question by the Leader of the Opposition and information was given to the House yesterday. The Government continues, at present, to have the responsibility for collecting its debts prior to the formation of the company. This is more related to the company being able to collect the debts from the date of its formation. I must say that I would wish that the Government were as successful in collecting debts as the new joint venture companies are. To give the hon Member an example, when we used to run the Telephone Service, our debt was something like 20% whereas the running debt of Gibraltar Nynex is something like 2½%. So I do not think that the argument of cases of hardship comes up at all. There is a system in place whereby the company refers them to the Labour and Social Security Department. When there is a genuine need the social services cater for those needs, particularly when there are old persons who need a telephone because of sickness.

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 House recessed at 5.05 pm.

The House resumed at 5.35 pm.

THE FOODSTUFFS (DANGEROUS IMITATIONS) ORDINANCE, 1992

HON MISS M I MONTEGRIFFO:

Sir, I have the honour to move that a Bill for an Ordinance to make provision in respect of products which, appearing to be other than they are, may endanger health and safety and thereby to transpose into the national law of Gibraltar, Council Directive 87/357 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 MISS M I MONTEGRIFFO:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill has been prepared to give effect to the EEC Directive cited in the explanatory memorandum. Whilst in general we would not be giving effect to EEC provisions which are concerned with the free movement of goods since we are outside the Community in respect of the free movement of goods, in the case of this Directive it is both concerned with safety of the consumer in that the dangerous imitations are those which appear to be food or sweets and also the Directive provides that one may not export those goods from the Community. It is for this reason, Mr Speaker, that it clearly has an effect outside the customs area and is appropriate for implementation in Gibraltar. If the Directive had been solely concerned with the importation or manufacture of a dangerous imitation, it would have been possible to give effect to it by the use of the Imports and Exports Ordinance. However, the Directive extends beyond that and is concerned with the marketing of such imitations. For this reason it is necessary to introduce a new Ordinance and since the provisions of the Directive are concerned with exporting, we also have to make provisions that business in dangerous imitations shall not be conducted from Gibraltar even though the dangerous imitations themselves do not come to Gibraltar. It is, in a way, comparable with some of our financial services legislation where we have to ensure that the activities, Mr Speaker, that do not take place in Gibraltar, are not conducted from Gibraltar. The trade that the Directive is intended to preclude is an unpleasant one and for this reason the penalties have been made substantial. 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 P R CARUANA:

Mr Speaker, the Opposition will be voting in favour of this Bill. We support the Government's policy of implementing Community legislative obligations which abide and apply to Gibraltar. We welcome the Government's decision, whether it be forced or voluntary, to do so by Ordinance rather than by Regulation. And what is more, we have no difficulty at all with the wording of the Long Title of the Ordinance given the exchanges that we have had at the House and outside the House in relation to the question of whether Gibraltar is or is not the thirteenth member State. We do not consider that describing the laws of Gibraltar as the national laws of Gibraltar in any way address that issue and we will therefore not take that point in relation to that argument. The explanatory memorandum does not form part of the Bill and, of course, there are phrases there which are capable of giving rise to discussion, not of course in the context of this Bill but in the context of the matter that divides us as to the subject matter that I have mentioned, namely, whether or not Gibraltar is the thirteenth member State of the Community. Mr Speaker, we have no comments at all on the substance of the Bill. We are satisfied that it represents an implementation of our treaty obligations to impose this legislation and we will therefore support it.

HON CHIEF MINISTER:

The explanatory memorandum, Mr Speaker, is there, in fact, to reinforce the position of the Government. The Directive in question requires the member State to take the action that we are taking here today and therefore by voting in favour of this Bill, whether the Opposition Members wish to admit it or not, they will be behaving as if we were a member State. The new development in terms of Community provisions is that the Commission now requires the legislation to identify the Directive which is being given effect whether it is primary legislation or subsidiary legislation, but not necessarily in the body of the legislation. It leaves it up to the member State whether it will include the reference within the law or at the time that the law is introduced within the title of the explanatory memorandum. We do not know whether the member State UK intends to do it in the same way as the member State Gibraltar or differently. So this is how the member State Gibraltar will be doing it.

HON P R CARUANA:

Can the Chief Minister give way? Mr Speaker, we, of course, do not accept the logic of the Chief Minister that in voting for this Bill, we are accepting his argument. The Chief Minister once described the difference between this as one of semantics. I do not think that that is true either. I do not think that the difference between stating the difference between the reality and aspirations is simply one of semantics. However, in his own words, the Chief Minister really has put his finger on the point. The fact that he thinks that this House is acting as if we were the member State shows that he does not believe that we are because if we were, we would not be acting as if we were, we would simply be acting as a member State. Mr Speaker, I hear what the Chief Minister has said. It really is entirely up to him whether we have this exchange everytime we have a Bill. For our part, we are quite happy to state our position on the matter and not raise it on every occasion, but if the Chief Minister considers that the expanding of his philosophy on the matter requires the point to be emphasised on each and every occasion that we pass a Bill of this kind, then of course, I am quite happy to participate in fun.

HON CHIEF MINISTER:

As the Member of the Opposition knows we issued a press release, Mr Speaker, in connection with the European Communities Ordinance where we said we would be drawing attention each time to the measures that we take to implement Community law to demonstrate that all the time we are de facto doing all the things a member State does and all that I have said today is the same as I have said in the Rotaract meeting that we are a member State in everything but name and the only thing that is dividing us is the constitutional position that the United Kingdom handles our foreign affairs because we are a dependent territory of the United Kingdom. But in practice, in the application in the laws of Gibraltar, contrary to the views that have been expressed by others that under Section 86 of the Constitution the UK law can be imposed on Gibraltar, we hold the view that that cannot be done. That it would not be permissible to use Section 86 of our Constitution to give effect to Community law in Gibraltar and indeed we take the view that international treaties cannot be implemented in Gibraltar against the policy of the Government of Gibraltar and at the moment the position is that the United Kingdom consults us before any international treaty or international convention is extended to Gibraltar. This is accepted in London. It seems to me very strange that we should have to be persuading some of our own people of something and we seem to be having a more difficult job of doing it than we are of doing it with the colonial power, be that as it may.

HON P R CARUANA:

Will the Chief Minister give way? Mr Speaker, is the Chief Minister saying that the Foreign and Commonwealth Office subscribes to the view that he has just expressed that Gibraltar is the thirteenth member State of the European Community in all but name?

HON CHIEF MINISTER:

Mr Speaker, what I am saying is that the Foreign and Commonwealth Office does not seem to be as upset by it as the Opposition Member is and therefore the hon Member has gone out of his way to counteract that view for reasons that are beyond me. I cannot understand why he should want to go round saying it is not true that we are the thirteenth member State. Nothing ill can come of it and a lot of benefit can come of it and, in practice, the most positive way to promote our message internationally is to say to people that we are here and that they may think that there are twelve Members in the Community with twelve different options, but that they are wrong because there are thirteen Members in the Community with thirteen options. Is he saying that we are not the thirteenth country? Is country as objectionable as state? Or is it that being the thirteenth member country is alright but being the thirteenth member State is not? We certainly are not the thirteenth colony because we are the only colony. It seems to me that it has been made an issue only when Opposition Members decided to make an issue of it and only by them and not by anybody else. As far as we are concerned, the essence of our argument is in the way we act in what we are doing here today. Here you have got the European Commission saying to its Members, "I require you to do the following". And we are one of the Members responding to that so we are responding today to a Directive from the European Commission by carrying out the application of that Directive in a way which suits us in Gibraltar and the essence of having that freedom to act independently of the other twelve is that, in fact, we are able to provide an alternative to the other twelve member States, which we would not be able to provide if we were not being treated as a member State. So we are being treated by the Commission as a member State. It is in our interest to demonstrate that we are to all intents and purposes a member State and therefore I cannot understand why we should, in fact, not do so, other than the hon Member does not like it. Mr Speaker, I have raised the matter because the Opposition Member in his own submission drew attention to the Explanatory Memorandum and it is not an accident that it is there. It is in pursuance of our policy that we made public that we would draw attention that we are transposing a Community obligation into the national laws of Gibraltar. That is what we are doing and that is something member States are required to do and we are doing the same as the other twelve member States will be doing in their national laws. No other part of the Community that is not a sovereign state is able to do this. We are the only ones. Nobody else can do it. Us and the twelve

sovereign nations. That is an extremely valuable asset on which we have to build, both for commercial reasons and for political reasons. It strengthens our argument. Therefore I really commend the philosophy to Opposition Members because if we can agree on this, at least it will be something that we can agree on.

MR SPEAKER:

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

HON MISS M I MONTEGRIFFO:

No, Mr Speaker, except, that I have never in my life heard the figure No.13 being mentioned so many times as this afternoon. I know that there are a lot of people who consider the figure 13 to be an unlucky one, but I think that there are so many others that think that 13 is lucky, Mr Speaker.

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

HON MISS M I MONTEGRIFFO:

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

This was agreed to.

THE IMPORTS AND EXPORTS (AMENDMENT) ORDINANCE, 1992

HON M A FEETHAM:

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

SECOND READING

HON M A FEETHAM:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, there are three principal objectives to this Bill. The first is as stated in the Explanatory Memorandum to the Bill which is to reflect a change in the administrative arrangements in relation to the storage of dutiable goods, to make minor amendments necessary to ensure consistency in the Ordinance and between this Ordinance and other Ordinances and thirdly to bring our customs procedure in line with other territories and make them compatible with the computerisation of the Customs

Department. The first objective is to pass the control of the Transit Shed from the Government to the operators and to provide and approve a processing zone. This is required in connection with the New Harbours development where the intention is for uncustomed goods to be stored, processed, manufactured, imported or exported. The other amendment is to change the title of a private bonded store to read "An approved place". This is again necessary in order to pass the control of the store to the operator and for him to keep record of his operations therein. The second objective is to make minor amendments, which have come to light, as for example, to allow motorcycles to be registered on GG plates, to omit the definition of private bonded store and government warehouse, to include the word 'vehicle' in a number of clauses and to provide for records to be kept by the operators of the stores for a period of three years. The third objective is to bring our customs tariff in line with the harmonised integrated tariff, insofar as tariff headings, trade descriptions and commodity codes are concerned. These descriptions are used in all other territories including, of course, the European Community. There is no change at all in the rates of duty payable. Regulations will be issued at a later stage to allow the Collector of Customs to amend the description of the goods, but I repeat, not the duties, whenever there is an amendment to the harmonised tariff. Another principal reason is to bring the Ordinance in line with the computerisation of the Customs Department and in order to do this, there is here, again, a need to effect a number of amendments. An explanation on these amendments, if any arises, can be dealt with at Committee Stage. 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 P R CARUANA:

Mr Speaker, in principle, we support the objectives of the Bill, connected and related as they are, to facilitate the development and expansion in Gibraltar of the import and export trade as an additional area of economic activity to sustain our economy. We also support the Government's desire to modernise the customs administration procedures and indeed to concentrate to the greatest possible and reasonable extent, that trade in the Industrial Park. Yesterday, at Question Time, we expressed certain reservations of a very restricted kind about whether these powers to approve or not to approve places, might be used to force people into the New Harbours development as the only means of carrying on with import/export business by denying them the licence or the approval to continue to have those facilities in their existing places. On the basis of the statements made by the Minister for Trade and Industry in answers to questions yesterday, our fears of that are allayed. I think what he said is that existing facilities enjoyed in existing premises could be retained

but any additional facility that was made available to persons within the Industrial Park would not necessarily be available to existing operators in existing facilities. Mr Speaker, there is one principle of the Bill with which we do not agree but frankly, our objections to that, given that it is really old hat, is not outweighed by our support for the principles of the Bill. We do not agree with the repeal of Sections 46, 47, 48 and 49, which are the sections that give to this House an element of control over such things as variation of rates of duty. I say it is old hat because of course the Government has already passed the necessary legislative provision giving itself by regulation the power to do those things. To that extent, this could be interpreted as housekeeping in relation to those sections. I think it is arguably more than that, but still, because the principle objection, which was that the House should set the rates of duty and things of that kind, has already been lost, we do not think that repeating our stand on that principle would justify opposing the Bill which contains the substantive intention with which one feels we can support.

MR SPEAKER:

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

HON M A FEETHAM:

I do not think that there is anything of substance that I need to reply to. I did give an indication yesterday that bonded areas that are at present unlicensed would not be affected by the new arrangements.

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 that the Committee Stage and Third Reading of the Bill be taken at a later stage in the meeting.

This was agreed to.

THE BILLS OF EXCHANGE (AMENDMENT) ORDINANCE, 1992

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

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

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, Gibraltar's Bill of Exchange Ordinance closely mirrors the UK Bill of Exchange Act 1882 and the Cheques Act 1957. However, under the UK Cheques Act 1992, statutory recognition has now been given to the very common form of crossing "account payee". Hitherto, this crossing has merely been recognised by banking convention. As hon Members will probably be aware, the effects of this particular crossing is that such instruments marked in this way will be non-transferable and shall only be valid as between the parties thereto. The obligation of the banks to have regard to this crossing has now been given statutory effect. The purpose of this Bill is to mirror such a provision in our own legislation in respect of the form of cheque crossing which has also been common in Gibraltar. 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 F VASQUEZ:

Mr Speaker, the Opposition has examined the Bill. We find it to be a non-controversial implementation of UK legislation.

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have nothing further to add, Mr Speaker.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

THE DISABLED PERSONS ORDINANCE, 1992

HON R MOR:

Sir, I have the honour to move that a Bill for an Ordinance to make provision for the needs of the disabled and

chronically sick in areas of employment, access to buildings, road traffic, etc, 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, speaking on the general principles of the Bill, the Bill has been prepared using the provisions in the United Kingdom for disabled and chronically sick persons. In order to give the greatest possible flexibility to meet the needs of disabled persons, the Bill is expressed as enabling powers and this is because there is legislation in connection with traffic. There is legislation in connection with working and there is legislation in connection with access to buildings and it is much easier when we deal with the needs of disabled persons to do this by regulation. The intention is to produce regulation which will amend the Traffic Ordinance to reflect the provisions in the United Kingdom allowing for vehicles driven by or used for the carriage of a disabled person to park in circumstances which would otherwise constitute an offence. The enabling powers will also allow for provision to be made to prevent abuse of such powers. Again, in relation to vehicles, it will be possible to use the provision contained in Clause 6 of the Bill, for example, to make a vehicle driven by or used for the carriage of a disabled person free of import duty. In the matter of employment, the Bill recognises the need to make provision for disabled persons, both for access to regular employment and for protected employment. It would have been inappropriate to have merely copied the UK provisions at a time when those provisions themselves are bound to be less than effective and are likely to be substantially amended in the United Kingdom. The provisions on access to buildings are mirrored in an amendment to the Town Planning (Applications) Regulations which provides that in respect of an application made after the date on which this Bill becomes an Ordinance, where the building is to allow access to the public, provision will need to be made for access for the disabled persons. The Bill uses a language of the Chronically Sick and Disabled Persons Act, not to the Disabled Persons 1981 Act, since we are able to expand upon what is reasonably impracticable in the regulations. The Bill recognises the need to consult with those people who can most effectively represent the need of the disabled persons. 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 P R CARUANA:

Mr Speaker, the Opposition would dearly like to be in a position where we were being asked to support a Bill making provisions for the needs of the disabled. Alas, this is not such a Bill and to that extent, whilst the Explanatory Memorandum is accurate in that it says that the object of this Bill is to provide the enabling powers necessary to make provision, the long title is inaccurate in that it says that it is an Ordinance to make provision. With the exception, perhaps, of Clause 4 of the Bill, it is an Ordinance to give the Government the power to make by regulations provisions for the needs of the handicapped or the disabled. Mr Speaker, one of the issues that divides us, on opposite sides of this House, is the view that we take of the proper use of subsidiary legislation. Whereas we take the view that subsidiary legislation is primarily intended to deal with the administrative details of substantive legislation, it is now well known that the Government take the view that subsidiary legislation is an appropriate legislative device for the enactment of substantive policy decisions. That, Mr Speaker, is what this Bill is intended to do. Clause 2, gives the Government the power by regulation to decide what words like "disabled" means, what words like "disability" means - the chronically sick and chronic illness. Clause 3, which deals with employment, is one of the more important policies which I would expect to find substantive provisions made for the disabled, really says nothing more than the Government will do what it likes on that subject. "It shall be the duty of a person who has a substantial number of employees to give employment to persons handicapped by disablement to the extent that it is prescribed by regulation made under this Section". This House is asked to give the Government the power by regulation to provide the employers, by reference to the numbers of employees the nature of the undertaking and the type of employment available therein and to whom the section applies. "The number of disabled persons to be employed by such employers, the method of registering disabled persons seeking employment". There is the proper subject matter of regulation because that is a matter of administrative detail. "The facilities to be provided, the exceptions and exclusions, offences and generally for carrying into effect the purpose of this section". Therefore, Mr Speaker, in relation to the area of employment, there is not one word of substantial provision. There is not one iota of substantive provision of the law. What this House is being asked to do, is to give the power to the Government, not only to write the administrative detail, but to simply publish the policy of the law, publish the substance of the law without the opportunity for debate in this House. It is for that reason, Mr Speaker, that I describe this Bill as a complete user-patience of the legislative function of this House. Of course, the Minister may think that it is easier. If the criteria that the Government are applying is eased,

well, of course, it is easier for them to simply publish things on a Thursday than to go through the trouble of debating it in the House. They might find it easier therefore to do away with this Parliament altogether because they appear to think that everything that this Parliament exists to do in its legislative function, they can do by regulations on Thursdays in the Gazette. To the extend that they bring legislation to the House, it is invariably only to give themselves the power to do it by regulation later. Therefore, it is the opinion of the Opposition that the Bill contains no substantive provisions. Mr Speaker, I could go through all the other Clauses but I think it will be taking up the time of the House. There is only one Clause in the entire Bill which could be said to contain substantive provisions and that is Clause 4, which actually says that a person making a new building must give access for the handicapped and that any person undertaking the provision of any building or premises to which the public are to be admitted, whether on payment or otherwise, shall, in the means of access and sanitary convenience, make provisions. But even then, it is, in our submission insufficient and defective because it is silent as a matter of principle on such matters as access of handicapped persons to such important areas as public pavements. It is well known that that is one of the greatest deficiencies in Gibraltar for the provision for handicapped persons. That it is very difficult for handicapped people simply to walk our streets because there is no provision in the organisation of pavements to enable people in wheelchairs to gain access from one pavement to the other. So if they are walking down Main Street, everytime they come to a turning, they have got two pavements to negotiate and that is impossible. There is an important area of access on which this Bill is silent. Is the Government therefore, going to commit itself in the same way as its regulations may commit employers in relation to the employer? I know that there are one or two instances where the pavements do take account of the needs of the disabled by having ramps at the points of access, but will the Government commit itself in legislation to making those provisions generally at least in the principal streets of Gibraltar as tends to happen elsewhere? Mr Speaker, the other clause to which I will refer is Clause 6 of the Bill, which reads, "Where in the opinion of the Government, it is necessary in order to properly protect the position of disabled persons in Gibraltar, that special provision be made for such persons, the Government may, by regulation, make such special provision as it determines appropriate and for this purpose and subject to Part 3 of the Interpretation and General Clauses Ordinance, such regulations may vary the application of any Ordinance to or in respect of disabled persons." So not content with wishing to make substantive legal provision for the disabled, which we would welcome, in the form of substantive legislation, and not content with wanting to do that by regulation or by themselves and without debate in this House, they want the power to amend every other Ordinance that this House has legislated by regulation insofar as they think, without discussion or debate in this

Chamber, is necessary to accommodate the needs of the disabled. That, Mr Speaker, is a complete hijack of the legislative prerogative of this House. The Opposition cannot support the Government in that policy of stratagem, Mr Speaker, and for that reason, we will not be able to support this Bill by voting in favour of it.

MR SPEAKER:

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

HON R MOR:

Mr Speaker, the objections of the Opposition as regards our policy on enabling powers is well known and I think it is pointless to discuss anything else.

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 J Blackburn Gittings
The Hon E Montado

The following hon Members abstained:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The Bill was read a second time.

HON R MOR:

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

This was agreed to.

THE CRIMINAL OFFENCES (AMENDMENT) ORDINANCE, 1992

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Criminal Offences 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. This Bill, in fact, contains many clauses and I think, apart from a couple of matters which I perhaps want to touch on, one will see from the Bill that, basically, the whole of it is an attempt to up the fines in accordance with our scale in Gibraltar. The House is aware of the level of scales 1 to 5, £100, £200, £500, £2,000 and £5,000. The Bill, in fact, contains in Clauses 115 and 116 the only matter that might have been thought to be controversial. In fact, those sections seek to bring the laws in Gibraltar fully in line with the existing law in the United Kingdom and the law, which I now understand, is the law in the other twelve States in the European Community. I do not think that I have to go into these matters. It is something which I think the House agrees now should be done. The only interesting matter, Mr Speaker, and I touched on this yesterday when you kindly introduced me to your Assembly, is that I had the privilege very many years ago of being a partner in a law firm in Cardiff and the distinguished senior partner of that firm, was the reforming and liberalising, because he was a socialist Member of Parliament, Mr Leo Abse, and I was very much involved with Leo when he drew in the ballot for the Private Members Bill and he, amidst great controversy in 1967, pushed through the Sexual Offences Act. We have gone rather better now in Gibraltar because we are suggesting that the age should be eighteen and in England it is still twenty-one. So it is nice to know that, as the thirteenth Member State, we are ahead of them. 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 P R CARUANA:

If the Honourable the Attorney-General thinks that the only content of this Bill that may be controversial is the amendments to Section 116, it can only be because it is his first meeting of the House. Had he been in this House

on previous occasions, he would know that the Opposition objects to the amendment of fines stated in terms of a figure and the replacement of it by reference to a scale, which is what four out of the six pages of this Bill seeks to do, because the scales themselves, under the Criminal Procedure Ordinance, can then be changed by regulation. What we have said to the Government is that we would support, as a matter of administrative tidiness, references to scale rather than references to an amount of money, if, the scales could then be changed only by Ordinance in this House and not by regulation because we think that the House should set the level of fines and not the Government by executive act. However, Mr Speaker, because our position on this matter is well known and because we consider that the subject matters of the amendment to Sections 115 and 116 are matters of social importance upon which we should take our responsibilities as legislators to state our views, it is our intention to support this Bill, entirely without prejudice to our contention that we disapprove of the amendment of fines by regulation. Mr Speaker, having said that, we regard that the subject matters of Clause 34 of the Bill, in other words, the amendments to Sections 115 and 116 of the Criminal Offences Ordinance, dealing with the decriminalisation of homosexual acts in certain circumstances, raises matters which are of conscience of individual Members of the House and that, therefore, as regards the Opposition, there will be no voting in accordance with a party whip and we have made the decision to give each hon Member a separate vote according to his conscience. Accordingly, at voting time, I will ask for a division. I feel that I can indicate that only one Opposition Member feels that he cannot vote in favour of this Bill. Mr Speaker, for the rest of us, we take the view that whilst indeed the subject matter of that amendment is a matter of conscience and a matter of morality, precisely because it is a matter of personal morality, we do not consider that it is an appropriate matter to be regulated by the criminal law of the land and that in supporting the amendment, as I am sure is the case of the Government, it is not a comment on homosexuality or anything of the sort. It is a comment as to whether it is a matter that should be regulated and regulated, as it used to be in the Criminal Offences Ordinance as it presently stands, by the law of the land. We take the view that it is not a matter that ought to be so regulated.

HON H CORBY:

Mr Speaker, my conscience does not allow me to vote in favour of the amendments to Sections 115 and 116.

MR SPEAKER:

You will be voting against in Committee Stage.

HON H CORBY:

That is right.

MR SPEAKER:

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

HON ATTORNEY-GENERAL:

Mr Speaker, I hear what the honourable Member has said concerning regulations. I think predominantly, he said that concerning regulations in reply to my Honourable friend Robert Mor, when he was introducing the Disabled Persons Bill. I hear what he says. I hear what the Hon H Corby says concerning conscience and I would not wish to make any comment on that.

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

HON ATTORNEY-GENERAL:

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

This was agreed to.

THE CRIMINAL PROCEDURE (AMENDMENT) ORDINANCE, 1992

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. This, in fact is a very simple matter. It is a Bill seeking to guide the magistrates in the city of Gibraltar only in the question of fixing an amount of fines to be imposed. The law used to be that magistrates were forced to enquire as to means, so far as they appeared or were known to the court. This Bill seeks to make magistrates now, in fixing the amount of the fine, take into account the means of the defendant. Now there has to be a means enquiry. This, in fact, is following legislation in the United Kingdom. It is obviously completely sensible and that really is all that I need to say about this Bill. 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 F VASQUEZ:

Mr Speaker, the Opposition supports any moves taken by Government to enable magistrates to make the enquiry and put them in a position to tailor fines, both to the offence and to the accused person.

MR SPEAKER:

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

HON ATTORNEY-GENERAL:

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 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 DRUG TRAFFICKING OFFENCES (AMENDMENT) ORDINANCE, 1992

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Drug Trafficking Offences 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. This is a proposed amendment to Section 5. This is a matter which, in fact, I touched on yesterday when there was a question concerning lack of teeth of the dragon in the remarks of Mr Justice Alcantara in his summing up in the case of Bolanos and Bolanos where they both got four years. This is a most sensible amendment insofar as in the Drug Trafficking Offences Ordinance, the prosecution can make assumptions as to the asset situation of a defendant and that means that a person would then be forced to make

a rebuttal of what the Crown says his asset situation is. The rebuttal which a defendant could make was sometimes very easy for him to make. He could merely say that he got what he was alleged to have by any methods. The proposal of the Government now is that through this amendment, the assumption which the Crown will make and can make, will stand unless the defendant shows that what he says is his asset has been the subject of taxation being paid by him either in this jurisdiction or in any other jurisdiction or if he says that money or assets which he has come from a third person and that that third person also should be able to show that he has paid tax on that money or property. 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 F VASQUEZ:

Mr Speaker, the Opposition will support any steps that this House takes to give more teeth to the dragon, which is the Drug Trafficking Offences Ordinance, as referred to by Mr Justice Alcantara. Although in general principles, we would support any move to make that Ordinance more applicatious there is one aspect of this proposed amendment which concerns us. That is the reference to property in the hands of the defendant but belonging to a third party and the effects of this amendment. I am not clear, Mr Speaker, whether this is a locally drafted amendment or is one which has been taken from an English statute. I suspect it is one which has locally drafted because it seems to be rather shodily drafted, Mr Speaker. It refers to a third party from whom the convicted person has obtained property. It does not say how that third party is supposed to come to court. It does not say whether the third party is forced to come to court and prove how he came by the property in question. I think that we are going to have to look at the drafting and possibly make suggestions at the Committee Stage as to possible amendments. So for the moment, Mr Speaker, we will be withholding our support purely on the question of the drafting of that amendment.

HON CHIEF MINISTER:

Mr Speaker, this is a locally drafted amendment. The original legislation followed the UK and we assumed, when we followed the UK, that the legislation in the UK was foolproof and that therefore we would not have the ridiculous situation that after having put the legislation in place to act as a deterrent, so that people who profited from that trafficking would know that they stood to lose all the money that they had made if they got caught, we find that when they get caught and they get taken to court, the Chief Justice tells us that they dragon has no teeth. If it had no teeth, it was because it was an imported dragon.

So we have now provided it with a pair of false teeth here. Perhaps we should have dealt with that when the hon Member was asking about the dental provisions in the National Health Service in questions yesterday. We will consider any amendment the Opposition Members may wish to put on the basis that they may think that there is some deficiency in the drafting, in which case, it would be more useful if they were able to send it to the Attorney-General before the House meets because it is more difficult to take a decision on the spot. Clearly, as long as we are conscious that what we are not prepared to do is to dilute what we are trying to do. This is really penal legislation. There is no question about it. I said earlier to the Hon Mr Corby, that we were 110% committed. We mean it and it is, in fact, not normal for somebody to prove his innocence but for the Crown to prove that he is guilty. What we are saying is that if somebody goes to court and says, "Yes I have been caught with 500 kilos of marijuana, but I do not really make any money out of marijuana, in fact, all the money that I have got in the bank was given to me by my aunty," well then the aunty will have to produce the returns of income tax to show how she came to give all that money to her nephew. That is what the basis of the thing is. If we are told that there is a difficulty in convincing the court that the money is legitimate, then frankly, even if it has been obtained by somebody from an activity other than trafficking and that other activity has not been 100% declarable, then they should not stray from whatever activity they were doing and get involved in drugs because they stand to lose everything.

HON P R CARUANA:

Mr Speaker, may I hasten to add that we are highly conscious of the fact that we are talking about convicting persons that have been convicted of drugs trafficking. It is not our desire to make it any easier for them to rebut any presumptions that the law imposes upon them. However, I think legislation has got to be fair even to convicted drug traffickers. The drafting point that we have to consider is whether it becomes completely confiscatory and, of course, we may wish to pass confiscatory legislation because it is out of the hands of the convicted person. The last line of the amendment "and if it has been received from some other person whether it has been so declared by other persons." If the other person refuses to cooperate, if not necessarily connected to the party, only the other person can show whether it has been declared and if that person refuses to cooperate with the convicted person, then, of course, the convicted person has not got the opportunity to rebut the presumption. I should say, Mr Speaker, that if the matter cannot be remedied by a change in the drafting, I would rather put the accused person in an onerous position than have an ineffective piece of enforcement legislation in relation to drugs. So the question is whether it can be improved without losing the substance, if it cannot be....

CHIEF MINISTER:

If the Member will give way? Let me say that the policy decision on which the drafting has taken place is that we want it to be confiscatory. We are not hiding that. That is what we told the legal draftsman to do. To make it as confiscatory as it was possible to make it.

HON P R CARUANA:

You may have been very successful because on this basis, you might be able to confiscate all his assets worldwide.

MR SPEAKER:

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

HON ATTORNEY-GENERAL:

Mr Speaker, I mentioned the word yesterday in answer to some question, that this, in fact, was a global problem. Any support which we get from the hon gentleman would be welcomed. A global problem means that everyone should address it. The Drug Trafficking Offences Act in the United Kingdom has been described by almost everybody as draconian and we regard that as a correct expression. The law should be draconian in its attempt to confiscate the assets of the evils of drugs.

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 EUROPEAN COMMUNITIES (AMENDMENT) ORDINANCE, 1992

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that the Bill for an Ordinance to amend the European Communities 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 CHIEF MINISTER:

Mr Speaker, I have the honour to move that the Bill be now read a second time. The Bill is important in more than

one respect. Clearly, we are in this Bill extending the area of potential business for Gibraltar from the members of the European Community to include the seven member countries of EFTA. As I have said in a recent public meeting, one of those seven is, in fact, smaller than us. It is nice to know that we are no longer the smallest in the club. The Ordinance is based but does not exactly follow the UK. The United Kingdom have decided to do something which it is not required to do by the EFTA/EEC Agreement and we are not following them to the same extent which is that it can give rights to EFTA members which it has given to EC members gratuitously. That is not a requirement of the agreement. The requirement of the agreement is that EFTA members enjoy EEC rights in the EEC and EEC members enjoy EFTA rights in EFTA, because it is essentially a bilateral reciprocal agreement between the two blocks. So there are some slight distinctions in the treatment between EFTA members and EEC members and we are only going as far as we are required to go to comply with the terms of the Treaty. The UK have decided to go further than that. We are, of course, outside the Customs Union, which means effectively that what we are doing is giving in Gibraltar the right of establishment, the right of employment, the right of the free movement of capital and the right of provision of services to the nationals of the Nordic group which make up the EFTA countries and to Switzerland. We will enjoy the same rights in those countries. In addition, we are pursuing the question of the generalised system of preferences which we have with the EEC. I will take the opportunity to inform the House that we have now had confirmation from the Government of Austria that we are included in their GSP as a developing country. It means we are still being able to retain for our exports of goods, the duty free entry into the European Community. We have got similar status for the United States and now we are looking at doing it with each individual member of EFTA because EFTA does not have a global agreement on trade with third countries. The position within EFTA is that although they have no restrictions in trade with each other in the European free trade area, each member is still free to do a different deal with a third country. Therefore, we have got access for duty free exports into Austria but it does not necessarily mean that we have got it in Switzerland. We need to do a separate deal with Switzerland. So we are pursuing that strategy for the export of goods. We have got it already, as I have said, for Austria, the EEC and the United States. Also perhaps, from a constitutional point of view, given the doubts that have been cast on the applicability of international treaty in Gibraltar, I think it is worth putting on the record, Mr Speaker, that although the constitution of Gibraltar clearly says that Her Majesty's Government retains the responsibility for the implementation of international obligations in Gibraltar, the procedure is that those international obligations are implemented by agreement with us. There has never been, for example, since the 1969 Constitution came in, one instance of an

international convention or treaty being imposed on Gibraltar against the wishes of the Gibraltar Government. Therefore, it is important for us to retain that because it means that even in external affairs, we have a measure of say and of choice and it is important that we should preserve that. The legislation, of course, provides for us to be able to give effect to new commitments by regulation and that may be what the Opposition Member was referring to as something that they might not be too happy with. I have to say that in this particular area - we provide for it in lots of areas - the United Kingdom is following the same route. For example, in the case of the Second Banking Coordination Directive, which we implemented by primary legislation, in UK, it is being implemented by subsidiary legislation. The Government has been asked by the UK if we could expedite the passage of the Bill because they would like to be able to see it implemented before the expiry of the UK presidency of the Community which runs out at the end of the year. For this reason we are seeking to take all stages of the Bill today which, normally, we would not do, but we can only do with the support of the Opposition since it requires unanimity to take all stages in one day. We would not be pressing to take this in one day if it was not because we have been asked by London if it is possible to do it. It does not seem a great deal to give in exchange for having the right to legislate our own international treaties. 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 P R CARUANA:

Yes, Mr Speaker, I have been done out of the same privilege as the Chief Minister has enjoyed of addressing the principles of the Bill with background music. I hope it does not make my contribution any less interesting than his was. Mr Speaker, we have no difficulty in consenting to the Chief Minister's request that all stages be taken today not necessarily because London has requested if we can do it but simply because the issues that arise can be, I think, disposed of. They are not so complicated that we feel that we need to spread argument of them or consideration of them on more than one day. Needless to say, Mr Speaker, we support the principles of the Bill insofar as they are necessary to transpose or to make the alterations necessary to the laws of Gibraltar. In this case, the European Communities Ordinance. The necessary amendments following upon the signature of the treaty with EFTA in Oporto. Mr Speaker, the clause of the Bill to which we object - Clause 6 under the heading "Consequential Amendments". They are not. They are not consequential to anything that goes before. It is simply a voluntary inclusion of a quite unrelated matter in the sense that, it is not. "Consequential" normally means amendments necessitated by and these are not amendments in any way

necessitated by the substantive clauses of the Bill. The Explanatory Memorandum is defective, in that, of course, it makes no reference to the provisions of Clause 6 of the Bill. Mr Speaker, I do not propose to go into any detail because as we are taking the Committee Stage presumably immediately after we finish taking the First and Second Readings of the few Bills that remain, I shall go into amendments that I wish to propose to Clause 6 at that stage. But at this stage, the principles of my objections to Clause 6 are, in effect, that it gives the Government the power to basically legislate in Gibraltar all Community law, not just matters relating to the EFTA Treaty, by regulation. Mr Speaker, the European Communities Ordinance itself, which we seek to amend by this Bill, gives the Governor powers to make regulations to impose the United Kingdom's treaty obligations in Gibraltar. A power which the Chief Minister has expressed in the past, he has not wished to use and has sought separate legislative authority on each occasion when he has wanted to make regulations. I refer to the point only because of the principle enshrined in the Ordinance even when it was the Governor making regulations to transpose into the laws of Gibraltar UK obligations. There is a Sub-section (3) to Section 4 of the Ordinance, which says, "Regulations made under Sub-section (1) of this Section, shall not come into force until such regulations have been approved by resolution of the House of Assembly." Therefore, Mr Speaker, the principle which I would seek to save in amendments that I will propose at Committee Stage, are that equivalent provisos requiring the Government to bring a resolution to the House before the regulations that they make are effective, should be include in the whole of Section 6. But I say, Mr Speaker, as I am addressing the principles only, I will not go into the details of the amendment that I will propose.

MR SPEAKER:

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

HON CHIEF MINISTER:

Mr Speaker, there are three typographical errors in the Bill. We have had this debate before in the House as to whether a typographical error is something that requires an amendment to be voted on. I would like, perhaps, to draw attention to them now so that, since we have not yet voted on this, we can vote on the basis that the Bill reads as it should and not as it does. In Clause 4, the first line of Subsection 4(a) says "subsidiary legislation" and I am told it should be "subordinate legislation". On page 143, we have a reference in Sub-section (10)(b) "a provision of any other instrument made before that" and there should be the word "date", which has been left out. In the penultimate line in that page, it says, "in relation to a European court" and it should read "the European court". There is only one European court, which is the European

Court of Justice. As regards the points made by the Leader of the Opposition, I accept that if the Governor were trying to make regulations, he should be subject to a resolution of this House, but I do not accept that the elected Government should be put in the same position as the Governor and therefore we will not be supporting his amendment.

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

HON CHIEF MINISTER:

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

This was agreed to.

THE CIVILIANS REGISTRATION (AMENDMENT) ORDINANCE 1992

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Civilians 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. This, in fact, I hope is going to be something which is quite without controversy. The Explanatory Memorandum says, "The object of this Bill is to amend the Civilians Registration Ordinance to make provision for the issue of new identity and civilian registration cards which are compatible with European Community standards". Basically from now on we are going to have cards and not carnets, we are going to have registration officers and not governors and if you do not get it right, very heavy fines will have to be paid. 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, the Attorney-General will no doubt be glad to hear that the Bill is not controversy as seen by the Opposition and will therefore be supported. Just two small points of clarification if the Attorney-General is in a position to give us the information. We would ask whether identity cards are in fact obligatory under Community law

or whether it is just customary for them to be issued and in what Community countries is the carrying of identity cards compulsory. Is it compulsory under EEC law to make it a requirement for the carrying of identity cards or registration cards here in Gibraltar? Finally, Mr Speaker, I would draw the attention of the Attorney-General to the amendment to section 2 in clause 2(C)(2). We are somewhat perplexed about the meaning of this clause, Mr Speaker. Maybe the Attorney-General would like to check whether there is supposed to be some amendment that has slipped the net or if not, explain to us what it means because we cannot understand it.

HON CHIEF MINISTER:

The purpose of that section is to allow people who are registered under the existing Ordinance to regulate their position within twelve months from the date that the new Ordinance is brought in because it is a moveable feast. That is to say, the new Ordinance will not come into effect immediately. There will have to be an appointed day when it comes in because of the machinery required to start the registration and since the registration involves registering new people plus re-registering everybody that has ever been registered, then there will be an overlap when both the old system and the new system will be operating simultaneously. That is really the purpose of that. We cannot say 12 months from today because it might take us 12 months to get the thing in place. It has taken us a long time to get the Bill to the House. I have to explain, Mr Speaker, that it is not a Community requirement to have identity cards and the United Kingdom is the only one that does not. Of the thirteen Members, at the moment there are eleven that have got Community identity cards. One has got something that looks like a bit of scrap paper, which is us, and one that does not have anything. We have the bit of scrap paper and we are in the position that nobody will accept that we have an identity card because it is not counterfeit proof. It is relatively easy to produce a substitute Gibraltar identity card and we have already come across quite a number of home-made versions. This is a particularly sensitive area against the background of the external frontiers of the Community and the movement of people inside the EEC without passports and the fact that the home-made have been made across the water. It is an area, we remind Members, where our ability to effectively patrol the external frontier of the Community has been questioned and used as an argument in the debate on the External Frontiers Convention. We do not think that it is a legitimate argument, but we do not want to give anybody any grounds for using it against us. We have had to go into fairly lengthy discussion with the United Kingdom to persuade them, as sometimes happens in quite a number of fields, that they should defend in our case something that they do not do themselves. In fact, the only British citizens that will have identity cards are those in Gibraltar. The identity card, once it is in place, will be capable of being used for travelling between Gibraltar

and the UK, as well as Gibraltar and the rest of the Community. We now have the equipment which is quite expensive, it is about £75,000 produced by De la Rue, but we are assured that the quality of the product - which has been approved by the United Kingdom and will therefore be defended by the United Kingdom if anybody questions it in any part of the Community - is of a standard that nobody can argue that we are producing anything that is not as good as anybody else's. The ID card, as such, will only be effectively available for Gibraltarians or BDTC's or British citizens who have got residence in Gibraltar. Other Community nationals will not be issued with an ID card by us, because they have got their own ID card issued by their own home state. But they will be issued with a residence carnet, which will not be an identity carnet and which will not be a travel document, but which will be capable of demonstrating that they are residing in Gibraltar. Therefore, we are issuing really three types of identification systems - one which is the identity card for those who are Gibraltar belongers, one for Community nationals who are residing in Gibraltar but who have got their own national ID card and one for non-EEC nationals who are residing in Gibraltar so that the Moroccan nationals, who are working in Gibraltar, will still be able to travel into Spain or go to Algeciras for the ferry on the basis that they can demonstrate that they have got residence in Gibraltar and work in Gibraltar and that they are not going to disappear in the hinterland. Again, it has been quite a lengthy process with the UK to identify how it should be done and the three categories and the way it is going to be done. There is no requirement, unless I am mistaken, I am not 100% sure on that point, to carry the card all the time but everybody will be required to have an ID card, as it is at the moment, or to have a residence card as proof of the fact that he has got legitimate residence in Gibraltar. This will also help us as we introduce the system and phase out the old one, to eliminate the home made versions because they will not be issued with a genuine article since after a period of time the old card will disappear. People will then no longer be able to use any that have not been officially issued to them after a certain period of time. In addition it gives us another tool to monitor any movement of illegal labour in Gibraltar because the registration system is very sophisticated and it enables us to put quite a lot of information on the card which uses the state of the art technology and is a computer readable card. The card is like a sort of Barclaycard type operation where you will be able to put information into the card reflecting the date of birth of the person and so on. It enable us to have a better picture of the composition of our population both in terms of permanent residence and in terms of transient people. I hope I have answered the hon Member's question.

HON P R CARUANA:

We are grateful to the Chief Minister for that explanation. I do not want to expand the scope of the debate, but, of

course, Mr Speaker, the last subject that the Chief Minister touched on, lies at the heart of the argument for or against the compulsory carrying and production of identity cards. The arguments against which have always held water in the United Kingdom, is precisely that it gives the Government the scope to collate information about its citizens and that is why we asked for clarification about the point as to whether there was any intention or indeed any requirement to have a compulsory carrying of cards. The compulsory registration in a manner that requires the giving of more information than perhaps is presently required and in a computerised manner does, to a very great extent, increase the footprint of the Government on its civilian population and does lie at the heart of some people's concern as to the whole subject of identity cards.

HON CHIEF MINISTER:

If the hon Member will give way? One of the items that is not included in the card is party political membership.

HON P R CARUANA:

Will he reserve the right by regulation to amend this? This is what I want to know.

MR SPEAKER:

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

HON ATTORNEY-GENERAL:

Mr Speaker, the Chief Minister has answered all that I would want to say.

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 ESTATE DUTIES (AMENDMENT) (NO.2) ORDINANCE 1992

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, the House will recall an Estate Duties (Amendment) Bill earlier this year which had the affect of repealing a number of provisions of the Estate Duties Ordinance and providing for replacement provisions to be made by regulations. These regulations have now been brought into effect. Unfortunately, a cross reference was allowed to remain within the Estate Duties Ordinance referring to a section which was thereby repealed. The purpose of this further amending Ordinance is therefore to correct the anomaly. 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 F VASQUEZ:

The Financial and Development Secretary will be aware that Opposition Members withheld support of this Ordinance when it came before the House earlier this year for the usually safe reasons that we do not agree with Government reserving onto itself these powers unto regulations and for similar reasons, Mr Speaker, we will not be able to give this Bill our support.

HON P R CARUANA:

Mr Speaker, for reasons that really we recognise that it is just housekeeping and it seems unnecessary to vote against, the principle points have been lost before.

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, noting the Opposition's position on the Bill, I have nothing further to add.

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

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J L Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon P J Brooke
The Hon J Blackburn Gittings

The following hon Members abstained:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

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 LICENSING AND FEES (AMENDMENT) ORDINANCE, 1992

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. Mr Speaker, it is quite common under other Ordinances for powers to be granted to a collector of Government revenue to deal with infringements of the revenue raising powers of the Ordinance in question without engaging in court action. This may be appropriate, for example, if the offence arises from perhaps a misunderstanding or is minor in nature. In these circumstances the collector may be permitted to either stay action for the offence or accept a penalty in compounding the offence without proceedings being taken. An example of another Ordinance in which these provisions are made is the Imports and Exports Ordinance. Hitherto, no such provisions have been included in the Licensing and Fees Ordinance and it is thought that providing an approach as an alternative to court action, will be both more effective and less cumbersome to enforce. With the level of potential penalty upon successful court proceedings is specified in the Ordinance, the Licensing Authority will be obliged to have regard to the level of close potential penalties in agreeing to any compounding. 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, it seems to the Opposition that the majority of what this Bill is trying to achieve are powers which are already there. On examining the Bill we have realised what the Financial and Development Secretary has just said that the Bill basically does two things. Firstly to give retrospective powers to the Licensing Authorities, to stay or compound proceedings. Proceedings which are already in existence. Secondly, to introduce the concept of staying or compounding those proceedings. We wonder, Mr Speaker, before we can say whether we are going to support this Bill or not, what are the reasons for bringing this Bill into effect. Are there any set of proceedings that it is felt necessary should be stayed or compounded? Is the Bill being introduced for something that could happen in the future or are there a series of proceedings in the pipeline covered by the Ordinance which either the Government or the Licensing Authority wishes to compound or stay?

HON CHIEF MINISTER:

Mr Speaker, as I understand the position, when this was brought to the Government for a policy decision, it was brought on the basis that it would provide an alternative route which would remove some of the workload from the courts and that that was where the initiative had come from. It may well be that it is drafted in a way that when it comes in, there could be some proceedings going on the day that the Bill becomes law. Remember that we are taking the Committee Stage at the next adjourned meeting of the House. I have no way of knowing whether in December, when this becomes law, there will be proceedings that have already started or not started, but as I understand it it is an alternative that cannot be imposed. If the person that is being taken to court under some offence insists on going to court, he will still have the right to do that and therefore there is no question that the Authority can decide to compound and impose a penalty instead of the court hearing proceedings. Nobody is being deprived of going to court if that is what they want to do. The argument that has been put to the Government is that there are cases where people would be willing to pay because they admit that they should have paid for something which they have not. They cannot because, as the law now stands, the matter has to go through a court and that this is not the case, for example, as the Financial and Development Secretary has said, in cases under the Imports and Exports Ordinance, where somebody not having paid duty can choose either to go to court or you pay a penalty which is compounding the going to court. That is our understanding of the situation and it is on that basis that we gave political support to the Bill.

HON P R CARUANA:

Mr Speaker, we have no difficulty with the principle of introducing really the continental system, which is to enable administrative authorities to impose fines on an administrative basis. There is an element, as the Chief Minister has just said, of choice in the sense that the miscreant can choose to be persecuted if he prefers through the court system. We are aware that there is a series of cases stuck in the court system relating to the exportation of tobacco from Gibraltar by persons who did not have a licence at the time - I am not familiar with the details of the case - but it has been subject to discussion in this House before and that there is an appeal which I believe is still pending as to whether the licensing requirements are legal or not in relation to that trade. We were really just seeking an indication whether the part of this amendment which relates to existing proceedings as opposed to future proceedings, may be calculated to give the collector or the Licensing Authority a degree of latitude in disposing with that batch of pending cases without having to trouble the courts further with it and whether it was further calculated to allow the Licensing Authority a degree of latitude to deal with future miscreants in relation to that particular activity, other than through the courts.

HON CHIEF MINISTER:

If the hon Member will give way? It is not specifically designed for that purpose but he may well be right that in the process that situation will also be the result. I do not know. I can tell the hon Member that that was not the argument that was put to me for doing it.

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I have nothing further to add.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

THE SUPPLEMENTARY APPROPRIATION (1992/93) ORDINANCE, 1992

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 1993, be read a first time.

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

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, as it is customary in the case of Supplementary Appropriation Bills, I will not make a speech in support of the general principles of the Bill, the purpose of which are well known to hon Members. Detailed explanations will be available at Committee Stage for either of the two proposals made should hon Members wish to have further information. 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 LT-COL E M BRITTO:

Not so much on the general principles which obviously we support, but just to put the hon Financial and Development Secretary on notice, that on subhead 107 - Industry and Development, we will be asking at the Committee Stage for more details on the breakdown of that figure and I can give him some guidance on the sort of information we are looking for. We would like to know whether we are looking at a full graphical database or whether we are looking at a text database and we would like a breakdown of that figure between the cost of the hardware, the cost of the software and whether there is any element of running costs included in that figure and if so, to whom and for how long.

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have taken note of those requests for information. They will be addressed at Committee Stage.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the House should resolve itself into Committee to consider the following Bill clause by clause: The European Communities (Amendment) Bill, 1992.

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

THE EUROPEAN COMMUNITIES (AMENDMENT) BILL, 1992

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

Clause 4

HON CHIEF MINISTER:

We have been through this before. Where it reads "subsidiary", it should read "subordinate". I have mentioned it in the Committee Stage on the basis that we should work on the premise that we are voting in favour of subordinate and not of subsidiary.

Clause 4 as amended stood part of the Bill.

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

Clause 6

HON P R CARUANA:

Mr Chairman, first of all, I think that the heading of this section is a non-sequitur and a misinterpretation. It is not a consequential amendment. It is not consequential on anything that has been done before and certainly not everything that is in it is consequential on anything that has been done before. I, therefore, propose that the heading be amended by its deletion. Mr Chairman, the effect of the proposed amendment to the Interpretation and General Clauses Ordinance in the new paragraph g(ii), is that when it relates to the legislating of the obligations under the treaties, as defined in Section 2, which definition we have just extended by adding the extra agreement to it, the Government may repeal, vary, amend or add to any Ordinance that is thereby affected, by regulation. We, Mr Chairman,

do not accept that the House should be excluded altogether from the process of implementing into the laws of Gibraltar the requirements of Community treaties or directives and I will explain to the House why. It is for a reason that the Chief Minister himself has recently highlighted. It is for this somewhat different reason, Mr Chairman, and that is, that there is latitude in the manner of implementation of a European Community Directive. That is to say, that the requirements of the Directive, as indeed the requirements of the treaty, although in the case of the treaty, it may be less likely to give latitude. But, even the implementation of Directives, is itself a treaty obligation. In other words, there is a treaty obligation to implement Directives and as the Chief Minister has himself recently highlighted, this Assembly has the ability to exercise a degree of latitude which we may choose to exercise differently from other legislatures in the Community as to how, in fact, we implement, in our law, the requirements of Community Directives. That latitude, Mr Chairman, is latitude that I think should be exercised by the legislature and not by the executive in the medium of regulations. It is for that reason- I have not said that it must be in the form of an Ordinance - that my amendment is not that they should not be able to do it by regulation, but that those regulations should not come into force until they have been approved by a resolution of the House. Thereby, Mr Chairman, simply repeating the principle in the European Communities Ordinance that even in relation to the implementation of European Community obligations, this House should not be excluded from the lawmaking function because otherwise the Chief Minister will have to go round Europe saying not that the House of Assembly is the thirteenth lawmaking Parliament, but that it is the thirteenth lawmaking Government. This will sound much less attractive to the audience than saying that we are the thirteenth law making Parliament. Mr Chairman, it is for that reason that I move the following amendment as a proviso to (ii), "Provided that any regulation made hereunder shall not come into force until such regulation has been approved by a resolution of the House of Assembly". Government Members will immediately recognise the formula of words in sub-section (3) of Section 4 of the European Communities Ordinance. Mr Chairman, in order to maintain a degree of consistency from this place as a legislature, I wish to move an amendment by way of introduction of a new clause. We are amending Section 23 of the Interpretation and General Clauses Ordinance and I wish to add a new Section 23(g)(iii) to read "there is a provision giving effect by subsidiary legislation to obligations arising under the treaties (as defined by Section 2 of the European Communities Ordinance) any subsidiary legislation made pursuant to any such provision shall notwithstanding any provision of that Ordinance to the contrary not come into force until it has been approved by a resolution of the House of Assembly." Mr Chairman, I think, in case there is any prospects that the Government may wish to support any of my amendments, the effect of that amendment, is, as the Minister for Trade and Industry said, a waste of time from the point of view of Government

Members with their peculiar philosophy about the value of this institution but not a waste of time from the point of view of the Leader of the Opposition who still thinks that the House of Assembly is a worthwhile institution because it preserves the legislative integrity and the legislative function of this House. The effect of my amendment would be that in any Ordinance that has already been legislated that gives the Government the right to implement Community requirements by regulations, notwithstanding that, such regulations would not come into force until approved by

INTERRUPTION

Mr Chairman, if some of the Government Members functioned as they would in a parliament elsewhere, I might be able to persuade some of them to support my amendment and thereby defeat the Government on it, but since they do not exercise that freedom of conscience and of mind, then it is a mathematical

HON J C PEREZ:

In any other parliament the matter would have been raised in writing beforehand and not on the spot and leave the whole parliament waiting until the hon Member has made up his mind.

HON P R CARUANA:

It gives me an opportunity to make a point that I was going to make at a later opportunity. That is, that the practice in this House of giving the Opposition five days' notice of legislation that it is expected to intelligently debate, even if in fact the debate has not turned out to be intelligent, notwithstanding how many bills there might be, how long they may be or how complex the subject matter may be, does not contribute to the quality of the legislative debate or on the debate on that subject. I know that it is not a practice of the making of this particular Government, but I would say this, that if the Government is able - which is not always the case, sometimes the Bills come to it at the last moment - to give us either the Bills or indeed their own working draft of the Bill before the last Gazette prior to the meeting of the House, then it would enable us to form our views and give our proposed amendment in writing more than on the spot.

MR SPEAKER:

Let me tell the Leader of the Opposition that on the Second Reading he can always introduce an amendment to postpone the Bill to another date. I think it would help if the Leader of the Opposition could read the amendment slowly, then I will keep the amendment here to hand over to the Government so that we are absolutely sure that what he is saying is correct. If the Government can pay attention to what they say, I think we can vote on that immediately after he reads it.

HON P R CARUANA:

Mr Chairman, paragraph (g)(ii) is amended by adding a proviso after the word "effect" in the following terms - "Provided that any such regulation made hereunder shall not come into force until it has been approved by resolution of the House of Assembly".

MR SPEAKER:

Let us take the first amendment. The deletion of the heading.

Mr Speaker put the question and on a vote being taken on the proposed amendment the following hon Members voted in favour:-

The Hon Lt-Col E M Britto
The Hon P Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The following hon Members voted against:-

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J L Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon P J Brooke
The Hon J Blackburn Gittings

The amendment was defeated.

HON P R CARUANA:

Mr Speaker, I understand that the Labour Party has the same problem in the House of Commons but it does not dissuade them from putting motions even though some of their members do sometimes vote against them. Mr Chairman, my second amendment is that paragraph (g)(ii) be amended by the addition of the proviso.

Mr Speaker put the question and on a vote being taken on the proposed amendment the following hon Members voted in favour:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The following hon Members voted against:-

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J L Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon P J Brooke
The Hon J Blackburn Gittings

The amendment was defeated.

HON P R CARUANA:

Mr Chairman, the next amendment is the insertion of an additional clause to little (g) as subclause (iii).

MR SPEAKER:

Now this is equivalent to that part of the Bill being read the second time so a debate can ensue if there is any need for it.

Mr Speaker put the question and on a vote being taken on the proposed amendment the following hon Members voted in favour:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The following hon Members voted against:-

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J L Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon P J Brooke
The Hon J Blackburn Gittings

The amendment was defeated.

On a vote being taken on clause 6 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 P J Brooke
The Hon J Blackburn Gittings

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 6 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 European Communities (Amendment) Bill, 1992, has been considered in Committee and agreed to and I now move that it be read a third time and passed.

HON P R CARUANA:

Mr Speaker, on a point of order. Simply for the record, we know that the elected Government Members voted against all of my amendments. There was a silence and no nod of the head from the ex - officio Members. Will the record show that they therefore abstained or they did not take part in the vote?

MR SPEAKER:

Unless the hon Member draws attention that he wants to abstain on Committee Stage, we just go ahead.

HON P R CARUANA:

So Hansard will therefore show that they voted against the amendments?

HON ATTORNEY-GENERAL:

Mr Speaker, I will like to be told as a new person, how hard one has to nod one's head. I could fall towards my Honourable Friend if he wants to.

HON P R CARUANA:

I can tell him. I do not know how hard he has to nod, but I can tell him that on the last vote, he did not nod at all.

MR SPEAKER:

The position is that in Committee Stage if an hon Member wants to abstain or vote against he makes it quite clear that he is abstaining or voting against otherwise we would take a long, long time. I take it therefore that the ex - officio Members voted in favour.

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

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Thursday 17th December, 1992, at 10.30 am.

Mr Speaker put the question which was resolved in the affirmative and the House adjourned to Thursday 17th December, 1992, at 10.30 am.

The adjournment of the House to Thursday 17th December, 1992, at 10.30 am was taken at 8.05 pm on Tuesday 24th November 1992.

THURSDAY 17 DECEMBER 1992

The House resumed 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 L Baldachino - Minister for Housing
The Hon J C Perez - Minister for Government Services
The Hon R Mor - Minister for Labour and Social Security
The Hon M A Feetham - Minister for Trade and Industry
The Hon Miss M I Montegriffo - Minister for Medical Services and Sport
The Hon J L Moss - Minister for Education, Culture and Youth Affairs
The Hon J E Pilcher - Minister for Tourism
The Hon J Blackburn Gittings - Attorney-General
The Hon P J Brooke - Financial and Development Secretary

OPPOSITION:

The Hon P R Caruana - Leader of the Opposition
The Hon F Vasquez
The Hon H Corby
The Hon Lt-Col E M Britto OBE, ED
The Hon P Cumming
The Hon M Ramagge

ABSENT:

The Hon L H Francis (Away from Gibraltar)

IN ATTENDANCE:

D Figueras ESq RD* - Clerk to the Assembly

STATEMENT

HON CHIEF MINISTER:

Mr Speaker, I had intended to make a statement given that we would have had to make particular arrangements to record the proceedings of the House and at the last minute it has not been found necessary. Nevertheless I feel that I need to appraise hon Members of the events because it is only really in the last fifteen minutes that my office was informed that the House would not be affected by the difference of opinion we have at present with our friends in the Transport and General Workers Union. For the record, now that we are able to have a record, let me say that the position is that several months ago I personally informed the GGCA of the restructuring that would take place with a target date of the 1st January involving the Department of Labour and Social Security. As a result of which that department will no longer be operating after the 1st January and the functions will be redistributed. Some of them outside the Government and some of them within the Treasury. Obviously, nobody in the department is going to be affected in the sense that everybody will be re-deployed to other areas of the Government where they can be more usefully employed and their skills put to better use. When the

process started, as I have already stated publicly, the initial step, as far as the hostels was concerned, involved the work of an EO and an AO, where basically that work consists of recording the money that comes in in rent and recording the money that goes out in wages and cleaning materials. In fact, recently, Mr Valarino who is the President of the GGCA, informed me that it does not even take up the full eight hours of these two officers. It is not the only work they do; they do other things, so the amount of work that has been contracted out is not even the full time work of the two officers. When the Transport and General Workers Union raised the matter with the Personnel Department, they were told that none of the manual workers at the hostel were affected in any way. This was just that the paperwork that was previously done in the Labour Department would be done elsewhere and that the Labour Department would be disappearing as part of the restructuring of that department. Although it is well known that it is the intention to put the whole thing in private administration and day to day running, that was not what was happening at this stage and that obviously there would be consultation with the employees before anything happened that affected them. In the interim they would all continue to be Government employees on Government pay and conditions and they would not be affected. That was the position. Regrettably, notwithstanding this, the Union felt that they had a dispute. We do not think that we have a dispute with them because as far as we are concerned there is no claim and there is no negotiation on that particular issue. The result of that was that 24 hours later the Personnel Department was informed that all Government departments were blacked. We did not realise that this had been included as a Government department until yesterday. This is the reason why the recording of the House would have been affected because presumably it was interpreted as being included in the definition of Government departments. When this was placed on record - I think it was on the 26 November that the Personnel Department was told that all Government departments were blacked - the Personnel Department did not take that to mean the House of Assembly as well. The position therefore is that the GGCA itself is supporting the TGWU although the GGCA is not in dispute over the fact that its members welcome the move. They accept that their members welcome this move, the TGWU does not accept what the GGCA accepts and the GGCA supports the TGWU for not accepting what it accepts. So that is obviously a complex problem to unravel. Be that as it may, I am sure that sooner or later the way of unravelling will be found and I know that hon Members will be happy to know that I had a lengthy meeting with the District Officer on Friday and we have agreed that we will informally meet regularly to try and avoid this kind of misunderstandings happening in the future in the light of our long standing friendship. I can also inform the House that the reason why we are able to proceed is because in fact half an hour ago my office got a call from the Branch Officer, Jaime Netto, telling me that as

a gesture of goodwill, members had been instructed to come here and do the work of recording and that therefore the blacking which still is in effect would not be affecting the proceedings of the House. I am grateful to the Branch Officer for that gesture of goodwill. Of course, it does not alter the fundamentals but, nevertheless, I am glad that we will be able to proceed uninterrupted. I feel that we have a responsibility to ensure that we are able to insulate the House from the problems that we may have as a government with our workers and we shall be looking at that between now and when we come back at the adjourned House. We think that the House needs protecting from our problems. Thank you, Mr Speaker.

MR SPEAKER:

I am very glad that the difficulties that we were fearing would be taking place this morning and interfering with our business to some extent, is not going to take place. I think perhaps it is timely to point out that the House of Assembly is not the Government. The House of Assembly is the legislature of Gibraltar. The supreme authority of Gibraltar within the limits of our Constitution that it should be respected by everybody and that attacking the House of Assembly in any way is undermining the rights of the Gibraltarians and I do hope that never again, anybody will try and interfere with the meetings of the House.

HON P R CARUANA:

Mr Speaker, I would like to make a statement with your leave on two subjects. The first is to express solidarity with the view that this House should be able to proceed at all times with its business and that such practical steps as can be taken, within reason, to ensure that we are immune from external interference should be taken especially if they are of a mechanical nature. Mr Speaker, the second statement is this. It is only six months since the Chief Minister showed me personally great kindness in the terms in which he expressed sympathy for the bereavement in my family and it is really a matter of great sadness for me to have this very early opportunity to reciprocate that by rising on behalf of myself obviously and my colleagues on this side of the House, to express our sincere and heartfelt condolences to the Honourable Michael Feetham and to his wife Maria Jesus on the tragic death of their son Alfred. It was a great shock to the whole community and the whole community I am sure has been solid with them in their time of grief and I would like to place on record the Opposition's official condolences to the Honourable Minister and his family.

MR SPEAKER:

The Chair fully associates itself with those words.

DOCUMENTS LAID

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to lay on the table the following documents:

- (1) Report of the Registrar of Building Societies 1991.
- (2) Statements of Consolidated Fund Re-allocations approved by the Financial and Development Secretary (Nos.4 to 7 of 1992/93).
- (3) Statement of Improvement and Development Fund Re-allocations approved by the Financial and Development Secretary (No.1 of 1992/93).

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE CARRIAGE OF GOODS BY SEA (AMENDMENT) ORDINANCE, 1992

HON M A FEETHAM:

Sir, I have the honour to move that the Bill for an Ordinance to amend the Carriage of Goods by Sea 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 Ordinance which this Bill seeks to amend, gives effect to the Hague Convention on the calculation of damages between parties to contracts for the carriage of goods internationally by sea. The two amendments contained in the Bill are of a procedural and not of a substantive nature. The first, in Clause 2, is to ensure that the reference to statutory provisions by which a carrier of goods may limit or exclude liability for goods lost or damaged whilst they are ship's cargo is complete by adding the reference to the statutory provisions which will replace in respect of a ship registered in Gibraltar the provisions of the UK Act on the carriage of goods by sea. This is therefore an amendment consequential on the passing into legislation of another Bill to be considered by this House and obviously would not take effect until such time that that Bill was itself brought into effect. It is part of the infrastructure of legislation

needed for the Shipping Registry. The second amendment in Clause 3, changes the unit of calculation for damages from the franc, previously the unit of international monetary transactions, to a unit of special drawing rights now the unit of calculation under the Hague Convention where the national currency is sterling and already used in other shipping related legislation. For example, the legislation dealing with liability for pollution damage from an oil leak - The Merchant Shipping Oil Pollution (Gibraltar) Order 1976. This also keeps Gibraltar legislation in line with that of the UK, which is on behalf of Gibraltar, the ratifying signatory to the Hague Convention. Both amendments are of a technical nature and I am assuming are uncontroversial. 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 F VASQUEZ:

The point is taken, Mr Speaker, that the amendments proposed are of a technical nature and therefore uncontroversial and that to that extent is accepted. The Opposition will not be in a position to support the Bill for the reason simply that as the Minister has indicated it is an amendment consequential on the passing of a Bill, which Bill has not been passed yet. In other words, this House through this Bill is being asked to approve an amendment to the Carriage of Goods by Sea Ordinance, riding on the back on the basis of an Ordinance, the Merchant Shipping Safety Ordinance, which has not been considered by this House yet. So the Opposition feel unable to either approve or disapprove this statutory amendment on the basis that we have not considered the basis of that legislation. We would have thought, Mr Speaker, that it would have been more appropriate to leave this amending Ordinance until after the passage of the Merchant Shipping (Safety etc) Ordinance, when we would have been in a better position to fully understand and fully be able to consider the effects of the proposed amendments.

HON P R CARUANA:

We think it is bad legislative practice to pass legislation which makes reference to other non-existent legislation. Here we are being asked to make a reference in this Ordinance to Section 99 of the Gibraltar Merchant Shipping (Safety etc) Ordinance, 1992. There is no such Ordinance and it is nonsense to pass legislation which refers in turn to non-existent legislation. It is converting this House into a rubber stamp and doing it frankly in a way that brings it into disrepute.

MR SPEAKER:

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

HON M A FEETHAM:

I have nothing further to add, Mr Speaker.

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

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon 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 P J Brooke
The Hon J Blackburn Gittings

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon M Ramagge
The Hon F Vasquez

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 MISLEADING ADVERTISING ORDINANCE 1992

HON M A FEETHAM:

Sir, I have the honour to move that a Bill for an Ordinance to transpose into the national laws of Gibraltar, Council Directive 84/450 relating to misleading advertising, be read a first time.

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

SECOND READING

HON M A FEETHAM:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill gives effect to the Council Directive 84/450. Clause 2 uses the exact words of the Directive in defining what is advertising, what is misleading advertising and the criteria to be taken into

account by a court in deciding whether advertising is so misleading that it should be merely be withdrawn or whether corrective statements should be issued by the advertiser. The Bill is concerned with advertising by any medium in Gibraltar and action under the Bill can be taken by anyone who thinks advertising is misleading. They do not have to have suffered a loss or even be liable to suffer a loss or damage. The Directive is aimed at providing both consumers and competitors with the opportunity to prevent misleading advertising. Action in the court could be taken against the person whose product is advertised or the publisher of the advertisement. Publisher is not confined to the reading word. 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 F VASQUEZ:

Mr Speaker, it falls upon me to comment on the general principles and the merits and I should start my address, Mr Speaker, by pointing out that in principle obviously, the Opposition has no objection to this proposed Bill. The fact is that it is, as the Minister has indicated, a Bill designed to provide some consumer protection for consumers in Gibraltar and to that extent it is to be welcomed. We have one reservation, Mr Speaker, and that is that we fear though that this Ordinance, as it will be eventually, must not be allowed to come effectively a two edged sword. The difficulty in the field of commercial advertising is to draw a line between what is acceptable and creative advertising, which is alright on the one hand, and unacceptable misleading advertising on the other hand. We have fears, Mr Speaker, and we will be proposing certain amendments to the Bill. We fear that, as drafted, this Bill might be going too far, simply, Mr Speaker, because it does not allow the court the jurisdiction to decide itself that it considers a complaint brought before it is insubstantial. This is, Mr Speaker, a provision which is contained in Article 6 of the relevant EEC Directive which in effect, as drafted by the Council of the EEC, does give and in fact directs member States to empower their courts to distinguish between what constitutes or what does not constitute an acceptable complaint. That particular article reads as follows, "Member States shall confer upon the courts or administrative authorities powers enabling them in the civil or administrative proceedings provided for in Article 4 to require an advertiser to furnish evidence as to the accuracy of factual claims in advertising if taking into account the legitimate interests of the advertiser and any other party for the proceedings such requirement appears appropriate on the basis of the circumstances". In other words, the courts is able to decide whether it considers that the complaint or the requirement is appropriate. As

drafted in our own proposed legislation, Mr Speaker, that safety net does not exist. Therefore, we are left with a possible situation where an advertisement which is not factual may be the basis of a valid complaint. It is a matter of commercial practice. Manufacturers and advertisers have allowed themselves a certain amount of what is termed in the business as certain amount of puff. That is a certain amount of exaggeration of their product. That is something that the consumer accepts. We have, for example, very famous advertising slogans. I can give the example "Heineken refreshes the parts that other beers cannot reach". That in essence is a factual statement which cannot be substantiated. I do not believe for a second, Mr Speaker, that any consumer is prejudiced by that statement. As framed, the Opposition fears that that advertising slogan might form the basis of a proper complaint and the court does not have the jurisdiction to say that it is insubstantial and may not accept that, on the facts of the case, it is appropriate to consider to order a retraction or an explanation. I think it is proper that the courts should be allowed that discretion and for that reason, Mr Speaker, we will be proposing amendments to the Bill in order that it more properly and more efficiently gives effect to the desired end, ie, which is the protection of the consumer from misleading advertising which actually damages his interests.

HON P R CARUANA:

Mr Speaker, in support of what my colleague has said, we interpret the defect to be that there are two very important lines in Article 6(a) of the Directive. In other words, the last three lines of Article 6(a) of the Directive have been omitted from the Ordinance and, therefore, made it the case that in Gibraltar, every advertisement, every factual statement must be capable of substantiation and if one cannot substantiate it, it is misleading and must be withdrawn. How the advertisers of 'Pedigree Chum' or how the local agents for 'Pedigree Chum' in Gibraltar are going to be able to substantiate factually that most dogs prefer it or the agents of 'OMO' that it washes whitest, is something that I think is dismal and of course the three lines that have been excluded from the section are exactly designed to give the court jurisdiction not to insist on factual proof of the statement in cases such as that.

HON CHIEF MINISTER:

Mr Speaker, we will certainly look at any amendment the hon Member puts between now and the Committee Stage, but certainly his reading of it is not our reading of it. Obviously, we think that what we are doing is the opposite of what he says we are doing but nevertheless, if he suggests a different wording, we will get somebody to take a look at it technically and if he is right, it will be put right at the Committee Stage.

MR SPEAKER:

If no other hon 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 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 P J Brooke
The Hon J Blackburn Gittings

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon M Ramagge
The Hon F Vasquez

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.

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 Bills of Exchange (Amendment) Bill, 1992; the Licensing and Fees (Amendment) Bill, 1992; the Public Utility Undertakings (Amendment) Bill, 1992; the Foodstuffs (Dangerous Imitations) Bill, 1992; the Disabled Persons Bill, 1992; the Criminal Offences (Amendment) Bill; the Criminal Procedure (Amendment) Bill, 1992; the Drug Trafficking Offences (Amendment) Bill, 1992; the Civilian Registration (Amendment) Bill, 1992; the Estate Duties (Amendment) Bill, 1992; the Supplementary Appropriation (1992/93) Bill, 1992 and the Imports and Exports (Amendment) Bill, 1992.

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

THE BILLS OF EXCHANGE (AMENDMENT) BILL 1992

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

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

THE LICENSING AND FEES (AMENDMENT) BILL 1992

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

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

THE PUBLIC UTILITY UNDERTAKINGS (AMENDMENT) BILL 1992

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

Clause 3

HON LT-COL E M BRITTO:

Mr Chairman, the second word of line 6 I think should probably be "have" and not "gave".

HON J C PEREZ:

Mr Chairman, that has already been noticed by the Attorney-General and has given notice that that would be taken as a correction.

MR SPEAKER:

Any other comments on clause 3?

HON LT-COL E M BRITTO:

The other point, Mr Chairman, is that there is mention of "Government" in both Clauses 3 and 4. Perhaps the Minister could clarify how it is that it is Government and not Nynex that the legislation is still

HON J C PEREZ:

Yes, Mr Chairman, because the law can only refer to the Government and the Government then assigns its powers under the law to the company that operates the public utility. As a result of the contract with Nynex, the powers under the law are assigned to the company but when we are talking about the law, we are talking about the Government.

HON P R CARUANA:

So, Mr Chairman, when it speaks about the Government cutting off the telephone, in fact, it is not anticipated that it

is something that the Government does at all. Would it not be better to amend the Ordinance so that it did not have to refer to Government?

HON J C PEREZ:

Mr Chairman, I do not see any need to do so now. I have no objection of doing it, but frankly, the contractor has a contract for a number of years and after that, whoever is in Government at the time, might wish to do something else. So I would rather leave it like that and leave it open for other people to do different things in the future if they so decide.

HON P R CARUANA:

Mr Chairman, obviously this is just an attempt to contribute to the quality of the legislation. I do not think any great political point arises here, but it says "if the same shall have been cut off by the Government". Well, unless the Government is saying that it is going to make the cutting off decision, this clause would never be invoked because the Government will not ever cut off a telephone. It may not actually, in technical terms, serve the purpose that it is intended, but if those who require it think that it does, they will have to wait and see if somebody challenges it, which is itself unlikely.

HON J C PEREZ:

Mr Chairman, I am glad for the concern of the Honourable the Leader of the Opposition that the public should know that it is not the Government that cuts off telephone services, that it is the company. But the legal advice that we have is that this is what is necessary. So if at a legal level he can convince other people to do something different, I have no great objections either.

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 FOODSTUFFS (DANGEROUS IMITATIONS) BILL 1992

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

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

THE DISABLED PERSONS BILL 1992

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

Clause 4

HON P R CARUANA:

Mr Chairman, I would like to propose an amendment to Clause 4. Mr Chairman, we believe that one of the principal

obstacles to the ability of disabled persons to at least do the very minimum for a normal life within the community - that is to say, the ability to get around town - is that our pavements and our public walkways should be so designed to have ramped ends. Therefore, Mr Chairman, we would like to add a new subsection (4) in terms that "The Government shall provide access to public pavements and walkways by ensuring that whenever there is a step up or down from such pavements or walkways, a ramped end will be provided". Obviously, Mr Chairman, the purpose of this amendment is that the Government having expressed its concern for the needs of the disabled by bringing this rather empty piece of legislation to the House, which is practically devoid of substantive content, will wish to express its commitment to the real and immediate physical needs of the disabled by recognising that it has the duty in relation to pavements, at least to make the disabled able to be independent in getting physically around town. These are developments that are taking place, at least in the main shopping street, if not in every street. We think it is well within the means and the resources available to the Government, if indeed they are genuinely concerned by the needs of the disabled, to start with their own public areas.

MR SPEAKER:

Does any hon Member wish to comment on this?

HON CHIEF MINISTER:

Mr Chairman, we will be voting against the amendment. Let me say that of course assuming that we are not here trying to play political games with the feelings of handicapped people, that does not mean that we care less about the handicapped people than the Leader of the Opposition. His concern for well drafted legislation seems to be strangely at odds because as a layman - not having the benefit of being a lawyer like he is - it seems to me that what he is asking us to do is to pass a piece of legislation which would mean that the moment it reached the statute book, the Government of Gibraltar would be breaking the law since it would not the day after have ramps throughout Gibraltar going up and down everytime there was a step anywhere in Gibraltar, which is what the amendment says. We do not even know whether we are talking about 100 or 1,000 ramps but if we have 1,000 ramps and if we do 999 ramps, then there will be 1 ramp missing which will be a criminal offence in breach of the new subsection he has proposed. I am not sure whether that means that the Attorney-General would then prosecute himself for failing to implement the law but certainly the intention of the Government is obviously to take into account the requirements of disabled people as it does as an ongoing process, but we are certainly not in a position to say if the law comes into effect on the 1st January that on the 2nd January there will be a ramp everywhere in Gibraltar where there is a pavement

going up or down. That will not happen on the 1st January and that is what the sub-section presumably expects us to do, because it is mandatory, ie "The Government shall provide access to public pavements by ensuring that whenever there is a step up or a step down", there is a ramp. If we could wave a magic wand and say, "Let there be a ramp", like somebody a long time ago is alleged to have said "Let there be light", then we might find out miraculously that we go out of the House and we find ramps all over the place. So I am not in a position to deliver that but it does not mean that I care less about handicapped people.

HON P R CARUANA:

Mr Chairman, it is all very well for the Chief Minister to speak for three minutes and to answer the substantive point by some technicality. He would of course have been free if he were more concerned with the substance than with the form to have moved an amendment to my amendment to impose a time limit or to limit it to the Main Street but because he cannot achieve it in all the streets instantly, the amendment has no substantive merit as far as he is concerned. Mr Chairman, so be it. It will be interesting to see, Mr Chairman, whether, when the Government and if the Government publish the regulations, that this Ordinance is intended to empower them to do, they will include things like that within their regulations because it is the first thing that needs to be done. Mr Chairman, in relation to the immediateness of the provision, of course the same applies to persons undertaking the provision of any building or premises to which the public are to be admitted. They have an immediate obligation. It is by no means clear the way Section 4(1) is drafted that it applies only to new buildings to be built. It could apply to the conversion of buildings from existing or if I suddenly opened my house to the public, I have to immediately comply with Section 4(1). So we shall see the extent to which in defence of the needs of the disabled, the Government start with what is immediately within their control and whether they do not.

HON F VASQUEZ:

Mr Chairman, I lend my support to the amendment proposed by my colleague. The fact is this, Mr Chairman, that this Bill addresses itself to the disability of disabled persons to get about. The intention of the Bill is to give them mobility and give them independence. As everybody in this House must be aware, Mr Chairman, the single factor which most hinders that mobility is the fact that a person in a wheelchair knows he is going to leave his house and he is going to be unable to manoeuvre himself up and down the streets of Gibraltar in a way that he would choose. So it is all very well for this Government, Mr Chairman, to propose legislation forcing or requiring private developers to so construct their buildings as to admit disabled people in wheelchairs etc. Of what use is that, Mr Chairman, if that disabled person in a wheelchair cannot get out of his house and get to the building in question. If there is

any area, Mr Chairman, that affects all disabled persons, it is the public areas of Gibraltar and specifically the streets and footpaths. Mr Chairman, I commend the proposed amendment and I would invite the Government to accept that it is their duty. It is all very well for the Government to say that individual developers will be responsible for making their buildings accessible, but, they, the Government of Gibraltar has responsibility itself to make sure that its own footpaths are accessible to individuals in wheelchairs to give them the very mobility that this Bill is seeking to attain on their behalf.

HON J C PEREZ:

Mr Chairman, they have come to the conclusion without knowing or asking what the policy is or anything else. They have come to the conclusion that all we do is insist on public developers to do a, b or c. Mr Vasquez is wrong again, once again. The Leader of the Opposition is wrong also in saying that we have done nothing about it. We have been doing something about it since 1988 when we first came into Government. We are in close consultation with groups representing the disabled. The people in the road section, the people in the traffic section, the people involved in the Government's own development programmes, the architects of the Government, the people involved in the Development and Planning Commission and the people involved at the planning section of both public and private projects, are all involved in wherever possible and the groups representing the disabled recognise that (a) it is not possible to do it overnight, and (b) that there are some areas which it is impossible to provide an access. One of the areas we looked at immediately we came into office was the House of Assembly, Mr Chairman. It was recognised that it was practically impossible to have a ramped access for people in wheelchairs to be able to come to the House. The only way we would be able to do it was to move the House of Assembly. I am trying to explain to the House is that in consultation with all these departments, everybody takes into account, whenever there is a project or a development or a change of pavement in Main Street or anywhere or any alterations to the infrastructure, the needs of disabled people particularly those in wheelchairs. But what the Opposition are trying to say, as the Chief Minister has already explained is, that we should legislate so that it happens overnight. Then when it is pointed out to them how ridiculous the notion of what they are saying is, they say that we should amend their amendment. Well why do they not try to amend their amendment? They will not have the support of the House because the whole thing has not been well thought out because if they say that there should be a ramp in any step going up or down, then they are even saying that we should build a ramp along Charles V wall to the top of the rock parallel to the steps. That is what

this amendment is saying and that is how ridiculous it is, Mr Chairman. I am sure that if one asks the group for the disabled whether they mean that by access to public buildings and access to areas in Gibraltar, they do not. But the Bill would include that. That is how ridiculous and badly thought out it is. I think, they are trying, as the Chief Minister has said, to make political capital out of a very serious thing, Mr Chairman. If they had come and said that they wanted to make sure that these considerations were being taken on board, they would have been satisfied that they are. They would not have had to make this stand which is totally absurd and ridiculous.

HON P R CARUANA:

Mr Chairman, the Minister in his inimitable style may wish to rubbish the remarks of the Opposition as indeed the House will recall he rubbished our motives when we told him that there was a dangerous gutter at the airfield. Having rubbished it, and the Chief Minister having told me that we were engaging in gutter politics, because there is a wide line and anyone who steers on the wrong side of the white line in effect deserves the fate that befalls him, several weeks later there is another near fatal accident there and low and behold, now we have, all be it inadequate, but at least some reaction from somebody. So the Minister can rubbish as much as he pleases and he can try and argue that Charles V Wall is a pavement or a walkway. Well if he thinks a walkway is anywhere where you can walk, then this table is a walkway as well, because if I climb on it I can walk along it. They may wish to trivialise everything and anything that is said on the basis of an irrelevant smokescreen and an irrelevant red herring. The fact of the matter remains that in five years that the Chief Minister thinks he has been so active, there are even along the Main Street - which is the first street that you think that anyone genuinely concerned with the mobility of the disabled would start giving ramped access to pavements - practically no such ramps. Frankly, if what they have achieved so far is a measure of what they are capable of achieving in five years, then it does not augur well for the mobility of disabled people in Gibraltar.

Mr Speaker put the question and on a vote being taken on the proposed amendment the following hon Members voted in favour:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon M Ramagge
The Hon F Vasquez

The following hon Members voted against:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J L Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon P J Brooke
The Hon J Blackburn Gittings

The amendment defeated.

On a vote being taken on clause 4 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 P J Brooke
The Hon J Blackburn Gittings

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon M Ramagge
The Hon F Vasquez

Clause 4 stood part of the Bill.

Clauses 5 and 6 were agreed to and stood part of the Bill.

Proposed Clause 7

HON P R CARUANA:

Mr Chairman, on my list there is a proposed addition of a new clause as Clause 7, in the following terms: "Notwithstanding any provision of this Ordinance to the contrary regulations made under or pursuant to powers contained in this Ordinance shall not come into effect until they have been approved by resolution of the House of Assembly". Mr Chairman, I realise that Government Members do not accept the principle that this House is the legislative assembly of this community any longer but I am determined to make the point on each and every occasion in which I think there is substantial abuse of the principles of subsidiary legislation. As I have said, Mr Chairman, on the second reading of this Bill, here we have an Ordinance which has six sections running into.....

MR SPEAKER:

What we are doing now is taking this clause as if it were the second reading and it will be put to the vote that way. So we are talking on the principles so really you can talk widely on it.

HON P R CARUANA:

We have a four page Bill, all of which, except one section, does nothing except give to the Government powers to make regulations. Therefore, Mr Chairman, what this House has before it is not an Ordinance to make provisions for the needs of the disabled, but rather an Ordinance, as my proposed amendment later to the Long Title suggests, to give the Government the power to make such provisions if and when they think fit or at all, by regulation. That is all very well, Mr Chairman, but that is not the principle for which subsidiary legislation is intended. Subsidiary legislation is intended to add administrative detail to substantive legislation and to simply pass a Bill that in effect says "The Government can do what it pleases in relation to making provisions for the needs of the disabled is simply to usurp the legislative function of this House and to transfer the law making competence of this House to the executive. Well, because I am in a minority in this House, there is nothing that I can do to stop it but I intend to make this point on each and every occasion that it happens because I think that that is my duty in defence of the legislative integrity of this House. Therefore, Mr Chairman, my new clause by way of amendment is intended to do nothing more than to require the Government when they have formulated their policy on the disabled and when they have written their regulations to make provisions to the disabled, to bring them to this House so that there is the possibility of discussion and debate about them. Their refusal to accept this clause can only mean that they do not wish these legislative matters to be the subject of debate and to be aired in advance of them becoming the law of the land which is precisely what I complain about and it is precisely the intention of this amendment.

MR SPEAKER:

Does any other hon Member wish to speak?

HON CHIEF MINISTER:

All I want to say, Mr Chairman, for the record, is that the hon Member is factually wrong in the sense that what he claims we are seeking to do now has always been possible under the laws of Gibraltar since the 1969 Constitution was brought in. Therefore, we are simply using a mechanism that has always been there. The hon Member obviously does not believe in making use of that mechanism. He fought an election campaign on that as one of the issues in January

last year and therefore, he is entitled to his views and we are entitled to ours. Certainly, I do not intend to make the same point at every meeting of every House on every Bill.

HON P R CARUANA:

Mr Chairman, I think that the Chief Minister is himself entirely wrong. It falls no part of my point that the Government has not always been able to make regulation. It is yet another example of reducing a point to the irrelevant and dealing with it on the basis of the irrelevant. No one has suggested that the Government is suddenly producing from its pocket a new right to make regulations. As always the Chief Minister wishing to confuse the issue and to cloud the issue. What I am saying is that no Government before this one has thought to make, in my opinion, the abuse of the power of the executive to legislate by subsidiary legislation that this Government abuses. I have said it on a number of occasions in relation to a number of things. The fact that the power exists does not mean that it can be used or abused for all purposes. Of course, it exists but it exists to be used according to law. With the greatest of respect to whomever has advised the Government on this point - it may well be the present Attorney-General in relation to this Bill - if the advice that the Government is getting is that in effect matters of substance, of which there is no substance in the enabling legislation, is a proper use of subsidiary legislation, then what that means is that the Government could bring one Ordinance to this House saying that "the Government shall be able to legislate as it pleases, whenever it pleases, in respect of whatever it pleases by regulation" and then we will all stay at home. We will close down the House of Assembly. We will save the taxpayer money and we will not waste our time in coming to this building because that is the effect of what is happening in relation to financial affairs, in relation to the disabled, in relation to stamp duty, in relation to import duty, in relation to everything. Frankly, if that interpretation of what is proper and what is improper use of subsidiary legislation is correct, then the Government Members have within their grasp, the ability in effect to render the constitutional legislative prerogative of this House worth less than the three lines of paper that they are printed on.

HON CHIEF MINISTER:

Mr Chairman, the point that I am making is, of course, we do not need to do what the hon Member has just said. It already exists.

Mr Speaker then put the question and on a vote being taken on the proposed new clause the following hon Members voted in favour:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon M Ramagge
The Hon F Vasquez

The following Hon Members voted against:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J L Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon P J Brooke
The Hon J Blackburn Gittings

The amendment was defeated.

The Long Title

HON P R CARUANA:

Mr Chairman, at least in the interests of truth and accuracy.

INTERRUPTION

No.

HON P R CARUANA:

It is indeed ironical that even before they have heard me, they say no, so obviously truth and accuracy is not virtues that they are willing to support in any circumstances. The Long Title of this Bill reads "An Ordinance to make provision for the needs of the disabled and chronically sick in the areas of employment". It does nothing of the sort. There is not one single provision of this Bill that makes provision for the needs of the disabled and chronically sick in the areas of employment, nor, in matter of road traffic. What this Bill does is to give the Government the power by regulation to do those things if and when it pleases or chooses to do so. Therefore, Mr Chairman, I am sure the Government will not wish to go down in print inaccurately and presumably notwithstanding their immediate reaction when I invoked truth and accuracy, they will not wish inaccuracies to be reflected in the laws of Gibraltar. Therefore, I do nothing more than propose an amendment to the Long Title of this Bill which renders it an accurate statement of what the Bill is. I propose, Mr Chairman, that the existing Long Title be deleted and be replaced by the following "An Ordinance to make provision for the needs of the disabled in the area of access to public buildings" - and I concede that there is provision, Mr Chairman, because Clause 4 indeed contains substantive provisions relating to the giving of access to public buildings - "and to give the Government the power to make by regulation provisions for the needs of the disabled and chronically sick in the areas of employment, road traffic, etc". Mr Chairman, as far as I can see on the reading of this Bill, that would be the only truthful and accurate way to describe the Long Title of this Bill.

MR SPEAKER:

Any other comments?

HON P R CARUANA:

Mr Chairman, I notice that the Government does not wish to express its view. The right to silence in criminal trial, of course, is now under threat because it is no longer interpreted as constituting a presumption of innocence. Does the Government's silence mean that they disagree with what I am saying or that they have no views to express on the matter?

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

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon M Ramagge
The Hon F Vasquez

The following Hon Members voted against:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J L Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon P J Brooke
The Hon J Blackburn Gittings

The amendment was accordingly defeated.

On a vote being taken on the Long Title 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 P J Brooke
The Hon J Blackburn Gittings

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon M Ramagge
The Hon F Vasquez

The Long Title stood part of the Bill.

HON CHIEF MINISTER:

Mr Speaker we are adjourning at this point. We will not be taking the Committee Stage of the rest of the Bills. Obviously we did not know to what extent we would be able to get through the ones that we feel we need to have in the statute book by next month. That is why there was a change in the Order. As the House knows, the Bills that have been published which were not within the statutory period of notice are very voluminous and we will be taking the First and Second Reading of those at the adjourned meeting.

HON ATTORNEY-GENERAL:

Mr Chairman, I have the honour to report that the Bills of Exchange (Amendment) Bill 1992; the Licensing and Fees (Amendment) Bill 1992; the Public Utility Undertakings (Amendment) Bill 1992; the Foodstuffs (Dangerous Imitations) Bill 1992 and the Disabled Persons Bill 1992, have been considered in Committee and agreed to, with one amendment, 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 Bills of Exchange (Amendment) Bill 1992; the Licensing and Fees (Amendment) Bill 1992; the Public Utility Undertakings (Amendment) Bill 1992 and the Foodstuffs (Dangerous Imitations) Bill 1992, the question was resolved in the affirmative.

On a vote being taken on the Disabled Persons Bill 1992 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 P J Brooke
The Hon J Blackburn Gittings

The following hon Members abstained:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon M Ramagge
The Hon F Vasquez

The Bill was 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 2nd February, 1993, at 10.30 am.

MR SPEAKER:

Before we adjourn, I would just like to wish all the Members and staff of the House a very Happy Christmas and Happy New Year as well. I hope Father Christmas brings you lots of good presents.

Mr Speaker put the question which was resolved in the affirmative and the House adjourned to Tuesday 2nd February, 1993, at 10.30 am.

The adjournment of the House to Tuesday 2nd February, 1993, at 10.30 am was taken at 11.55 am on Thursday 17th December, 1992.

THURSDAY 2 FEBRUARY 1993

The House resumed at 10.45 am.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

The Hon P R Caruana - Leader of the Opposition
The Hon F Vasquez
The Hon H Corby
The Hon Lt-Col E M Britto OBE, ED
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge

IN ATTENDANCE:

D Figueras Esq RD* - Clerk to the Assembly

ADMINISTRATION OF OATH OF ALLEGIANCE

Mr Speaker administered the Oath of Allegiance to the Hon E Montado, acting Financial and Development Secretary.

MR SPEAKER:

I am sure the House would like to welcome Mr Montado even if he is just here temporarily. He is an old hand at this job although the last time he was here it was ten years ago.

HON E MONTADO:

Mr Speaker, if I may I just want to thank you for welcoming me to the House. As you say I was here some time ago on four previous occasions. Then I had to face yourself across the benches and not least the Chief Minister. I am rather rusty now on Treasury matters but I hope the House will bear with me and I will try to be of assistance to the best of my ability.

MOTIONS

HON R MOR:

Sir, I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the motion for the approval by resolution of the House of the Social Security (Insurance) (Apportionment of Funds) Order 1993.

Mr Speaker proposed the question in the terms of the Hon R Mor's motion which was resolved in the affirmative.

HON R MOR:

Mr Speaker, I beg to move that this House resolves that the Social Security (Insurance) (Apportionment of Funds) Order 1993 be approved. Mr Speaker, on the 16 November 1988, a Bill was passed unanimously in this House which called for an amendment to the Social Security (Insurance)

Ordinance. This Bill, Mr Speaker, included an amendment to Section 29 of the Social Security (Insurance) Ordinance which related to the Social Insurance Fund. The amendment established that the old Social Insurance Fund be split up to two different funds. That is to say, one Fund to be called "The Social Insurance Pension Fund" out of which payments would be made in respect of old age pensions, widows benefits, guardians allowances and widowers pensions. The other Fund, Mr Speaker, was termed "The Social Insurance Short-Term Benefits Fund", out of which, as the name implies, short-term benefits such as maternity grants, death grants, etc, are paid. Mr Speaker, in respect of how the old Fund should be apportioned, the amendment referred to incorporated paragraph 1(c) of Section 29, which reads as follows: "The Fund and other assets, if any, standing to the credit of the old Fund shall be apportioned between and shall vest in the Pension Fund and the Short-Term Benefit Fund in such proportion as the Governor on the advice of an actuary and subject to the approval by resolution of the House of Assembly may by order in the Gazette determine". As you can see, Mr Speaker, there is a requirement for the House to approve by resolution the apportionment of the old Fund between the Pension Fund and the Short-Term Benefits Fund in accordance with the advice of an actuary. This actuarial advice has been received and is contained in the Schedule of the proposed Social Security (Insurance) (Apportionment of Funds) Order 1993, which I am asking the House to approve by resolution. Mr Speaker, I commend the Motion to the House.

Mr Speaker proposed the question in the terms of the Hon R Mor's motion.

HON P R CARUANA:

Mr Speaker, I think it is implicit in what the Minister has just said, that that is the advice that they have received. In other words, it is not that they have received that actuarial advice which may be different to the actual apportionment. The apportionment is in accordance with the advice of the actuary, which has been transposed into the breakdown. Mr Speaker, the Opposition will support this resolution to approve this break-up of the Fund. As the Minister has said, it was envisaged as far back as 1988, when the Government first split up the contributions into those two funds. It did for the first time on the 8 December 1988, by Legal Notice 137, so that the contributions were split between the two Fund. The only point that we would make and we would like a assurance from the Minister on, is this. As he knows, the fund has, notwithstanding the split-up, being accounted for in a consolidated basis pending this split-up of funds which now takes place. The House has had and has approved a counts in Gibraltar containing a consolidated account of these two funds. We are now asked retrospectively to the 1 December, to ambivalent into two separate funds and I ask whether it would not be appropriate to re-state the accounts so that we have separate accounts

for each fund from the 1 December 1988. Otherwise we shall have a period during which there will be no accounts. I notice, in fact, that the way the accounts are presently set out, albeit the consolidated account in respect of expenditure of the fund, really they are separated because the account tells what has been spent on pensions and on each type of pension and what has been spent on short-term benefits. In respect of the revenue, there is no such break-down. I suppose one could do a calculation on the basis of the contribution which had been separated since 1988, but I think it would be proper, given that the public accounts of Gibraltar will now stand on the record in a different form because of the retrospective element of this Order which we would otherwise approve that I would like the Government to agree at some point to publish re-stated accounts.

HON CHIEF MINISTER:

Mr Speaker, I do not think we can go back and republish the audited accounts of the Government of Gibraltar from 1989 onwards with a different format, but of course, in the audited accounts for the year ending 31 March, this year, the auditor will be recording the resolution that has taken place and the implications of that resolution. Let me just say that part of the difficulty that we have had with this, has been that we have acted on the advice of the auditor in the allocation and apportionment of the two funds but we do not, in fact, share his views. But we have actually done what he has recommended, although in our view, it produces an incorrect result. This is because in arriving at the 2½% : 97½% ratios, the way that this has been done by the actuary is to take all the benefits paid out of the fund and not take the contribution of the UK as part of the assets of the fund. So that he has said that 97% of the benefits go to pay pensions and only 2½% go to pay benefits but in the 97% is included the pension paid to former Spanish workers, which does not come from out money. However, in the money that has to be distributed, he has not included the money provided by UK because that is not available for distribution between the two funds. The result is that if one looks at what was the situation prior to the payment of the Spanish pensions in 1986 the proportion going to pensions was nowhere near like 97½%. The consequence of that is that it left the Short-Term Benefits Fund in deficit. In order to address that we then had to agree that a higher proportion of the income would be allocated to the Short-Term Benefits Fund, so the distortion created by this way of analysing how the apportionment should take place, has now had to be mirrored by a distortion of the income side, so that on the income side we will now have to apportion a bigger amount of the investment income to the Short-Term Benefits Fund to make up for the fact that we apportioned a lower amount of the approved capital. If in the calculations which the department did, it came up with the answer that either we could have 2½% of the nominal value of the fund including the £50m that the UK had put in 1988 or forget the £50m

and put 4½% of the local funds in the Short-Term Benefits Fund. Either one of the other would have produced, in our view, an amount which would have ensured that the Short-Term Benefits Fund was not in a deficit position. If we had separated the funds in 1988, we would have been running deficits in the Short-Term Benefits Fund from 1988 onwards because of this approach which we have not been able to persuade the UK actuary to change although for us it is perfectly logical that if you are saying "For apportionment basis, I count the payment to the Spanish workers, then in looking at what has to be apportioned, I count the money that has been made available for that payment." We were not able to make any headway but eventually we would have been able to agree that a different formula can be used for the apportionment of the benefit but had we shown the accounts separately since then, we would have had a problem in that the income based on the amount that was apportioned from the original capital did not generate enough money to be able to cover things like unemployment benefit and so forth. We would then have had, by virtue of the requirement to make these funds balance, to increase the contributions into those funds which we did not want to do. This particular apportionment will be followed by an apportionment of investment income which does not require resolution of the House and does not have to be done on the same formula but we have agreed with the actuary that in that area, we will be able to make a compensating change. All that will be reflected in the audited accounts of this year.

HON P R CARUANA:

Mr Speaker, when the Chief Minister referred to apportionment of the investment account, of course, once the fund is allocated to separate accounts, each derives the investment income that naturally flows from the assets allocated to it and in respect of the investment income from 1988 to date, perhaps the Chief Minister would just clarify for me whether he is saying that the allocation to which this resolution refers is in respect of the capital as it existed in 1988 and excludes accrutions to it from investment income since that date.

HON CHIEF MINISTER:

That is precisely what I am saying, Mr Speaker. What we are doing at this stage is placing 2½% of the money that there was in the fund in 1988 into the Short-Term Benefit Funds and 97½% of the money into the Pension Fund. The ratio of 2½% and 97½% reflects how much of the payment in benefit was for short term benefits and how much was for pensions. But in the payment for pensions, the actuary included the payment of the Spanish pensioners but in the amount of the apportion he did not include the money provided to do that. In order to be able then to have the fund not in the red, he has agreed that that is the treatment that has to be given to the money that was there in 1988, but

that the treatment that we give to the investment income that was generated by the joint amount between 1988 and now, can be in a different proportion and in arriving at that different proportion will effectively be making compensation for the fact that it did not accept that it should be 4½% instead of 2½%.

MR SPEAKER:

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

HON R MOR:

I have nothing further to add, Mr Speaker.

Mr Speaker proposed the question in the terms of the Hon R Mor's motion which was resolved in the affirmative.

BILLS

FIRST AND SECOND READINGS

The Gibraltar Merchant Shipping (Registration) Ordinance 1992

HON M A FEETHAM:

Sir, I have the honour to move that a Bill to make provision for the Registration of Merchant Ships and Pleasure Yachts in Gibraltar, to repeal the application of ships registered in Gibraltar of certain Ordinances and Acts of Parliament and for the matters connected with and incidental to the foregoing, 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 Long Title of this Bill, which I have just read out, is in fact a summary of the Bill in itself. The Bill sets out the provisions for registering a ship or a pleasure yacht in Gibraltar. It envisages two registers. That concerned with ships of 24 metres and over in length and the register of yachts of less than 24 metres. This division reflects that now provided for in the United Kingdom legislation. The Bill is concerned only with ships which register in Gibraltar, Mr Speaker. It is not concerned with ships not registered in Gibraltar and which call at our port and the object of the Bill is to put in place an effective system of ship and yacht registration to make attractive to owners the registration of ships in Gibraltar. In drafting the legislation account has been taken of the commercial realities of shipping and consideration has been given to

ensuring that the legislation, as drafted, will be attractive to the financial institutions who now have a substantial influence on owners and the owners choice of the flag. The substance of the Bill re-enacts in a more logical and codified form the substantive law now operating in Gibraltar in relation to the right to register ships and the mechanism of so doing. It must be remembered that to a large extent, the requirements to be satisfied by ships of 24 metres and over in length are determined by international convention and the freedom of any country to legislate is thereby curtailed. However, we do have freedom in the areas of, for example, ensuring that the system works effectively and that mortgages etc can be efficiently recorded. Provision has been made for this in the Bill. Mr Speaker, shipping is a matter in which the United Kingdom obviously has an interest. Ships registered in Gibraltar will continue to fly the Red Ensign flag carrying of course the Arms of Gibraltar. The Bill has therefore been the subject of substantial discussions with the United Kingdom. Although the United Kingdom was given an opportunity to comment on the legislation before the Bill was published pressure of work on UK officials meant that this exercise had not been completed. Nothing new, Mr Speaker. There will therefore be a number of amendments at the Committee Stage which will be taken at a later meeting, to take into account the minor drafting points that have been raised by the United Kingdom and other technical points which more recently have come up which the Chief Minister will be taking up in the United Kingdom this week. There has also been a process of consultation in Gibraltar in relation to the Bill and as a result of that other amendments will be moved at the Committee Stage. In a Bill of this length and complexity, the need to make amendments is, I am afraid, unavoidable. Therefore I regret also a number of misprints in the Bill which I hope will be all corrected before the Ordinance itself is published. Before I take hon Members through the Bill part by part, it may be useful if I give to the House some explanation of the background out of which this legislation and that concerned with safety and shipping has arisen. As I have mentioned, the United Kingdom has a continuing responsibility at an international level for the shipping registers of dependent territories. It is through the United Kingdom and through its ratification of international conventions that those conventions apply to Gibraltar. The United Kingdom remains answerable to the International Maritime Organisation and the International Labour Organisation, both specialist bodies of the United Nations, for compliance by the dependent territory registers with international conventions. The United Kingdom some years ago took steps to establish that dependent territories operating ship registers had in place legislation adequate to give effect to international conventions and also had an adequate marine directorate to enforce that legislation. The United Kingdom therefore introduced the system of categorisation of dependent territory registers. Only a register with category 1 status could register ships of 150 tonnes or over. In effect, any register with less than category 1 status was only a yacht register. A number of

dependent territories registers have sought to achieve category 1 status. Gibraltar at the time indicated that it too would want category 1 status. As I have already said, we continued to be and will continue to be a Red Ensign Register as the result of the achievement of the status that we wanted and we started to put in place, at the time of notification, some part of the necessary legislation to allow us to qualify for category 1 status. The Isle of Man, Bermuda and Cayman Islands have proceeded along the road to categorisation and have in fact achieved category 1 status granted by the United Kingdom. We have the benefit of learning by their very costly experience at the same time even though they have not had the unfortunate situation that they have not been able to benefit in the transitional stage. They have discovered, Mr Speaker, that despite the enormous investment that they have made, that they have failed to attract the amount of shipping that they expected and which would have warranted the investment. This Government has explored extensively the quality which make a register attractive to responsible ship owners and out of this has come a number of policy decisions reflected in the legislation now before the House. The first of these was to follow the line of the United Kingdom in dividing the register into ships of 24 metres and over in length and into pleasure yachts. I should point out to the House that a ship of under 24 metres which is a passenger ship will, for the purpose of the legislation, be treated as a ship of over 24 metres in order to ensure that all international conventions relevant to the passengers of ships is adhered to. Whilst we are following the United Kingdom in making the division, we are not following the United Kingdom in turning the registration of a pleasure yacht into a pointless formality. Regulations to be made under the Ordinance, will ensure that the registration of a yacht in Gibraltar continues to be a rigorous process and not an opportunity for fraudulent activity. To strengthen this position, I will on consideration be moving an amendment to Clause 38 of the Bill to make provision to register in respect of pleasure yachts those who are qualified to register yachts. In order to obtain category 1 status from the United Kingdom for the Gibraltar registry, not only is the legislation contained in this and the Safety Bill necessary together with regulations to be made under both Bills, we also have a worldwide enforcement machine to ensure that ships registered in Gibraltar comply with international obligations on safety, pollution, etc. If our register is to be successful, Mr Speaker, to provide a proper service to our owners wherever they are in the world. It is for this reason that we are making provision in the Bill for the appointment of a competent maritime administrator, who, reporting to the Government, will carry out the administrative and technical functions necessary to operate a safe and commercially successful register. I am confident that the legislation we now have for consideration will provide substantial business opportunities both for the activities of registering ships and yachts in Gibraltar and for all of the activities ancillary to that. I can tell the House that the maritime administrators

to be appointed under the provisions of the Bill, will be charged by the Government with promoting a register as well as carrying out their technical functions. I now propose to take the House through the Bill part by part, Mr Speaker. Part 1 makes provisions for the commencement and deals with the interpretation of the terms used in the Ordinance. Part 2 makes provisions for the appointment of maritime administrators, one in respect of large ships and one for pleasure yachts and spells out the powers of the maritime administrators. It also makes provision for the inspection of registers and for the rectification and correction of registers. Part 3 deals with the register of big ships by specifying the types of registers to be used, that is a register of ships and a register of ships under construction. The register of ships allows for the registration of ships under a bare boat charter. That is to say, for the registration of a ship which is being operated from Gibraltar but where the initial registration is on the register of another flag. This new provision has been sanctioned by the United Kingdom. The part specifies the ownership necessary for a ship to be registered in Gibraltar and deals with the tonnage and description of ships, that is, ships names, marking of the ships and the form of application for registration. This sets out in detail the formalities of registration and the powers of the maritime administrator to refuse registration or to remove a registration. It allows for provisional registration and also deals with a flag to be flown by the ship once registered. It specifies the port of registry and makes provision for the transfer of registration in limited circumstances between Gibraltar and another register. The provisions on bare boat registration in and out of the register are set out in this part as are the details on the transmission of ownership. Part 4 deals with registration of pleasure yachts and makes provisions for parts of the Ordinance to be applied and parts to be excluded by regulation. An approach in line with that taken in the United Kingdom. Part 5 deals with the recording of mortgages and related instruments on the register. It is a detailed and technical section to ensure that mortgages can be recorded efficiently and accurately and goes on to deal with the rights of the mortgager and the mortgagee. Part 6 deals with maritime liens. In passing, I would like to draw, Mr Speaker, to the attention of the House the concern that has been expressed that Section 52 taken with Section 88 is not adequate to ensure that the provisions of the Ordinance are not applied to ships registered elsewhere but indeed arrested in Gibraltar. At the Committee Stage I will be moving an amendment, which I hope will satisfy those anxious at this point. Part 7 deals with registration of ships owned by the Government. Part 8 makes the arrangement for the transition of ships now on the register together with yachts now on the register into the new registers. Part 9 is essentially a housekeeping part and it is concerned with matters such as evidence that must be furnished, fraudulent declarations, service of documents, suspension of registration etc. It also, Mr Speaker,

contains the power to make regulations, deals generally with offences and penalties and makes provisions for the necessary repeals and revocations when this Ordinance replaces those provisions now currently affecting the registration of ships in Gibraltar. 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 P R CARUANA:

Mr Speaker, as the Minister for Trade and Industry has indicated, this is a very complex and highly technical Bill dealing with highly technical matters and in addressing the House as to the principles of the Bill, I will attempt not to get bogged down in matters technical which, in any case, may be best left for the Committee Stage. Mr Speaker, there is no doubt that for a number of reasons the shipping register, as it has existed in Gibraltar for a number of decades in an active commercial sense, had grown moribund in the sense that we were losing our tonnage and that we were failing to attract new tonnage. In addition pressure was being brought to bear for compliance with certain standards which would certainly have involved the investment of resources beyond that which I think would have been justified by the level of business that the old register in its existing form was attracting. All that, is unquestionably true. Mr Speaker, I am almost certain that hon Members will not recall that I made this subject the subject matter of my maiden speech in this House, in which I positively encouraged the Government to investigate the potential advantages to the economy of Gibraltar of the shipping register and ways on which it could be improved. Therefore, Mr Speaker, I make that observation to underscore the fact that in principle the Opposition is highly supportive of initiatives to make of the shipping register a more significant area of potential business activity for the finance centre, in particular, but for other aspects of the economy in general which could benefit from the presence of a more vibrant shipping register. Mr Speaker, a strict consideration of the principles of the Bill would not require one to address the Bill on the basis that the proposed registrar was a private concern. The Bill does not say that the registrar is going to be a private concern. The Bill simply says that a maritime administrator is going to be appointed and of course technically the maritime administrator could be the Captain of the Port, so that it remained within the civil service, but it is well known - because the proposed administrators have been in Gibraltar paying their courtesy calls and speaking to people - that the Government has decided to appoint as maritime administrator a private commercial enterprise of American origin. I do not say of American origin in any derogative sense, simply to identify it. It is a company by the name

of International Registries Inc. An organisation which has hitherto had responsibility for administering the Liberian registry and one other in the Marshall Islands. Therefore, Mr Speaker, I think it is necessary to consider the principles of the Bill within that context. One of the items of principle which does give us some concern is the enormous freedom given to the maritime administrator to perform his functions, power and duties inside and outside Gibraltar. Those are the words of Clause 3(2) of the Bill. Added to that clause much later on in the Bill, Clause 39 (5), which allows the recording of mortgages and related instruments outside Gibraltar, in effect creates a very significant departure from the existing regime. Whereas somebody wanting to use the register in Gibraltar in accordance with the system that we have had and that we are used to working with to date, would have had to come to Gibraltar to do it, or at least use a Gibraltar based professional, both to register the boat and to register a mortgage on the boat. Technically the possibility exists for somebody to deal directly with the Gibraltar register. Somebody could if they had wanted to put a mortgage in an envelope and send it to the Registrar of Ships at the Port Department and ask them to register it, but in practice, that never happened and certainly did not happen in any commercial transaction except commercial transaction. I know that there was one transaction involving a fleet of BP tankers which was brought here by the initiative of the Captain of the Port and that was dealt with directly by the Captain of the Port with BP. The reality of it was that it was almost inevitable that people wishing to use the Gibraltar register would engage Gibraltar professional operators, be it lawyers or a trust company or a shipping management ie a locally based operator of some kind. This power on the part of the maritime administrator, bearing in mind that it is not now the Registrar of Ships in terms of the member of the civil service of Gibraltar, that it is now a private organisation, this power gives them the ability in effect to set up a branch network of Gibraltar shipping registries or branch officers of the Gibraltar shipping registries, wherever they please, in New York, in London or wherever they have an office. In other words the registrar can now take the register to the user. Very convenient indeed for the user and as far as the user is concerned unquestionably a great advantage. I suppose I should declare an interest, Mr Speaker, since I do have a professional interest in precisely this point, but it is a broader professional interest. It affects the finance centre in generally and all those engaged in it, the result of that - to put it no more strongly than I feel I can definitely justify at this stage - is very likely to be, time will tell whether it will be or not, really what has happened to other territories in which registers have been set up on the basis that you could deal with the register outside the physical territory of the place. Like Liberia operated by these people, Bahamas not operated by these people, other registers where you can register a Bahamian ship in London. There is a man called Captain Morris who sits in an office in London and he registers Bahamian ships

and, as you all know, register a ship in Liberia, in New York or elsewhere. The results is that the professional operators, not just lawyers, professional operators in Liberia, if indeed there are any in that country, but certainly in the Bahamas, which has a very vibrant professional community, really have practically no input, no say, no participation of any significance in the process of user of the registry. The result, I am expressing my opinion, time will tell, I think will be that owners and professionals in other territories used to use Gibraltar through local organisations will now acquire the ability to deal with the registrar directly in New York, directly in London, directly in Piraeus or given that there is even power, they can almost put the register in a brief case, because the maritime administrator has got the right to authorise an official to really take the registry to the ship owner in his office. Now what professional operator in this industry could compete, even if the opportunity arose, with somebody who is really both administering the register in and outside of Gibraltar and dealing with the user of the register at the same time? I think that the competition that will be provided will be unfair. I suppose that the registrars themselves, International Registries Inc will not have the gall to both operate the register and go around trying to act as practitioners in relation to the registry of ships in Gibraltar. There are other members of the group, associated companies, who will get the benefits of the relationship and who may go out into the business. I can tell that it will be practically impossible to compete with that. The result may be - I do not want to be too alarmist, because I sincerely hope that I am wrong - in effect exporting local finance centre jobs to the officers in which the maritime administrator has its offices and his branch offices abroad. I think that there will be a "loss" of business because I suppose you could argue that it is business that we have not got at the moment, because the shipping register is now moribund. But whilst the initiative to encourage a development of the shipping registry is a good one and that one that we would support, we would like to see restrictions placed on the ability to do business with the register outside Gibraltar to ensure that the hub of activity in relation to the register is in Gibraltar and not in New York, in Tokyo or elsewhere where the proposed maritime administrators may have an office. Mr Speaker, another area of concern to us on the principles of the Bill is the enormous amount of power that is given to the maritime administrator. I take note of the fact that we are dealing with a new concept and that when you are dealing with a new concept, it is possible to become paranoid either through lack of familiarity or through concern for change or fear of change or simple conservatism with a small 'c'. We are discussing a commercial profits driven operator, again I do not say that derogatively of them, they are in commerce to make profit and therefore it is fair to assume that they will be driven by the profit motive, unlike the civil service

or unlike a Government department, which may be driven by a desire to raise revenue, but has a broader range of interests to protect. The public interests of Gibraltar is wider than simple revenue raising. Mr Speaker, there are several examples, I will not go into any great detail or even go into all of them, but there are some which I would like to highlight, for example the definition of a mortgage. Gibraltar has a highly developed shipping tradition and law. The laws of Gibraltar being akin to the laws of the United Kingdom, are highly developed when it comes to deciding what is a mortgage. There are four hundred years worth of jurisprudence that says when a document constitutes a mortgage and when a document does not constitute a mortgage. I think that it is giving far too much power to a commercial shipping registrar to say that a mortgage is or such other instrument having like effect as shall be approved from time to time by the maritime administrator. What is and what is not a mortgage under the law of Gibraltar is not for a maritime administrator to decide. What constitutes and what does not constitute a mortgage is a matter of operation of law and there has to be certainty on matters of that kind. I ask myself what extent of supervision the Government of Gibraltar will be able to impose on this maritime administrator, given that he can perform his functions inside and outside Gibraltar. In other words, what element of control can the Government realistically expect to have in relation to the conduct of the maritime administrator's function on behalf of the Government of Gibraltar outside of Gibraltar. Clause 3(4) gives the maritime administrator the power to make and issue something called administrative instructions, "as may be required or may appear to him to be necessary or expedient for the better carrying out of the provisions of this Ordinance". If an administrative instruction were limited to things which are obviously administrative like office hours or the colour of the paper that the documents have got to be written on, that these things which are obviously administrative, you might say, what does it matter that that is delegated to a commercial enterprise, but the fact of the matter is, that the definition of administrative instructions in the Bill, is not so limited to administrative matters. It is not couched in terms that make it clear that these instructions that the maritime administrator can issue are really limited to things which are only of an administrative nature. Mr Speaker, at the risk of straying into more controversial political territory, it is really quite enough, that we lose our legislative prerogative to a Government that admits that it likes to do things by regulation as opposed to legislation, but I think it is altogether too much that this House should lose its legislative prerogative to a commercial foreign maritime administrator who is given broad powers in effect to legislate on matters of shipping. Then in relation to those administrative instructions, which as I say, I would like to see more obviously limited to matters of a clearly administrative nature, I can see that there are things which fall into that category, and which can properly be left to administrative instructions. What the Bill says is that he shall "publish or cause to be published such instructions

in such manner as he sees fit". These people are going to have more powers than the Government themselves because the law says that when the Government makes an administrative instruction, which are called regulations, you have got to publish them in the Gazette. Well these chappies can publish their administrative instructions and they can publish them or cause to be published in such manner as they see fit. No! If these things are going to have the effect of law, if they are going to operate in a binding fashion on the citizens of this community and on the users of this community, there has got to be certainty that we know at all times what the law is and I think that the law should stipulate how these administrative instructions have got to be published, not leave it to them. I would like to see them published in the Gazette but if they cannot be published in the Gazette, at least some obligation that they are posted on the notice board or some other means that will enable operators to say "Have there been any new laws printed this week? If not I can safely proceed on the basis of last week's laws". This is simply going too far in giving powers to somebody that is not within the public administration in the normal sense of the word. We are also concerned, sticking only to the principles, Mr Speaker, with the provisions of Clause 5 dealing with the rectification of the Register. It provides that the Government shall make regulations to specify the persons who may correct errors. The maritime administrator, nevertheless, may himself correct something called clerical errors or obvious mistakes. The following vital points arise. Who decides what is a clerical error? We know in this House how we sometimes debate whether a misprint in one of the Bills before us is a clerical error requiring a formal amendment or whether it is not. Who decides what is an obvious mistake? Does it have to be the maritime administrator's mistake or can he correct mistakes or errors on the part of one of the parties to the document? That is not made clear in the law. The present regime of the law is that the Governor's permission is required to alter the register. There are enormous books called the register in which entries are laboriously made and if there is so much as a slip of the pen, the Governor's permission in writing is required to amend that. Why is the law so strict? I do not say that this new law should be so strict or that we cannot arrive at a less colonially based method of authorising amendments to the register, but the reason, and this is why I make the point, Mr Speaker, why the law is so strict is that third parties very often make valuable and important commercial decisions on the basis on what they see when they go and search the register. It is no consolation to them to discover later that it has been changed because it was an error or because somebody had made a mistake and the only reason why it is presently difficult to correct the register, is not because somebody thinks that the Governor himself has got to give permission for a spelling mistake to be corrected, but because once you abandon the principle that the register is sacrosanct, people do not know when they look at the register whether

it is subsequently going to be corrected by reference to a criteria that is not established in the law and therefore it ceases to have this definitive value of establishing what the fact is. I do not say that there should not be some procedure for rectifying the register, what I say is that the power to authorise the rectification of the register should not be deposited in the commercial administrator of the register. I think that this clause needs to be looked at again and I think that the power ought to be retained by some public official of the Government of Gibraltar, at least or at best requiring an order of court. That might take some time, but at least keeping it within the domain of the public administration. Clause 13(1)(d), as I read it, in effect, gives the maritime administrator the power to decide what documents have to be filed to register a ship in Gibraltar. I say these are matters that have to be established by operation of law. The law should say to register a ship in Gibraltar, you need document (a), document (b), document (c) and document (d), and that is a matter of law and people that are using the register, look at the law and say, "If I want to register my ship in Gibraltar, I need documents (a), (b), (c) and (d)." Frankly, to leave to a maritime administrator the power to decide what documents should be filed to register a ship in Gibraltar, I think, is a matter which I correctly add to the list of points which I think in this Bill, as a matter of principle - which is all that I am dealing with at this stage of the proceedings - gives the proposed maritime administrator - not because it is International Registry Inc or because they are American or because they are not Gibraltarian or any administrator that is not part of the public administration ought not to enjoy the powers of this magnitude. On a small point, Mr Speaker, but I think one that is important, Clause 6(1) of the Bill does not appear to require the register even to be kept in Gibraltar physically. Nowhere in this Bill does it say that the register must be kept in Gibraltar. I think that both from the point of view of our desire to develop our own institutions and to keep control of our activities, I think that the maritime administrator must be required to keep this register in Gibraltar and Clause 6(1) should say, "The Maritime Administrator shall keep the register in Gibraltar". Mr Speaker, I will not comment on Clause 7(3)(b)(ii). That is another thing about this Bill, the numbering of it might have been simplified for the purposes of future reference. The sub-clause refers to foreign maritime entities. The Bill that would have brought those creatures into existence, is no longer before the House, it has been removed from the agenda, whether or not that means that this Bill will be amended before its passage or not, is a matter that I leave entirely to the Government. I do not know what the future of the withdrawn Bill is, whether it is temporarily or permanently withdrawn. There is, Mr Speaker, in my opinion, a downslide in making it too easy for ships to be registered in Gibraltar in the name of legal entities

incorporated wherever you like in the world. One of the things that adds value to the finance centre through the shipping business, is not just the registration of the ships, which of course is just a oneoff thing, you register the ship, you charge the fee note, some people would say an excessive fee note, but still a fee note, and that is it, the ship is registered. From time to time they may trouble you to put on a mortgage, to take off the mortgage, but what actually produces recurring benefit to the finance centre is those things for which you can charge on a recurring annual basis and that is if the ship is owned through a Gibraltar company to which the local industry then has to continue to provide services on an annual and recurrent basis. I would offer my opinion to the Government that in fact to facilitate the registration of ships in Gibraltar through corporate entities wherever in the world incorporate, whether directly or allowed in through the back door through some Ordinance such as the Enterprises Ordinance, if it comes to the House, is something which I would not recommend, because what it would actually do, is deprive the company formation and administrative sector of the finance centre of one source of turnover. I know of nobody who has declined to register a ship in Gibraltar because they cannot use their Norwegian company or their Swedish company or their Greek company because at worst all they have to do is form a Gibraltar subsidiary of that company. I would not like the value of that point if the Government considers that it has any merit to fall on the basis of an exception. I am sure that there is somebody in the shipping industry who prefers to register his ships, for whatever reason in the name of his national company. On the whole that is not the generalised position and if we can both promote the registry of ships and preserve the source of work for the company side, I think it is worth considering and doing it. There is, Mr Speaker, a small point of principle in Clause 14(4), which thankfully, having given him so many powers, does create a right of appeal against the decision of the maritime administrator to refuse to register a ship but curiously that appeal is to the Administrative Secretary and I ask myself whether it is proper in principle for a civil servant in his capacity as a civil servant, I do not say that civil servants are at any personal level disqualified from exercising judicial or semi-judicial functions - but in his official capacity, to be the appeals authority. In my submission, I cannot think of any precedence that exists for making a civil servant the set of an appeal. I think more thought has got to go into that and to see whether there is not somebody more appropriate to make the party to whom they have to appeal than the Administrative Secretary. Mr Speaker, Clause 13(c) is an unnecessary obstacle to the future use of this Bill. If I am reading it correctly it appears to require official permission if somebody wants to transfer their ship from somewhere else to Gibraltar, from the transferring flag to transfer the ship to Gibraltar. That is not the case now. It has never been the philosophy of any British Register, not even London, the Isle of Man, Southampton or Gibraltar. We have not even required a deletion

certificate. In other words, it is not a condition of registering a ship in Gibraltar or London now, that you even show that you have deleted your ship from the previous register, let alone obtain the permission of the flag. I ask myself, what interest of our own - given that we all have the same common interest in that this venture should be a success and that we should attract as many ships as possible - are we serving by putting an obstacle which some owners may not be able to comply with. I know that there is a residual discretion on the part of the maritime administrator to waive, but in principle, this is something that has got to be told. If a customer rings me tomorrow and says, "What are the requirements for registering a ship in Gibraltar?", I have got to add this item to the list, I cannot exclude it on the basis that I am going to be able to persuade the maritime administrator to waive it. It seems to me that it is simply a bit of paper which they might have difficulty in getting for any number of reasons which do not go directly to their own reputation or reputability, which simply made them look elsewhere. I would change that. I would keep the existing regime of not requiring even a deletion certificate, still less permission. There is, of course, it has come to no great surprise to the Government an objection in principle on our part to the provisions of Clause 38(4); in effect, the whole register of pleasure yachts which is a concept which in principle we agree. I think it is wise to separate the two, but that is going to be established by regulations and as Government Members know we prefer, as indeed they are doing now by debating a Bill. We would have preferred to have seen the details of the establishment of the register of pleasure yachts to be achieved by principal legislation and not by regulations. I fear that I want to stray into legalities. I have left out even, rather than bogged the House down with legalistic arguments, those points which I think are too legalistic and I will raise privately with the Government before Committee Stage, but there is one which I think is important. That is Clause 47 of the Bill. Clause 47 turns upside down the philosophy of the laws of Gibraltar in general. What it says is this that if one is a mortgagee of a ship one can, when one decides that there has been a breach, simply take title, not exercise the power to sell, which exists in the present law, but to say "As of now this ship is mine and I will keep it as mine." That regime does not exist in the laws of Gibraltar even to property situated on Main Street. A mortgagee of any asset under the philosophy and the jurisprudence of English law can never say "As of 12 o'clock today, this is mine and I put it in my name and I will keep it. I am not selling it, I will keep it. This is now my ship, this is now my house." The reason for that is obvious. At the moment that can only be done with a court order. That is called foreclosure and that requires an order of the court and the reason why that requires an order of the court, as opposed to selling the property. A mortgagee can sell the property without an order of the court but he cannot keep the property for himself without an order of court

because of course it lends itself to possible abuse. When I speak of possible abuse, I have not got in mind the reputable bank. You have got to remember that mortgages do not have to be in favour of the bank. The ship owner himself could form another company and give a mortgage to himself and when the temperature gets too hot in the kitchen, he says "Fine now as mortgagee I am taking title of the ship" and he starts again and defeats all the creditors. Therefore, I have asked on several private occasions to have explained to me what the need is for this radical departure from a system of English law which exists for a good purpose. To date, no such valid explanation has been offered to me in private and until one is offered to me, I have to oppose this because it seems to me to be a pointless exercise which departs from the principles of the laws of Gibraltar and which is potentially open to abuse. Therefore, unless there is some positive reason why this should be allowed, I think the negative reasons would outweigh it. I am grateful for the comments of the Minister for Trade and Industry in relation to Clause 52. I myself have that concern. I think, as the law presently stands, it is a real concern. Gibraltar is an extremely attractive jurisdiction for the arrest of ships. As we speak there are three tied up at the Detached Mole. They deposit an awful lot of money in the community. Not only does the Government get 1% of the proceeds of sale through the courts poundage, but, it creates work for ship keepers. It creates work for shipping agents. It creates work for stevedores. It creates work for the pilots and for everybody. That business ought not to be tampered with. To a great extent it exists because we have a system of priorities of claims against the ship - which we share with England and which we share with much of the British Commonwealth although some have departed from it - which is clear, long-established, well defined, and everybody knows what it is. It does not do injustice to anybody and it works. The effect of this Bill, as it presently stands would have been to tinker with that order of priorities in a way which was capable of rendering much less attractive to mortgagees who are the people who most arrest ships and all the ships parked at the Detached Mole today are under arrest by mortgagees. I am very pleased to hear that the Government is taking that point on board. I look forward to have sight of that proposed amendment. I had an amendment which I was going to propose at Committee Stage. I do not mind making it available to the Government to see if they feel that they ought to take that on board or achieve the same result by some other means, but certainly that result is very important that it is achieved. Mr Speaker, to finish in relation to the principles, of course, as I said at the outset it is little more than informed speculation on my part, but there is going to be a commercial administrator. The legislation itself does not say and the legislation would be equally usable without one, but we know that the reality of it is, that there is already a chosen maritime

administrator, we know who they are by name, we know where they come from, we know what they have done before and we know what they are allowed. Of course the Government has not and may not, although I will ask it to, make public the terms of that contract between the Government of Gibraltar and the maritime administrator so that we know on what terms they are running this service on behalf of the Government. The Bill is silent on such important matters as the financial arrangements. Is there going to be any change in the level of fees charged for registration of ships? Is there going to be any change in the tonnage taxes? The Bill does not address those issues. It does not tell us what regime is going to be put in place for the revenue raising aspects of this Bill nor do we know how that revenue and on what basis, if any, is going to be shared between the Government and the maritime administrator. Obviously they are not here for the love of us, they are in it for business. What percentage of what revenue will they take? What is the proposed regime in that regard? How much they take of it may never be published. I would ask the Government to make the terms of that contract public, but at least let us know soon whether there is going to be any great change in the regime in terms of registration fee, tonnage tax and things of that kind. Two points to which I attach quite a lot of importance, Mr Speaker, and they are my final points because it is perhaps our first major experiment with privatising a public register. Can the Government end the appointment without penalty? This is something for which one would have to see the agreement. Really what I am doing is urging the Government to ensure that the terms of the contract that they have with any maritime administrator, whoever it might be, has to be such that the Government has almost unrestricted ability, subject to some commercial reality, to end the arrangement because the public interest of Gibraltar cannot be left for evermore in the hands of somebody concerned only with one aspect of it which is that we should have a successful shipping register. If there should be a difference of opinion between the Government of the day and the registrar as to what is or what is not good for Gibraltar's image or for Gibraltar's future or for Gibraltar's broader interests, it is not acceptable for the Government to be told, "Here is our contract. Here is the law. We are free to get on with it, this is none of your business." The Government ultimately must have the sanction of saying, "You either run this register in accordance with my wishes or you do not run it at all." It cannot cost the Government an expensive damages action to put itself in a position where it can regain control of the public interest of Gibraltar. Therefore, I impress upon the Government the need to take care that whatever contractual arrangements they enter into, has to address that point. I notice from the Bill, that they have taken care to protect themselves. Clause 81 purports to give them a complete immunity from civil action.

Let me just make sure that I am not misquoting it, it might say something about bad faith. "Unless it is shown that the actual omission was in bad faith". That is a pretty broad immunity, for example, it means that they are not liable for negligence. In order to make them liable for anything, one actually has got to prove bad faith. Bad faith is practically impossible to prove. In effect this is a complete immunity from civil action but it does not enure to the benefit of the Government. The fact that I cannot sue the maritime administrator does not mean that I cannot sue his master, namely the Government of Gibraltar. Why is it for the Government of Gibraltar to have an operator acting in its name perhaps prejudice in peoples' commercial interest in a way which may give them a court of action but the maritime administrator knowing that they are safe? May that make them a little more reckless knowing that they are safe but the Government of Gibraltar is exposed? There is no immunity for the Government of Gibraltar here. Therefore, I ask myself why a private operator should have any greater immunity or any greater answerability in law for his actions, than anyone in this Chamber when we go about our public business or our professional business. They get the immunity but not the taxpayer nor the Government of Gibraltar. I think that needs to be looked at and I would want to ask them why they think that they need this immunity from civil action. Mr Speaker, that is all that I feel that I should say or that I can say without getting bogged down into too much detail on the principles of the Bill. We support the objectives of the Bill. We are highly supportive of a desire to create a more active shipping register. We are mindful of the fact that at the end of the day it is a matter of resources and therefore we have got to find a way of doing it that allows a sufficient investment by others of resources to do it. Nevertheless, we will be abstaining on the second reading and hope to be in a position to support the Bill by the time it gets to the third reading once we have seen all the various amendments which we are going to propose privately to the Government before Committee Stage and which they have themselves have already indicated they wish to bring forward.

MR SPEAKER:

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

HON M A FEETHAM:

Mr Speaker, let me say first of all that I am pleased with the contribution that has been made by the hon Member and I will explain why. The shipping registry is not an issue which has come about as a result of us deciding that we want to modernise the registry and that we want to put a commercial operator to run it in keeping with our philosophy,

which is pretty well known by now. I am not going to get into that. This is an issue, Mr Speaker, that has been going on even before I think I was in the Opposition. I remember being on the other side of the fence when Adolfo Canepa, as my counterpart in those days, was arguing with the British Government, the Department of Trade and Industry and everybody else that we have been involved, about the need to enhance the shipping registry in Gibraltar. The net result has been that for whatever reason the shipping registry in Gibraltar has been in deep decline. We have complied with all international conventions over a period of time, moreso, Mr Speaker, since we came into office, because we perhaps have been more aggressive towards getting these conventions in place. The net result of that has been that in fact the shipping registry took further decline because the ships that were on our shipping registry were ships that had to be taken away. So, when we talk about the shipping registry business that we have had in place, whether we like it or not, provided for by the professionals in Gibraltar, without my throwing any aspersions on anybody, has been that the quality of ships that we have had on our shipping registry over the years (50% of them) were ships that nobody else wanted anywhere else. So, Mr Speaker, that is not the business that we are looking for. We want, first of all, to put into place a category 1 status registry in Gibraltar so that we can compete on an equal basis with everyone else doing the same business. We have been in discussions with the British Government in order for us to comply with their requirements because we are a British Dependent territory. There are no arguments about that. I am not like the hon Member involved in the business on the side of the shipping registry. As a man of the legal profession, he knows much more about the technicalities of the laws about that. But in many respects, I am extremely pleased that we have got this Bill being discussed here today because at least we have got Bill that is putting everything together and is giving us a basis for what I think is a very important debate which is taking place here in this House today. At least we have got that far and I think that is to the credit of the Government and that the Opposition Member is highly supportive of our efforts in trying to bring about a shipping registry that is going to attract new business to Gibraltar. How we go about it, who we appoint to do it, what infrastructure we put in place in support of that, is where perhaps there are some differences and I take note of the number of points which have been made because I myself, having looked at the Ordinance, need some answers because it has only been at the very last moment that this Bill has been under discussion in very high circles. So even today whilst we are here, I can say that the Department of Trade and Industry are still not happy about a number of things that we will have to take up with them and we will obviously discuss it when the Committee Stage takes place. Mr Speaker, I think that looking at it now from my point of view, not

as a technician, but as a politician, I not only want to have in place a shipping registry that we can be proud of, but a shipping registry that is going to bring business to Gibraltar. Looking at the resources that Gibraltar has, one knows and the Opposition Member made it one of his final comments that we are limited in the resources that we have and at the end of the day it is a matter of judgement what infrastructure we put in place in selling the product that we are trying to sell which in this case is the shipping registry. As a person that has been involved in attracting business to Gibraltar for the last four and a half years, I quite frankly, in my judgement, have come very firmly to the conclusion that we need to get into partnership with people outside Gibraltar in the promotion of Gibraltar because they themselves have got in place the necessary infrastructure to bring business to Gibraltar. We have to weigh that up with the sort of business that could be created if, for example, the administrator would be one of the legal firms represented in Gibraltar instead of an international concern. If there was a business in Gibraltar, not necessarily a legal profession but any other business to whom we could say, "Right you run the registry for us" - I am trying to be quite serious about it - would we still be able to bring the business that we are looking for in the competitive world that we are in? So the steps that we are taking in our judgement in looking for a partner, is to weigh these things up and say to ourselves, "Well I think that the positive things are going to outweigh the negative things and we are going to create new business." It is incorrect to say, Mr Speaker, that as a result of an appointment of a private company, the network of that private company is going to be such that the local professionals are going to lose all the business that is there at the moment for them. It is quite clear in the Bill that the yacht register stays as it is. The yacht register is not affected at all and the yacht register, Mr Speaker, has been the biggest growth area. So from the point of view of a yacht register being owned by a company or being owned by an individual, there is no change, that continues to be done in Gibraltar. As I understand it, I may have to be corrected, it is only for ships over 150 tons that that providance can be done by a private operator that we may or may not appoint in due course. Therefore, Mr Speaker, when we look at the business that has been provided by our professionals in Gibraltar during the last eight years, we see that if we are talking about putting a ship under the registration of a company, we see that in fact if we have only got sixty ships, pro rata we have provided sixty companies which is the recurring income every year from those companies. In the last eighteen months, Mr Speaker, we have registered one ship over 150 tons. I am not a technician. I am a politician. I look at this from a commercial point of view in the interest of the

revenue of the Government of Gibraltar and in the promotional drive that Gibraltar must put in place in the next three and a half years with all the products it has to sell if we are going to consolidate the economy of Gibraltar and make Gibraltar self-sufficient. If we do not get the product right and the ingredients right and we are prepared to make some sacrifices somewhere and not everybody thinking about their self-interests and not Gibraltar's global interests let us forget about the shipping registry. I am afraid we are not going to make it, as simple as that. So that is the philosophy, Mr Speaker, with which we are approaching our strategy. There are, of course, some points that have been made, quite rightly so, which needs to be answered. I would have thought that they may have best been answered at the Committee Stage because some of the questions asked, by the time you get to the Committee Stage, may not be relevant. Under the present situation, in any case, when talking about appeals, the appeal is made to the Deputy Governor. Why not to the Administrative Secretary? There was a question about having to seek the consent - I am not quite sure about the clause referred to - of another registry. Why do we need to seek consent? I am informed it is to stop bad ships running from registers where it has failed to comply or pay. So that is the answer. It is not as if we are trying to change something very important, it is because it is felt that it is necessary to protect our interests and as far as the administrator has got administrative powers to issue notices, they are in fact equal to the notices issued by the Department of Transport who are free to issue them as they see fit. So that is the basis of what we are trying to do here in Gibraltar. Much perhaps to the Leader of the Opposition's surprise the UK Department of Trade and Industry have told us that we should give more powers to the maritime administrator in terms of freedom to rectify. So there are different views. On one hand by the UK saying to us we cannot do this, the Leader of the Opposition saying to us that we are perhaps going too far and the UK saying to us that we are not going too far on that but going too far on this. We are the people in the middle. We are the people that have to make the decision and we will do so in our best judgement for Gibraltar. In terms of the Bahamas and the point that has been made, I am also informed by people in the profession that the Bahamas took all the Hong Kong ships and made quite a lot of money. In fact, they ignored the views of the local law profession. We have the Merchant Shipping Registration Ordinance brought to this House. I think it has taken the previous administration and us a number of years to get to this stage. I am pleased that the thrust of the Opposition is supportive but questioning some of the technicalities. I think that there is a lot of common ground for us and it augurs well for the shipping registry in that respect. We are going to leave this Bill, as indeed the other two, for the Committee Stage in another meeting which shows how much importance we are giving to having a consensus acceptance in Gibraltar. Let me make

it quite clear that at the end of the day the Government will have to do what it considers to be the best in the interests of Gibraltar. Let it also be said that we have been in full consultation for a substantial period of time with people in Gibraltar before we even got to this stage. That process will continue. The representations that have been made to me will certainly be considered some of which have already been taken on board and have already been accepted for amendment at Committee Stage. All this shows that we are on course, Mr Speaker, after a very long time to have the Ordinance on our books as a category 1 status register which is what Gibraltar wants. Let us keep our fingers crossed, let me say, that we actually do finish up with the status 1 category register. I will seat down because I think the Leader of the Opposition wants to say something. Otherwise he will not be able to speak afterwards.

HON P R CARUANA:

The Minister mentioned that the Bahamian register obtained all the Hong Kong ships. I sincerely hope that we are equally successful. The point that I was making was precisely that the Bahamas had been very successful at attracting ships but that that volume of activity had not been reflected in Bahamian based professional organisations. If one goes to the Bahamas, one might think that there is not a shipping registry in the Bahamas. I hope that we do get all these ships, but if we can get them in a way that anchors the activity physically to Gibraltar, then more benefit will ensue than if we just get it on the same basis as the Bahamas have got it which is from a little office in London that the lawyers and the accountants and the trust managers and the company managers in the Bahamas do not even know about, let alone earn from.

HON M A FEETHAM:

I said that but I qualified it by saying that they ignored advice. And what I am saying to you is that we have been through a consultation process. What we want is the best for the Gibraltar in the shipping registry. Therefore that is the unity and that is what we are discussing. It is not that we have ignored anybody or anything like that. I am saying that we are having a debate here and all these things are going to be taken on board, Mr Speaker.

Mr Speaker 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 J Blackburn Gittings
The Hon E Montado

The following hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The Bill was read a second time.

HON M A FEETHAM:

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

The House recessed at 12.25 pm.

The House resumed at 15.25 pm.

THE GIBRALTAR MERCHANT SHIPPING (SAFETY ETC) ORDINANCE, 1992

HON M A FEETHAM:

Sir, I have the honour to move that a Bill for an Ordinance to make provision for the control, regulation and orderly development of merchant shipping in Gibraltar, for the proper qualification of persons employed in ships registered in Gibraltar, for the safety of such ships and their crews and passengers, for compliance with international obligations in respect thereof, to repeal the application to ships registered in Gibraltar of certain Ordinances and Acts of Parliament and for matters connected with and incidental to the foregoing, 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, in general this Bill is concerned with the manning of ships registered in Gibraltar and with the surveying and certification of such ships. It gives effect to international conventions of the International Labour Organisation and of the International Maritime Organisation, which as you know, are specialist bodies of

the United Nations which the United Kingdom has ratified and which has been extended to apply to Gibraltar. The Bill is concerned only with ships registered in Gibraltar. Ships which visit Gibraltar will continue for the time being to be regulated by the Merchant Shipping Ordinance and the United Kingdom Merchant Shipping Act. The Bill essentially brings together in a coherent manner the provisions which now are spread throughout the Merchant Shipping Ordinance and the United Kingdom Merchant Shipping Act running from 1894 to 1988. It also provides for an efficient system of administering the activities with which it is concerned. The Bill provides for as much of the details to be dealt with in regulations and again the regulations which have been prepared are a codification of much existing and disorganised law. The Bill and its regulations have been the subject of long and detailed negotiations with the United Kingdom. The division between primary and subsidiary legislation is approved by the United Kingdom. If we are to have a successful shipping register in Gibraltar, we must provide the right infrastructure. This Bill is part of that. Of course, in many respects, the area with which this Bill is concerned is the subject of international convention and the legislation is intended to deal with the mechanisms necessary to implement those conventions and to provide the framework of standards to support those conventions that give a discretion in application to the flag State. Mr Speaker, there has been extensive consultation with the United Kingdom as the ratifying power and because of this, it has imposed a burden on United Kingdom officials to respond. We have been waiting for some of these responses. It will therefore be necessary to deal with a number of amendments at a later meeting at Committee Stage. Unavoidably as well, Mr Speaker, in a Bill of this magnitude there are errors of punctuation and printing. Hopefully these will all be corrected before the printing of the Ordinance. Part 1 of the Bill is a commencement of the Ordinance, Mr Speaker, and the definition of the Section. Part 2 is an administrative provision appointing the agent who on behalf of the Government will operate the provisions of the Ordinance and limits in itself the powers of the maritime administrator. Part 3 is concerned with the requirements of manning a ship and with crew welfare, conditions and discipline. Part 4 is concerned with the appointment of surveyors to inspect ships, their powers and obligations and the standards and certificates required of ships to ensure safety at sea. The part also deals with a number of miscellaneous matters, all concerned with the safe operation of the ship. Part 5 makes provisions for the regulations to apply to the hovercraft and part 6 makes similar provisions in relation to submersible crafts. Part 7 makes provision for the application of international conventions dealing with the carriage of passengers, their luggage and the limitation

of liabilities by carriers. Part 8 makes provision for the adoption of all international standards relating to pollution from oil and any other matters, for example, chemicals and refuse. Part 9 is in effect a housekeeping part dealing with the mechanics of operating the requirements of the Ordinance and for the repeal of the legislation which will be replaced when this Bill is brought into effect. Most of the clauses, Mr Speaker, of course, can be dealt with at Committee Stage 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 P R CARUANA:

Mr Speaker, certainly it is absolutely essential that if we are to operate in Gibraltar a proper shipping register on the sort of scale that it is envisaged that this one might become, that we should operate a system that the laws of Gibraltar rather, should provide a safety regulatory package of the highest international standards or at least of the highest standards that international conventions apply as a minimum standard, given that there may be countries that voluntarily choose to apply higher standards than these. That is a matter for them. The Opposition is satisfied that insofar as this Bill basically seeks to legislate the SOLAS, The International Safety of Life at Sea Convention and other international shipping conventions that it does indeed apply the correct standards of safety. But of course, it is also important, Mr Speaker, not only that the law should actually provide for that system, but that we should ensure that the regulatory system of safety that the law imposes is adhered to. That requires supervision. That requires monitoring and it is in that context really that we have recognised that it is going to be necessary for Gibraltar to have some sort of arrangement with some sort of third party at least for this part, for the supervision and for the surveying, for what would be called the marine administration department of a larger country. Mr Speaker, for that reason, we are again, as indeed we were this morning with the Merchant Shipping Registration Bill generally supportive of the objectives of the Bill and of the basic regime that it seeks to implement, given as the Minister has already said, that basically what it does is introduce into the laws of Gibraltar well known and long-standing international shipping conventions. But there are, nevertheless, several points of principle, again as occurred this morning, which do arise from this Bill, and which I think could usefully be taken on board. Of course, the first item that arises is that given the role of monitoring and supervising compliance and safety standards, that the Government of Gibraltar should be entirely satisfied with the credentials of the chosen

contractor. As I have said this morning in our discussion on the Bill, unofficially one knows who it is alleged it is going to be but as the Bill stands before the House at the moment, it could be anybody and certainly it is essential that that organisation, whoever it is (a) is equipped to perform the function, (b) is itself supervised to ensure that it does indeed impose the standards required and that that organisation should enjoy a level of international reputation and support that will not bring the flag eventually into disrepute through lack of enforcement of safety standards. Again in this Bill, drafted as it has been by a common pen to the one this morning, there is the concept of administrative instructions and that the law does not specify how those administrative instructions have to be published. I will not take up more of the House's time than is necessary, except that I adopt exactly the same two points that I have made this morning about a clearer definition of what sort of things are allowed to give administrative instructions about and that the law should specify how those administrative instructions have got to be published. The Bill is silent on the substantive provisions in relation to manning. It is left to be dealt with by Government regulations but I presume because it was actually one of the principal reasons why the old registry started emptying of tonnage. I assume that there will not be a requirement for the master, the chief engineer and the first officer to be British nationals and British certificated. That, as the Minister for Trade and Industry and his colleagues know is the ultimate reason why we started losing tonnage to our competitors who dropped that requirement. The fact of the matter is that there are neither enough British certificated officers to go round in international registers and secondly from the cultural business point of view, German and Greek shipowners do not want to have to employ British officers. So I assume that when the regulations on manning are produced, they will include in the regime, which presumably is one of the points still to be settled with the United Kingdom Government, an allowance for us to have officers on board our ships which although not British are of course adequately certificated by a recognised maritime nation. Another point that arises, again not dissimilar to one that arose this morning, is in Clause 5(1)(b) of the Bill, where it says that the maritime administrator - again all my comments have got to be read in the context that the maritime administrator is some comfort - should specify standards of competence to be attained and conditions to be satisfied by officers and crew. I believe that the standards of competence to be attained is a matter that goes to the root of the manning requirements of our registry and should be established by law and it is not up, just as before it was not up, to the registrar of British ships to decide what standards of competence should be required for Gibraltar registered ships. These are things that are established

by law and why should we give to a commercial contractor the power for him to decide what standards of competence there should be on the crews of Gibraltar registered ships? Clause 5(4), relates to the making of regulations in relation to matters connected with manning and it specifically in relation to a whole series of things, which it is said that the maritime administrator may make the necessary regulations for. We would like that power retained by the Government. In other words, that the maritime administrator administers a regime that is imposed by the law of the land if the maritime administrator is not both the administrator and the legislator in relation to any matter of any importance. As I have said again this morning, one could make a case for allowing them a degree of latitude on matters which are clearly only of an administrative nature, but I think that neither of these Bills that we have discussed so far today is adequate in its terms as to what administrative instructions can relate to. Clause 6 of the Bill gives to the maritime administrator the power to grant exemptions from manning requirements and these are said to be entirely in his discretion. Once again we believe that placed in the hands of a commercial maritime administrator this power is too wide. The only condition which appears to be placed on the exercise of that discretion, is that it should not result in breach of an international convention which has been extended to Gibraltar. We believe that there ought to be another overriding condition of a general kind imposed, if indeed the power is going to be left where it is, and that is that there should be no compromise of safety standards. The sole criteria that should underscore any decision to grant an exemption should be safety and certainly a desire not to breach any international obligation should also be there, but it ought not to be possible for anyone to grant an exemption from manning requirements which are capable of compromising safety even if they do not breach an international convention. There are many things which are left unaddressed by this Bill in the sense that we have not got the whole package before us and therefore we are not really able to say that we agree that the law of Gibraltar now provides an adequate safety package because most of the things that go to the safety of a flag and that go to the safety of a register, as the Minister has himself said, have been left for the Government to do by regulation and therefore we shall have to wait and see. Such important things as the safety of seamen, compensation for life at sea, relief and return of seamen, the conduct and powers of inspectors, safety and health on ships which is itself an enormous category of regulations giving effect to the International Load Line Convention, giving effect to the SOLAS Convention, all the area relating to hovercrafts and submersibles all the area relating to pollution which is a vital area of control, all safety matters as they relate to yachts and of course, manning itself. So really what we have in front of us is a very small part of what the whole

safety at sea legal regime that we implement in Gibraltar is going to look like. Therefore, it is really not possible to evaluate this Bill in any comprehensive sense. We shall have to wait and see what the final package looks like. Curiously, clause 37(1) introduces into this legislation the concept of desertion. In effect what it does is that it blurs the distinction between absence without leave, which is something which is dealt with in another clause and then there is a whole clause 37 that deals with desertion. Most interestingly, as withholding your labour: being absent without leave from your ship is equal to desertion and incitement to desertion is made an offence, it will be interesting to see how the local representative of the ITF or the Transport and General Workers Union is going to do his job either in this port or in any other port in relation to a Gibraltar ship given that it has almost become a criminal offence for anyone to incite somebody else to desert their ship. In other words, to be absent from their ship in breach of their contract of service. I think that the whole of clauses 37 and 38 are heavy handed. It introduces into our law a new concept and it is not one which I think sits well in an Ordinance dealing with merchant shipping. Understanding, of course as I do, that there are peculiarities relating to merchant shipping, considerations of safety, both of the ship and of the cargo and of ports and of third parties which means that there could be a need to restrict the freedom of people going on strike or the freedom of withdrawal of labour. But this introduces into the merchant shipping legislation of Gibraltar almost military standards and military concepts for desertion. Clause 64, Mr Speaker, again contains a general power to the maritime administrator to make exemptions from the legal requirements relating to safety and health and to life saving appliances. Again we do not know the extent to which that would be possible because the regulations are not yet in place. Again the only condition is subject to not breaching an international convention and I would like that to be extended to include the non-compromise of safety. There is a clause that speaks of summary proceedings instituted in Gibraltar, which is understandable, and then summary proceedings instituted elsewhere. Clause 109(2) starts "Neither a conviction for an offence nor an order for payment of money shall be made under this Ordinance in any summary proceedings instituted elsewhere". It is an interesting concept. I do not know where else other than in Gibraltar, this legislation could seek to be enforced in terms of enforcing fines under it, since that would have to be in the courts of Gibraltar. Clause 110, Mr Speaker; I will be making comments to the Government in relation to the Committee Stage. This is the jurisdiction clause which I think is ineffective to establish the jurisdiction of the courts of Gibraltar. It speaks specifically, "for the purpose of giving jurisdiction under this Ordinance, every offence shall be deemed to have been committed and every cause of complaint to have arisen either in the place in which the same actually

was committed or arose or in any place in which the offence or the person complained of may be at the time." That almost excludes the jurisdiction of the courts of Gibraltar to deal with offences under this Ordinance. The chances that either of those conditions will ever apply to give the courts of Gibraltar jurisdiction are very slim because many of these ships of course will spend most of their time in places other than Gibraltar. That jurisdiction clause has got to be tightened up to make it clear that the courts of Gibraltar will always have jurisdiction to enforce the safety requirements of this Ordinance in relation to offences committed in relation to a Gibraltar registered ship wherever that ship might be. Otherwise the enforcement procedures and the ability of the Supreme Court of Gibraltar ultimately to enforce the sanctions contained in this Bill will be prejudiced. The same point arises that I made this morning in relation to immunity from civil liability. The maritime administrator is immune from everything that he does or omits to do unless it was shown to be in bad faith and I make in passing the same point of course of the same immunity would not be available to Government. There is in Clause 120, which is the residual section that gives to the Government the power to make regulations in a general category of things other than the ones that I have already mentioned. "The power of establishing, financing and managing a fund for the purpose of the conduct of investigations required by this Ordinance to be made and for the making on behalf of the Registrar of affiliation fees and associated costs to International Maritime Organisations," is not clear from this Bill whether this will be a fund established under the Public Finance (Control and Audit) Ordinance or whether this is going to be a fund established under this Ordinance and administered by the maritime administrator so that the revenues from shipping, be it tonnage tax or registration fees, will be dealt with differently and will not be dealt with as revenue of the Government of Gibraltar. That is something that I think we would like to have clarified by the Minister if he is able to when he replies. Finally, Mr Speaker, there is a small but I think important point in Clause 121(2) which enables the Government to add to the list of conventions in the Schedule that shipowners in effect are obliged to comply with. The schedule presently contains the conventions that presently apply to Gibraltar and there is a power in the clause that I have mentioned enabling the Government to add to that schedule. It does not say anything about the publication of those additions and I think that that ought to be by notice in the Gazette because the effect of adding a convention to the schedule is that the shipowners obtain an immediate obligation to comply with those conventions and therefore the fact that those conventions have become law in the context of the Merchant Shipping (Safety) Ordinance should be made as public as possible which simply means in accordance with the standards that we impose generally that new laws that are introduced are given a degree of publicity in the Gazette. As I say, Mr Speaker, we shall have to await the full package of regulations to see that it is all achieved. I assume that

the regime that will be applied through the regulations will be those that are presently required by the conventions and if that is so, of course, the regulations like the Bill will enjoy the support of the Opposition

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 am pleased to note that the Opposition Member is genuinely supportive once again of the Bill that I have just presented. It is correct to say that it will form part and parcel of an overall package that will streamline shipping activities in Gibraltar. It is also correct to say that at Committee Stage there will be again a number of things that need to be looked at and consequently it is not correct to assume at this stage that there is going to be a unanimous support of that package when we have gone through all the Committee Stage. But this particular Bill is geared towards safety at sea and the words used by the Leader of the Opposition were "there should be no compromise on safety standards". I think this Government has demonstrated that during its term of office by, applying all the necessary conventions that we are required to adhere to in the last three years. The net result of that has been not that we have lost ships because of the requirement of British masters, but we have lost ships because of the way that we were running our shipping registry by not adhering to international conventions and so on, there were quite a lot of ships that were virtually dumped on our registry and we accepted them and we had to take them away because they were not meeting safety standards. For example, like the 15 year rule and the general upkeep of the ship. So we are totally committed to the question of safety of seamen and so on and so forth, not least of all of course that the Chief Minister has been a merchant seaman himself. I do not think that there is any need in any way to make that point. I think that is taken as an understanding on our part. The other point is, and I totally agree with him, is an important point which has frustrated the efforts of the Government. It has frustrated the efforts of the legal profession. It has frustrated the efforts of everybody that is trying to sell ship registration in Gibraltar. Why should we have to have British masters, British shipping engineers and a British first officer? Why should we? We have taken this up. It is still a point which I think will be conceded and we should have at least any member of the European Community as part and parcel of that package. We all know that the Department of Transport cannot defend that there are British masters available for every ship that is registered in any of the British dependent territories. It is just not on because there is not anybody available. It is a question of protectionism for surveyors and other people that for their own personal sectoral interests want to procrastinate the situation which can no longer be defended. That point is very, very strenuously

being fought for by the Government of Gibraltar. That point will continue to be the thrust of what we want to achieve. He also made the point about manning levels and that the law is silent on manning to some degree. It is because of course the law itself must also be read in the context of the international conventions regarding money and international conventions regarding money are very restricted in themselves. It gives us very little room for manoeuvre anyway. It is not that we are trying to leave an open door there so that we can be supportive of shipowners that do not want to have the degree of manning that is necessary and therefore prejudice the safety of the ship and the crew but it is because it has to be taken in line with international conventions that are there. The discretion allowed in those conventions is extremely limited as indeed, I am sure the Opposition will be very pleased to know, under the convention, the Government, whatever Government is limited in its powers to make regulations, so therefore the Opposition have got a strong ally on their side in respect of that. The other point which I think is an important one - the rest I am going to leave for the Committee Stage - and was referred to is Clause 37(1) on desertion. All we have included there is what is provided for in British law in the Merchant Shipping Act of the United Kingdom, so I am advised. Therefore, if we are complying with the definition and the defined areas of desertion and it comes on the Merchant Shipping Acts of UK and the UK are the ones that are responsible for ensuring that we adhere to this then I am fairly satisfied at this point that that is OK with us. But of course since the matter has been raised I will obviously look at it again, seek advice and even before we get to Committee Stage the whole thing may be sorted out anyway. Mr Speaker, this Bill is part and parcel of the infrastructure required with the first Bill that I presented. The package will emerge as we get through Committee Stage and I do not think I really need at this stage to make any other point because some of the points that have been raised will come up anyway when we go through clause by clause at Committee Stage.

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 J Blackburn Gittings
The Hon E Montado

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

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 subsequent meeting.

THE GIBRALTAR SHIPPING ENTITIES ORDINANCE 1992

HON M A FEETHAM:

Sir, I have the honour to move that a Bill for an Ordinance to make provisions for the registration of the Gibraltar Shipping Entities for the conduct of such companies and for matters connected with and incidental to the foregoing be read a first time.

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

SECOND READING

HON M A FEETHAM:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill makes provisions for the registration of private companies for the purpose of owning ships. The legislation is modelled on the international business companies legislation operating in other dependent territories and financial centres. It provides for corporate structures familiar to those practitioners who advise clients with an international base who, in making decisions about the jurisdictions in which they wish to form companies and operate ships, compare in the process one jurisdiction with another. Gibraltar unlike a number of other offshore centres has to take account of its membership of the European Community. The model of similar legislation found in other jurisdictions therefore is amended, particularly, Mr Speaker, in Part X and Clause 143, to reflect the need to comply with the requirements of a company operating in the European Community. The Bill will therefore provide a suitable vehicle for the registration of ships intending to operate within the EEC. Opposition Members will see that the purposes for which a company incorporated under the Gibraltar Shipping Entities Ordinance can be used are indeed limited. I refer hon Members in particular to Clauses 5 and 7. The Bill has been prepared against the background of the need to attract

business into our shipping register and takes account of the experience in having similar corporate provisions in other jurisdictions with which Gibraltar is indeed competing with. Every effort has been made to ensure that our legislation will provide a competitive base for lawyers, company managers etc in Gibraltar to attract business into Gibraltar. No doubt some of the Opposition Members who are themselves lawyers will recognise in the legislation the comparable provisions in, for example, the British Virgin Islands, Jersey and Guernsey. The offshore wealth is indeed a competitive one. For example, the Isle of Man's assessor of income tax, I am sure Opposition Members will have read this, commented publicly recently that he was pleased that the Isle of Man had been able to improve their corporate legislation particularly to deal with collective investment schemes, UCITs and ship ownership. How long ago, Mr Speaker, was it that we ourselves have been wanting to introduce UCITs into Gibraltar and we would have been one of the first and I am talking about at least seven or eight years? We are talking about ship ownership and that is what the Isle of Man are saying in response to the sort of thing that we are trying to do today. The offshore competitors that I have mentioned earlier are different from Gibraltar in that, Mr Speaker, which I think is the advantage for us, they are not members of the European Community. They cannot offer to ship owners the advantage of that membership and equally they are not burdened, which is to their advantage, with the requirements of complying with all the company law directives. In this Bill we are seeking to ensure that we are not unduly handicapped either by the people offering the services here or those who wish to register their ships here. 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 P R CARUANA:

Yes, Mr Speaker. Regrettably the Opposition shall not be supportive of this particular Bill as we have been of the previous two. This Bill is in no way as we understand it necessary for the proper and successful operation of the shipping register which is the venture in which the Government enjoys our support. It contains a radical departure from the established principles of company law and I do not propose to bore the House unduly by going into technical and legalistic concepts, but in relation to such things as fixed capital, the protection of minority shareholders, the compulsory redemption of minority shareholding interests, the protection of creditors, the protection of rights of parties dealing with the company, the rights and duties of directors, the purchase, sale, holding and dealing by the company with its own shares, the unrestricted ability of these companies to reduce their share capitals, all of these - I have drawn the list in very general terms - are principles which are completely different in this legislation to that which regulates

companies incorporated under the Companies Ordinance. It introduces into Gibraltar a completely new system of company law; a completely new jurisprudence philosophy underlying the rights, duties and obligations of all the various constituent parts that go to form a company in terms of shareholders, directors, creditors and other people dealing with the company. Unless I am reading it particularly badly, and I will be very pleased to have it pointed out to me that I am reading it badly, I think when this Bill eventually becomes law, one will not even be able to search the register to see who the directors of these creatures are. I know that this happens in the British Virgin Islands and the British Virgin Islands have the reputation in the finance centre world that they have, for good reason, I am not saying that it is for this one. Imitation is not always the best form of flattery and the fact of the matter is that to create a corporate vehicle in which third parties cannot even see who are the directors of this company by going along to search the public register, seems to me to be a step backwards, not a step forward in the sophistication of this finance centre that we are all trying to create here. These entities do not even have a registered office in Gibraltar; another departure from the existing concept where there is a building, all be it with only a brass plate screwed to the wall, but there is a building in which you can contact the company and there are people in that building who are responsible for this company. There is something akin to the company secretary here which is the registered agent but this simply amounts to a downgrading of the physical connection between these corporate entities established in Gibraltar under the laws of Gibraltar and Gibraltar itself at a time when we have been criticised and when all finance centres are being criticised for allowing too tenuous a connection between the locality and the corporate entity established with it. This is a retrograde step and it is a retrograde step of a particular unclever kind in that it just, by reducing the requirements for physical connection with the territory, reduces the things for which finance centre operators can charge the services which are compulsory and the things for which will generate volume, activity and fee income in the finance centre. Mr Speaker, all corporate entities are capable of being abused by people who set out to abuse. In his address this morning in relation to the Registration Bill, the Minister for Trade and Industry very properly said in relation to the Yacht Register, that he was anxious that it should not become an opportunity for fraudulent activities and whilst I recognise that the law would have to be so draconian as to be unusable for it to be incapable of being used by fraudsters, our Companies Ordinance can and regrettably sometimes is used by people to do things with improper motives. This creature created by this Bill, is a fraudsters dream ticket. It is not only an opportunity for fraudulent activities, I think, it creates fertile ground for lack of all the things that the Companies Ordinance presently says about ordinary companies. It is fertile ground in my opinion for people with improper dishonest motives to use as a vehicle. Therefore Mr Speaker, whilst ordinary

companies can and are used, this is despite the law and not facilitated by the law, I believe that this corporate structure is so much more lax in terms of the hands-on approach of the law to regulating it that really it is stripping away what little defences exist. We believe that the law must provide a minimum standard of protection even if it can be abused. Ultimately, because we have an interest in Gibraltar's reputation not being sallied, for the protection of the reputation of the jurisdiction and we think that this law allows too much of a free for all. It almost creates the self-regulated company where the directors are all powerful, the law does not impose on the many fiduciary duties and they only have the duties that the memorandum and articles say. The memorandum and articles do not decide everything. The directors decide everything and if there is a minority shareholder that does not like it, the directors can just buy them out and be done with it. There are provisions to which I will refer in a moment which compound the problem but I am just trying to paint at the moment a picture of a Bill that creates a corporate entity which is of a very different kind from the one that we are used to and the corporate devices that exist to regulate in company law: mainly the Companies Ordinance type company that we presently have. Mr Speaker, I feel that I can make all these comments without in any way contradicting the support that I have given to the merchant shipping initiatives because I just cannot see why it is necessary to add this particular legislative provision to the other one. We have in Gibraltar a proven corporate vehicle. I am not aware, although there may be cases, as I have said this morning in relation to another matter, of anyone that has not come to use Gibraltar because they are disenchanted or that they think that they are disadvantaged by the corporate vehicle that we have in Gibraltar, namely the company. It works. It is well regulated. There is an established body of law interpreting the various rights and duties and therefore, Mr Speaker, we see no need to depart from that concept. Of course, if it were necessary to depart from that concept to gain some sort of advantage, to gain some sort of leg-up in relation to the merchant shipping initiative, then of course one would say, "Let us weigh up the pros and cons and it maybe that the pros outweigh the cons. On balance we would prefer not to change things but as we gain something else that we do want to gain, on balance we take the view that it is worth changing". I am not in that position because no-one has yet explained to me why this peculiar creature - I hesitate to call it a company - created by this Ordinance is necessary or helps even. The Minister has said, as indeed the Explanatory Memorandum says, but both of them incorrectly. Of course I impute no ulterior motive to deceive the House, simply that the Minister has relied on the Explanatory Memorandum which is wrong. It says "The object of this Bill is to provide the legal framework for the formation and operation of companies having the exclusive object of owning and operating a ship." That is what he has said, that the objects are restricted to owning and operating a ship. He has, I am quite happy to recognise in all good faith, referred us to Clause 7 as proof of the fact that these entities would be restricted to owning and operating a ship. In fact, Clause 7, demonstrates the contrary. Clause 7 is nearly two pages of things that this company can do which has absolutely nothing to do with owning

and operating a ship. For example, this company can deal in overland transport. It can deal in any aspect of transportation, not just shipping but any aspect of transportation. It can be a stevedore. It can be a wharfinger. It can be a ship broker. It can be a ship agent. It can be a freight forwarder. It can be a warehouseman. It can be a chandler. I will not bore the House by going through the list but what I say to the Minister is that if he genuinely believes that he is commending to this House a Bill which allows such corporate entities to only own and operate a ship, then I shall tell him that he is not actually doing what he thinks he is doing. He is commending to the House a corporate entity which in accordance with the terms of the law that creates it, has far, far, greater corporate capacity than the one that he has described to this House. There is a reference to general trader. Now what is a general trader? What cannot a general trader do? And what cannot be done by somebody who has the power "to do all and any of the acts and things herein set forth as principal, factor, agent, contractor or otherwise, either alone or in company with others and in general to carry on any other similar business which is incidental or conducive or convenient or proper to the attainment of the foregoing purposes or any of them and which is not forbidden by law." Mr Speaker, I urge the Minister, if his intention is that these entities should be limited to what he has told the House he thinks they are limited to and for what the Explanatory Memorandum quite inaccurately says that they are limited to, to amend Clause 7 to read three lines - "The purposes of these companies are limited to the ownership and operation of ships". Mr Speaker, there is in relation to the name of the companies things that do arise on the principles. Clause 9 is an idea, Mr Speaker, which I have seen before - "The name of every company incorporated under this Ordinance shall contain the word 'Limited', 'Corporation', 'Incorporated', 'Societe Anonyme', 'Sociedad Anonima', 'Aktiengesellschaft' or any other recognised suffix indicating limited liability or the abbreviation 'Ltd', 'Corp', 'Inc', 'SA' or 'AG' or the abbreviation of such other recognised suffix as form part of the name and where a suffix is used etc.etc.. In effect, and I recognise this idea, it does not originate with those that lie behind the shipping register. It is an idea that I have heard mooted in the local finance centre long before attention started to be addressed to the question of ship registration. Let us be clear about what we are suggesting here. We are suggesting that somebody should be allowed to form a company in Gibraltar under the laws of Gibraltar and go around the world pretending that it is a German company or a French company or a Spanish company. Why else would anyone want to form a company in Gibraltar and call it ABC Aktiengesellschaft or 'Corp' or 'Inc' which is what the Americans put at the end of their companies or 'SA', which is what the Spaniards and the French put at the end of their companies. If not a clear attempt to give people a jurisdiction in which to form a corporate entity and then use it around the world in a manner calculated to give the impression that it is incorporated in another jurisdiction. I say to this House, as a matter only of my opinion and the opinions of my colleagues that it is

not, in principle, a practice worthy of this jurisdiction. If people come to this jurisdiction to establish companies here, let them use the word 'Limited' which at least does not give the impression that they are not incorporated in Gibraltar. If somebody said that he represented a company called "General Traders Inc" or "General Traders SA", would it cross one's mind that such a company might be incorporated in Gibraltar? Of course not. Therefore the motives for that particular legislative provisions have not been explained and certainly they would need to be explained in great detail before I at least were persuaded that the motives are good. Clause 9(2) is quite proper. It means that we cannot use for these, I do not call them companies, I call them creatures, words such as 'Assurance', 'Bank', 'Building Society'; all the restrictions that exist in the Companies Ordinance about words that are particularly sensitive and should not be Royal, things that suggest that there is a connection with the Government, bank, trust, in other words sensitive words. Then it says "except with the approval of the Registrar". Now who is the registrar? Rumour has it that the registrar of this is going to be the same people as the registrars of the shipping registry, the American company. Does this Government really want to leave to a commercial operator and does not want to reserve to itself the right to license the use of such words as 'Trust' and 'Bank'. Quite apart from everything else, it would be a breach of the Banking Ordinance. I say that the right to use such words as 'Empire', 'Imperial', 'Insurance', 'Municipal', 'Trust', 'Royal' etc, etc, must be retained within the public administration and cannot be farmed out to any commercial registrar. I would therefore at Committee Stage urge the Government to reserve that power to the Administrative Secretary, if they like, or to the Financial and Development Secretary or even to the Minister, if that is necessary, but to keep that within the public administration. Mr Speaker, I have formed the conclusion that even allowing for the obvious and errors that there are in it upon which I am in consultation and certainly we shall cooperate to amend the more obvious mistakes as quickly and as easy as possible without formal amendments and all of that, but even allowing for that, this is a remarkably badly drafted piece of law. I will go further and put my neck on the block. This law has not been drafted by an English lawyer. This law contains statements and comments which in the context of the English legal system are infantile. For example, somebody has thought it necessary in a law of Gibraltar to state that - this I am sure will appeal as amusing even to Government Members who are not lawyers - a change of name does not affect any rights or obligations of a company. Who could possibly believe or seek to argue that changing the company's name, ie instead of calling them ABC Limited, it is changed to XYZ Limited, that it should be necessary in the law of the land to say that just by changing the name of the company, the company's obligations are not changed? This is the sort of law that might be appropriate in some far flung Carribean Island where they may not have had a companies legislation or where

they really may have been instructing the natives for the first time in their life on the niceties of company law. It is a completely inappropriate piece of legislation to seek to impose on a jurisdiction that has had three hundred years. That is for longer than the nationality of the person that I think has drafted this, has had his own national identity. Frankly to come and say, in this jurisdiction as Clause 30 says, and I am only choosing two examples, to lighten the mood and add to the humour of the proceedings. To say in Clause 30, it really is not serious but we will be the laughing stock to say, "Shares of a company incorporated under this Ordinance are personal property and shall not have the nature of real property". Let me translate how that reads to a lawyer. That is the equivalent of saying, "A carnation is a flower and not an Exocet missile". A share is incapable of being real property. To say that a share shall be deemed to be real property and not personal property is an act of stupidity in the drafting. The reason why I say this in these terms is to highlight perhaps too graphically the fact that what this law represents is the importation into Gibraltar of concepts that are completely alien to our law, that have been drafted by people who learn their law in a quite different jurisdiction and who therefore introduce concepts into our law which read ridiculously. I use that just as the example of how inappropriate it is to get a product which is based on the laws of some other jurisdiction which are completely different philosophies and just interpose it, impose it, transpose it, on our jurisdiction where we have an established system of law regulating the formation and regulation of our companies. This law permits the unrestricted use of bearer shares. The unrestricted use of bearer shares is a concept which this jurisdiction abandoned decades ago and if one looks at the legislation regulating exempt status companies, they are highly restricted because it is generally recognised that the moment that one allows bearer shares, the ability to regulate is lost. One loses the ability to even suspect, let alone discover, if unreputable individuals are using the jurisdiction. How are we going to monitor drug-trafficking and money laundering and all these things that people are so quick and anxious to knock us over the head with, if we allow our companies to be used by people who are untraceable to the authorities in this jurisdiction. The unrestricted freedom to use bearer shares is in my opinion a retrograde step for this jurisdiction. There is a Clause 18(1) entitled "Transfer of Assets". "For the purpose of section 17(d), the directors may cause the company to transfer any of its assets into trust to one or more trustees, to any company, enterprise, association, partnership, foundation or similar entity and with respect to the transfer, the Directors may provide that the company, its creditors, its members or any person having direct or indirect interest in the company or any of them may be the beneficiaries, creditors, members, certificate holders, partners or holders of any other similar interest". Quite apart from the fact that it is practically unintelligible,

it is practically unreadable and unintelligible but when one eventually discovers what it is that that clause is trying to say, one discovers that it is simply a device allowing the company's directors to take the assets out of the company, park them in the name of some presumably less amenable legal entity, simply as a way of concealing the asset from creditors. I am sorry I cannot conceive that any reputable company behaving bona fide, will have any need for this sort of legislative provision. I do not know why it is being put there by those that have put it. All I can say is that that and several other sections in the hands of unscrupulous operators is a charter. They could have a field day. There is no restriction. Clause 32(2) allows the companies to delete from their register of members historical information. So they are only bound to keep information of who the shareholder is today. What that means is that by simply transferring the shares away, all historical record, all ability of the authority of creditors, of courts, to trace who has ever owned that company disappears. Ask yourselves this, what honourable, reputable, genuine, bona fide motive could anybody wish to have for wishing to delete from the record all information as to who has owned these shares in the past? I have racked my brain as far as it is rackable and I cannot think why anyone should want to introduce into the law of Gibraltar, the abilities of the directors to delete the record. Destroying evidence or destroying the record is normally something that is frowned upon. Well here we have a law that says that the company can do precisely that. Again a point similar to the one that I made this morning, Mr Speaker, it is so obvious perhaps that it has not been included, but given that the intended registrar is commercial and foreign and given that they are experts of the use of computers, facsimile microfish transmitted by fax and all sorts of things that we Members in this House could not possibly be expected to understand, I think that it is important that the law should impose an obligation that a register of these things should be kept in Gibraltar. There is no requirement in this law for the register of these entities to be in Gibraltar. It seems an obvious point but in the regime of the whole thing, I think it is just as well to put it in. There is the sort of freedom for a company to acquire its own shares which may or may not comply with the directives. I have heard both opinions expressed. In layman's terms this law gives the directors an unrestricted ability to use the company's own assets, to buy shares from the shareholders, to buy the shareholders out using the companies own assets and to hold its own shares. These are things that until very recently the law used to prohibit absolutely. The law of Gibraltar still prohibits it absolutely. The law of Gibraltar still prohibits a company from buying its own shares and that is because we are a bit behind the English law. In England they have now relaxed that slightly and a company can buy up to 15% and subject to very strict conditions because of course you see directors are in a great privileged position knowing what the future of the company is, knowing what the assets of the company are worth and are not worth,

to know when it suits them, that the company should buy an asset from shareholders. Here we have a law that whereas our present law contains an absolute prohibition for very good reasons contains an absolute lack of restriction. Complete freedom to buy, hold, sell and otherwise dispose of your own shares. Again, it is a concept which I think sits very uncomfortably, not only with our laws, but I think also with European Community Directives and I think that if this particular area of the freedom of the companies to acquire and deal with their own shares, may indeed prove to be the Achilles heel of this whole legislation in terms of compliance with directives in due course. Part VIII, to which the Minister has referred only in passing, allows the merger and consolidation of these companies with foreign companies. In other words, we have a company incorporated in Gibraltar subject to our laws that people dealing with it think they are dealing with a company incorporated in a civilised jurisdiction and they like our Courts and they think that the lawyers here are the best thing since sliced bread and they know the laws and what they are dealing with. There is a complete freedom on these companies by simple vote of the directors to migrate, to fly away from the nest by merging or consolidating with a foreign company incorporated in Timbuktu, it does not matter where. You might say this is clearly a design to facilitate cross-border mergers and cross-border consolidations of the real genuine type in commercial industries. There is even a clause that allows the Gibraltar company to merge with its own foreign subsidiary. So if I am one of these things incorporated in Gibraltar and I am being hotly pursued in the Courts of Gibraltar by my creditors or even by the Government in their regulatory capacity or by the Financial Services Commissioner or by whomever, I form a subsidiary in Timbuktu and I resolve to merge with my subsidiary in Timbuktu and hey presto the Gibraltar entity has ceased to exist. It takes five minutes to terminate with all the consequences that that brings to creditors, to people that have contracted with that entity and to people that have taken security from that entity. It takes a resolution of the board of directors and five minutes for that company to cease to have any legal connection with Gibraltar at all, simply by merging or consolidating with some entity in another part of the world. I think that there is scope for the laws nowadays to allow a degree of freedom for migration of companies. It is not a concept that has been invented by the people that drafted this Bill, but it has been included in this Bill, in fact, in unrestricted terms that amounts to a licence to escape from ones creditors. It has been thrown in like everything else by someone who has thought it is a good idea. It has just been thrown in without thought to the consequences and without attention to the regulatory aspects of it. But migration on any terms and conditions and that, in my opinion, creates an irresponsible law, it creates a bad law. Just imagine the position of somebody who contracts with the company knowing that it is incorporated in Gibraltar and finds that yesterday it moved to some, I do not wish to be derogatory of any

other country, some country in which the courts may not work as well, in which the court procedures may be different and in which the shareholder may have connection with the powers. The potential for prejudice is enormous and I think that it will prove to be the principal purpose why these entities will not be successful because banks will simply not be willing to do business with these entities. This is a mobile company and banks will simply not wish to touch them with a bargepole, quite rightly. Anyone who thinks that they are going to buy a ship in one of these entities and get a bank to lend them money, when they cannot even find out from time to time who the directors are. When they do not know from one minute to the next whether the company is still incorporated in Gibraltar or whether it has moved to Timbuktu, is really, frankly, in my humble opinion, extraordinarily naive and for that reason alone, I think that this legislation is not only bad, it is not only unnecessary in the context of the promotion of the shipping registry, it will also fail to generate any demand for this product. Similarly, anyone who agrees to become a creditor, anybody who agrees to become a minority shareholder of one of these companies, really does entirely at his peril and really is throwing his fortune to the wind. There is absolutely no durable protection for the minority in this legislation. There is an extraordinary provision in Clause 97 which says that one can dissolve the company and ceases to exist, draw a line, file put away and up to two years later, the directors can pass a resolution saying that they have changed their minds, they can forget the dissolution and they are now back on the air. I really do not know who dreams up these concepts. They have got an extraordinary fertile imagination rolling somewhere to be able to say that the company has ceased to exist; it has been dissolved; it has been liquidated; the directors have resigned; the shareholders have resigned; but two years later the directors meet and say that they will have the company back and hey presto, it is not true that the company has ceased to exist two years ago, really it has existed all the time and it is back. The mind boggles, Mr Speaker. Anyone who doubts the laxity of this Bill and how the underlying philosophy of its drafting is a lax, free-for-all concept, need only contrast the drafting of Part X dealing with accounting which is clearly drafted in accordance with that style of drafting to which we are accustomed, with the drafting of the rest of the Bill. There is in Part X a detailed, strict regulatory concept of not allowing people to get away with an inch compared with the rest of the Bill which is a "get on with it chaps, we will deal with the problems if and when they arise later." The philosophy is so obvious from the drafting. It is like shining a light on the whole thinking behind this Bill. Again, we have many of the concerns I have expressed today about the appointment of the registrar in Clause 133. In Clause 133, again the registrar has the power to perform his functions inside and outside Gibraltar. What we therefore have here, on appointing the American or some other outside company as registrars of this, is a registrar that will set up a network of registry offices around the

world. It is exactly the same point about the ship registry. Has it been ever heard, I ask myself rhetorically, of any jurisdiction, other than Liberia, in which one can form one's companies outside Liberia, outside the jurisdiction. Here is an ability to the registrar to do his business, to perform his powers inside and outside Gibraltar. So from now on, people will be able to form their Gibraltar entities in London, in Paris, in New York or wherever it is that these registrars wish to do their business. Again, it is a recipe for loss of work for local practitioners. I declare an interest. It is a recipe for loss of local connection at a time when we should seek to be getting more sophisticated, when we should seek to be retaining for ourselves the input, the professional input. We are giving it away and we are giving it away to be carried outside Gibraltar, God knows where, by whoever these registrars might choose to employ. We are exporting finance centre jobs from Gibraltar to the international network of officers of this registrar who I understand, are the same people as are proposed to be appointed for the ships. I think that what is happening in effect is that the registrar of ships that the Government intend to appoint has in effect created his own private register of companies. His own private entity regulated by a different concept of law drafted by him of which he is going to be the registrar, not in Gibraltar alone, but wherever he has got offices around the globe, which he is going to peddle because he is going to go into the business of company formation and in which Gibraltar will have absolutely no connection. We must take care. We must at least take care, take every reasonable prudent precaution to make sure that we do not go the way of Liberia where public registers were Liberians only in name and had no real connection with the State of Liberia at all. I think and perhaps it is the most controversial quip that I might make in relation to this legislation. Frankly, I think it is a form of colonialisation. I really genuinely believe that this is a step backwards for us as a community, certainly in the field of the finance centre. I really do believe that, instead of striving to take greater control of our own destiny, of our own products, of our own institutions, of our own industries, we are handing it away unnecessarily because I repeat what I said before. If it could be demonstrated that this was necessary for the others, it would be a question of seeing which of the two prices I need to pay most and of balancing, but because I do not see the connection, because no valid argument has been aired yet - I cannot think of one - why this product is necessary for the success of the one where we are agreed we want to succeed in the shipping registry, that I oppose this legislation and that I think that this legislation is bad. I think that this legislation has been drafted with the commercial interest of the proposed operator of it in mind and not with the wider commercial interest and the wider public interests of Gibraltar in mind. A small point but systematic of what I am trying to describe here. Clause 142 says that before the registrar can be asked to perform

any function, he must be paid all arrears of fees due to him - all arrears for any function. In other words, I am a creditor, I want to search one of these creatures and I come along to the registrar and I give my £5 search fee but he says "No, because the company owes me £630 of fees due to me as registrar for filing this or for doing that". What has that got to do with me? I am a member of the public coming to search a public record. This is inserted for their own commercial interest. They know that eventually a bank will come that needs to do a search, will pull out its cheque book and ask, "What does this company owe, here you are?" It is just not proper. No administration of Gibraltar has ever done that when the public purse has been the beneficiary, why should we do it when the beneficiary is going to be somebody else? It just ought not to be. It is just not a principle by which the public affairs ought to be conducted. Therefore, to conclude, Mr Speaker, we believe that this law is unnecessary. We believe that it is badly drafted. We believe that it is drafted by the proposed beneficiary of it with the view to its commercial interests and not in the long term interests of Gibraltar. We would urge the Government seriously on a non-party political basis to reconsider its commitment and its need for this legislation. We believe that the Government will eventually regret this legislation and the Opposition will therefore vote against it at all stages.

HON F VASQUEZ:

Mr Speaker, I do not want to take the House's time very much longer. Obviously, my hon colleague, the Leader of the Opposition has gone to great lengths to take this House in a fairly detailed way through this proposed legislation, but there is just one point that I would wish to add to my hon. colleague's comments, Mr Speaker, and that is this. If one thing is clear to us is that the Government have really very little idea as to the substance and the content of this proposed legislation. I think it is fair to say, Mr Speaker, that they themselves sitting on those benches do not understand what it is that they are proposing to enact and given that, Mr Speaker, it is all the more remarkable that in these circumstances no-one else in this jurisdiction appears to have had any input in the drafting of this legislation. I will start with the Attorney-General. It seems very clear to us that the Attorney-General has had no hand at all in the drafting of this legislation, something which in my submission is, entirely unprecedented in Gibraltar's history. We have important laws that are affecting the status of corporate entities in Gibraltar and the Attorney-General has had no input whatsoever. What about the Financial Services Commissioner? He is another individual appointed by this Government to supervise this sort of entity. Has he been asked for his comments? Has he had any input whatsoever in the drafting of this legislation? No, he has not. So neither Ministers, nor the Financial Services Commissioner, nor the

Attorney-General, nor any professional in Gibraltar, nor any practitioner in Gibraltar has had any input in the drafting of this legislation. As far as we understand it, Mr Speaker, this legislation has been drafted out of Gibraltar by the very people who it is envisaged will be administering that legislation. In that context, the Opposition pleads with the Government, for goodness sake, to take care in the implementation of this legislation. They themselves, Mr Speaker, do not appear to appreciate the sort of mess they may be getting Gibraltar into in relation to this. It is all very fair to say, Mr Speaker, that we need to bring the work to Gibraltar. That is so, but at what price, Mr Speaker? At what price to the reputation of this jurisdiction, the reputation that has been hard to establish, which we have been fighting for in the last twenty years in the establishment of the finance centre in Gibraltar? What cost to that reputation will this proposed legislation entail? As the the Leader of the Opposition has drawn the comparison, we are putting ourselves in the hands of an American company that purports to come here and dictate the law to us in a way which every professional that has looked at it, has been absolutely scandalised. For those reasons alone, we plead with the Government to treat this legislation with a great deal of care and for goodness sake, before enacting this legislation to look at it exceedingly careful before it enters our Statute Books.

The House recessed at 5.00 pm.

The House resumed at 5.20 pm.

HON CHIEF MINISTER:

Mr Speaker, I want to say very little but I feel I have to say something after some of the absurd statements made by the last contributor to put the record straight. I do not know why the hon Member thinks that it is unprecedented for the Attorney-General not to draft this one. As far as I am aware, the Attorney-General stopped drafting in 1987. We have been employing a legal draftsman to do the drafting specifically for that purpose ever since. I suppose that the hon Member, whose interest in politics is very recent, did not have a clue who was doing the drafting before he arrived in the House. The system was changed in 1987 and since 1987, the role of the Attorney-General, is to advise the Government of legislation, but somebody is specifically employed and paid to do the job of drafting laws. There is nothing unprecedented about this one. There is no greater or lesser involvement in this one than in the other fifteen.

HON F VASQUEZ:

As the Chief Minister has pointed out, the usual practice is for the Attorney-General to be consulted and to give his advice and the question is has that taken place in relation to this legislation?

HON CHIEF MINISTER:

Mr Speaker, I do not know when the hon Member was last in Government so that he knows what was the usual practice is and I do not know what was the usual practice before 1988. I can only tell him the usual practice since 1988 and the involvement of the Attorney-General in this legislation is no more and no less than in any of the other ones. What I am telling him is that his statement that it is unprecedented for the Attorney-General not to have been more closely involved in drafting this legislation, is in fact, totally wrong. There is nothing unprecedented about this. The precedent if it was created by us, was created by us in February 1988, when we stood for election. The other point that I want to make is that in fact Opposition Members are right in saying that there has been a considerable input into all three pieces of legislation from the potential operator of this business. That is correct. But I think what is misleading is to give the business community here in Gibraltar or anybody else the idea that we are actually removing existing business from people here and giving it away to the Americans or anybody else because we are in the process of advocating re-colonisation by the former British colony which now forms the United States of America. The truth of the matter is that the United Kingdom, a year ago in looking at the way the red ensign registries operate, came to the conclusion that unless a particular dependent territory had the physical and technical resources which they were satisfied with, they would not be allowed to operate as a shipping registry for ships of over 150 tons. We are the only ones that has not had this done by direct rules from London by Order in Council. That was the degree to which we are able to resist the colonial power, no more than that. The process of consultation the Honourable Mr Vasquez complains about because he, as an expert, has not been brought into the picture or other people as experts have not been brought into the picture, I do not know what experts we have got here in shipping registries. Certainly I suppose if we could claim we had such an expert, it would be in his chambers since in the last three years there have been two ships registered and the two have been registered by them. Nobody else has done so. I suppose to that extent they are the only experts in the city. But of course the entire body of legislation before and subsequent to publication has been toing and froing between Gibraltar and the Department of Transport in the UK ad nauseum. I have had meetings with them and I am going to have further meetings so, in fact, I do not pretend to be an expert, notwithstanding having been a seafarer myself for four years, but which I survived despite of the absence of SOLAS in the 1960s. The position is that we have been trying to reconcile what the United Kingdom wants from the Gibraltar Registry if we are going to be able to restore the registry to Category 1, which hon Members will recall I said we were targeting to do by the end of December and we missed the target. I said in December that we had missed the target when this was brought to the House. We had missed the target

because we had not been able to reconcile our differences with London. We adjourned until today in the hope that we will be ready today and we are not ready today. We will certainly take into account the strong feelings felt by the Opposition and the representations we have had from other people and we will have to see whether we can reconcile all those different views but the bottom line is that the Government of Gibraltar will not spend the money that is required to be spent to go into competition for a shipping registry of the standard that the UK expects us to have because at the end of the day, it maybe that the lawyers and the trust managers and ATCOM and everybody else will make money by registering them but the Government of Gibraltar will lose money. We are not in the business of attracting an activity to Gibraltar as a result of which most Gibraltarians are out of pocket and a few are in pocket. So therefore that option is not open. Either we have somebody that is prepared to risk his own cash and invest. If it is needed to invest a £km in hardware, he will have to do it. Either we have that on the basis that we have been able to create an opportunity for taking ships from competitors which makes it worth that person's while to invest that money because he thinks the risk is low and he will be able to attract enough business to Gibraltar to be able to get his money back or we will have not an investor prepared to do it, in which case the ships that are on the registry today will have to leave, because we have got temporary exemption for ships of more than 150 tons. We have had a situation where we cannot take any new ones in but the ones that are there already can stay temporarily until we resolve the problem. If we do not resolve the problem and we go back to London and we say, "The potential operator of the registry expects to be able to operate in a certain way, the local professional people do not like the way he wants to operate and therefore are against him coming in, you in London do not like the legislation that we have produced and therefore the answer is that we will keep everybody happy". He can stay where he comes from. The local people can see that they are not having this second grade colonialist coming here to take us over. The people in London are very happy that we go back to 150 tons and we will have three less problems to concern ourselves with which are these three pieces of legislation.

HON P R CARUANA:

Our comments are generally on the question of registration. Our most critical comments have been reserved for this third piece which we say ought not to be necessary.

HON CHIEF MINISTER:

I am aware of the distinction that the hon Member has made and this is why I have said that as far as the Government is concerned, what we would like to see is, within the next six months, Gibraltar restored to a Category 1. Gibraltar being able to market itself as a competitive jurisdiction in which ships can be registered which will generate as much business as we can get it to generate for

the local professionals. But obviously, if we have a situation where either we let the local professionals have 10% of something or 100% of nothing, it seems to us that it is better for them that we get them 10% of something. On this particular piece of legislation, the hon Member has made a very strong case for saying why is it needed at all. The answer to that is frankly, I do not know 100% why it is needed at all. All I know is that in looking at the mechanisms that we are putting in, this was one mechanism which was suggested would give us an advantage over the competition where we could have a vehicle where somebody could say, "I have a particular route to incorporation which is for shipping and which is not constrained by all the other things that may be required if I wanted to incorporate a company in Gibraltar to do something different". I accept that what the hon Member has said is that if that is what it is intended to do, it is a point that he has made to my colleague about Clause 7, then, in fact, what the entity registered under the Ordinance can do is more than just own and operate ships. We will look at it in our discussions with London and with the potential operator. If we do not really need to do this, we are not going to do it just for the sake of doing it. Secondly, if it is something that is critical to get the thing off the ground, then we will see whether in fact it can be altered sufficiently to make it acceptable to all concerned so that we do not put Gibraltar's good name at risk because it certainly is not what we want. It is not good having the largest merchant fleet in the world, although as an ex seaman, it would be a nice thought that I am the Chief Minister of the biggest shipping nation on the planet. It is not good doing that if the result of that is that everytime a ship gets in trouble, the finger gets pointed at us. As my hon colleague said, particularly in areas like safety I do not need convincing. I would rather not have a shipping registry at all than have on my conscience the death of one seaman. So there is no question about that. It is not a negotiable point from the Government's point of view. I know that the Leader of the Opposition has at no stage suggested that we have done anything other than act in good faith in trying to get this off the ground and I think that he has recognised that what we have done is with a certain limited knowledge of the technical content. The reality of it is the requirements that the people are going to put up the money because we are not putting a penny. At the end of the day what we will have is a share of the fee that is paid. It is a business, at the end of the day, the man that is selling the Gibraltar Registry has to sell the Gibraltar Registry in competition with somebody else and if the tonnage tax is £1 somewhere else, then it may be 75p here and we might get 25p, but we do not have to spend anything and the 25p will be a royalty. If it costs 60p, then obviously nobody is going to do it and spend 60p to collect 75p, give us 25p and keep 50p and be 10p out of pocket. It is that simple. The bottom line is that this is business with a profit motive which has to be done in a way which makes the potential for profitability attractive and not do anything to undermine our position either in the Community or in the eyes of potential investors or in the ability

of our people here in Gibraltar. It is a perfectly legitimate area of business in which they may wish to engage. We are conscious of all those desirable objectives and we will try and reconcile them. If we cannot reconcile them, we may then need to give up the effort.

MR SPEAKER:

if no other hon Member wishes to speak, I will call on the mover to reply.

HON M A FEETHAM:

Mr Speaker, as usual the Chief Minister, has chipped-in in such a way, that I think he may have cleared up a number of the points that particularly the Leader of the Opposition may have made. But as the mover of the Bill, I was not entirely happy with the environment that was being described by the Leader of the Opposition in criticising the Bill. I got a distinct impression of the perception which Gibraltar is suffering today precisely because the way people have tried to sell Gibraltar. The perception that was being put over was that here we were introducing a Bill that could be described at best as a Bill that could be used for widely illegal transactions. That sort of perception or description worries me. Ministers come to the House prepared, contrary to what the Honourable Mr Vasquez has said, and do take time in understanding the Bill that one has to defend. I am not here defending the technicalities or the interpretation of the law that I am putting forward. I am here putting forward a Bill as a matter of policy. It is for my legal advisers to advise me accordingly and matters are raised, that is what the House is for, advising me that there is a point that is being made and that it needs to be changed. Having said that, it seems to me that having come here with a preconceived idea about the Bill, the Leader of the Opposition failed to take into account some of the important points that I actually made in defence of the Bill. The policy points that I made in the defence of the Bill. First I said that this legislation is modelled on the international business company legislation operating in other British dependent territories and in other financial centres and in fact, was approved by the United Kingdom in 1984. That is the first point. Secondly I said, unlike these other areas, we will have to comply with EEC Directives in those areas where we are affected and the law will have to comply in that respect. So we are complying with EEC Directives. We are also saying that the company will be limited in its ability to transact. That is also another point that I have made. The provisions that we are making are comparable with other British dependent territories. These are the points that I have made. From a point of view of the Bill itself and the purpose that it will serve as part of the package that is emerging in terms of the shipping registry and so on, we see it as part of the product that the Government is advised is necessary to be able to go into a marketing strategy in this respect. That is the purpose of this. To say that this is an importation from

America - which incidentally is one of the most powerful nations in the world and have been very good at promoting its economy and at business promotion and so on and so forth - is not something that one in any way should belittle. I do not see why we cannot have American expertise in particular areas that we feel is necessary. I do not see we should feel unduly worried about it. At the end of the day it is this House that is going to decide on the legislation. Let me remind Members of the Opposition that when we talk about importation of ideas from so far away as the United States or from some little island in the Caribbean, the Opposition Member said that this sort of Bill could damage the reputation of Gibraltar that has been in financial centre terms trying to promote itself for the last thirty years. In fact, if I recall rightly, I stand to be corrected, in 1967 the Leader of the Opposition's father-in-law was responsible for bringing the concept of the exempt company into Gibraltar and I understand it came from the principles that were applied in the Caribbean. The concept, the idea derived from that particular area. Nobody is challenging that today and in fact the question of exempting trusts from tax did derive from the Cayman Islands. Today all these things are acceptable models. Having said this, I think that I have made it quite clear and my theme all along in defending the three Bills has been that from now until Committee Stage we have got to try to come to a package that is based on a form of consensus. The carpet may actually be pulled from under our feet anyway, so let us see what happens in the course of the next six months and see whether it may not even be necessary for this Bill to be brought into the statute book if an alternative form of package is found. Nothing is sacrosanct at all. Let us not try to belittle attempts from whatever source it may come to put ideas over in the concept of trying to sell Gibraltar. That, I think, would be a dreadful mistake to make. Mr Speaker, having said that, I do not have much more to say. I think the view is very clear. What we need to do now is to see what we can do in the course of the next six months and quite frankly go aggressively into the marketing of the shipping registry in Gibraltar which has been lacking for eighteen months.

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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

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 subsequent meeting.

The House recessed at 5.00 pm.

The House resumed at 5.20 pm.

THE EMPLOYMENT (AMENDMENT) ORDINANCE 1993

THE 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 very much as the Explanatory Memorandum says. The object is to remove the references in the Employment Ordinance to the Department of Labour and Social Security. Following some restructuring of departments, Mr Speaker, the Department of Labour and Social Security does no longer exist.

HON MISS M I MONTEGRIFFO:

The Minister does.

HON R MOR:

The functions, Mr Speaker, of the DLSS still remain and they are being carried out now under different departments. The employment side has been taken over now by the Employment and Training Unit. Other functions will be taken up by the Treasury and some are being taken up by the Personnel Department. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON LT-COL E M BRITTO:

Mr Speaker, let me say first of all that we had an indication because I think it was the Chief Minister who said something about the department being in the process of ceasing to exist although I must admit that maybe we were not quite aware that it had already done so. Mr Speaker, I come back to the introductory remarks of the Minister for Labour and Social Security - I assume the title still remains even if he does not have a department to go with it - where he tells us that the Bill, in accordance with the Explanatory Memorandum, is to remove references in the Employment Ordinance to the Department of Labour and Social Security. Unfortunately, Mr Speaker, what the Bill does is a little bit more than that and that is why we, at this stage, are not able to support the principle what the Bill is setting out to do. What the Bill does in its amendment to Section 16, that is in Clause 3 of the Bill, is to do away with the appointment of inspectors from being officials from the Department of Labour and Social Security. It gives the Director or some other person appointed the right to appoint "persons" who are not necessarily members of a department of Government and obviously civil servants. In principle, the Opposition is opposed to an appointment of such wideranging authority and as such as inspectors under this Ordinance being given to unspecified persons and to show what we mean, Mr Speaker, I will quote from the Ordinance some of the powers which inspectors under this Ordinance have -

- (1) They are able to enter at all reasonable times any premises, ship or other place liable to inspection;
- (2) They have authority to interrogate alone or in the presence of witnesses the employer or employees on any matters under this Ordinance;
- (3) They are able to require the production of any books, registers or other documents, the keeping of which is prescribed by this Ordinance; and
- (4) With the prior written authority of the Director, they have the authority to do anything necessary to ensure that this Ordinance is complied with.

Because of the wide scope of these powers, Mr Speaker, we feel we are unable to support the appointment being given to persons unspecified as the amendment provides for and certainly persons outside the discipline of the Civil Service, the discipline of the Official Secrets Acts and the discipline of an organised body like officers of the Department of the Labour and Social Security which were doing the job before. As I say, Mr Speaker, we will be voting against the Bill.

MR SPEAKER:

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

HON R MOR:

Mr Speaker, I do not wish to say anything further.

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 J Blackburn Gittings
The Hon E Montado

The following Hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

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.

THE IMMIGRATION CONTROL (AMENDMENT) ORDINANCE, 1993

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Immigration Control 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. The object of this Bill is to amend the Immigration Control Ordinance to allow for the application of the provisions of the Ordinance to the nationals of any state in fulfilment of the terms of any agreement entered into between that state and Gibraltar or on behalf of Gibraltar with that state and it allows for the fulfilment of European Economic Community and European Economic Area obligations on the part of Gibraltar. This is another way of saying that the amendments make provision in order that the terms of a bilateral agreement can be reflected by variations to the schedule. That is by variations to the description of people referred to in the schedule and would, for example, allow the provisions of the Ordinance dealing with the nationals of a member State of the European Community to be extended to the nationals of some other specified state, for example, a member of EFTA, who has chosen not to go into the European Economic Area. The Bill repeals and replaces Section 17 of the Immigration Control Ordinance to provide an enabling power for the production of rules under the existing provisions of the Ordinance in respect of frontier workers and to allow for frontier workers certificates. This is an enabling power and there is at this stage no specific intention to make rules under the provisions of the clause. Section 11 of the Ordinance is amended by inserting after the words "Four Corners" the words "or at such other locations as the Government shall by notice in the Gazette appoint". Clause 7 deals with some printing errors in the Ordinance. Section 24 is repealed. The amendment to Section 26 of the Ordinance reflects the provision of Clause 22 which repeals Section 24. Clauses 12, 13, 14, 15, 16, 17, 18, 19 and 20 are concerned entirely with converting penalties into reference to fines on the standard scale. That is the standard scale of the Criminal Procedures Ordinance which specifies amounts by levels which can be updated under the provisions of that Ordinance. 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 Attorney-General has mentioned Section 24 of the existing Ordinance rather briefly in his Explanatory Memorandum, but this, in particular, is one of the areas where we have reservations about and we have difficulty once again in supporting this Bill. It is not the only one. There are a number of areas in this Bill that we do have difficulty with so I shall deal with them individually. I shall take the amendments to Section 24 first. In his rather backwards and forwards definition, I do not think

that most hon Members would probably have got a clear idea of what this amendment is doing; so I shall endeavour to try to explain it in much clearer terms. The way we see it, Mr Speaker, is that in some ways this amendment makes what is already an Ordinance that is discriminatory against women, even more discriminatory. In some other senses it eliminates some restrictions. Let me explain. At the moment, Mr Speaker, under Section 24, a man married to a Gibraltar woman, under the terms of the Ordinance shall be entitled to a certificate of permanent residence once he fulfils certain conditions. In other words, after he has been married for five years, and if the non-Gibraltar man and the Gibraltar woman are still married, in other words, not separated, and living together. Under Section 26 of the Ordinance, the Governor, notwithstanding these restrictions of still married and living together for five years, may, under his absolute discretion, give this non-Gibraltar a permanent certificate of residence. That is the state of the law as it exists now. Once the amendments are brought in, the restriction of five years still married and living together disappears and under clause 26, the qualification of notwithstanding in the Governor's powers also disappear. So we are left with "The Governor may, in his absolute discretion, grant a certificate of permanent residence to any man who is married to a Gibraltar woman". In some ways it is less discriminatory because it does away with the restrictions of five years but in other ways more discriminatory because whereas at least after five years the non-Gibraltar or the Gibraltar woman had the right because the Ordinance said "shall be entitled". There was the right for her husband to be given permanent residence. Under the proposed amendments, the "shall" disappears and the "may" remains so either after one year or after ten years, there is no guarantee that the non-Gibraltar husband will be given a permit of residence if for some reason someone does not want to give it to him. It is no longer a right, it is now a concession because the wording is "may". To make matters slightly worse, Mr Speaker, one would have thought that once the amendment was being brought in, Sections 25 and 27 of the existing Ordinance, would also have been looked at. These sections refer, Mr Speaker, to the child of a woman, married to a non-Gibraltar. Once the law is amended, that child, Mr Speaker, who has Gibraltar blood, will have less rights than the non-Gibraltar husband because the non-Gibraltar husband now has an entitlement if it is given to him, to a permit of permanent residence as from the moment he marries. The child who has Gibraltar blood, under Section 25 is not entitled to that certificate of permanent residence until he reaches the age of 18. As I say he has got less rights than the non-Gibraltar. When he reaches the age of 18, he only has the right to get that certificate of permanent residence if he is living in Gibraltar. To complicate the matter further, Mr Speaker, to say that that child who has half Gibraltar blood has even less rights than a, shall I say, foreigner, someone who is not even married to a

Gibraltar mother. Under Section 28, the Governor may grant a certificate of permanent residence to any person: "(1) Who satisfies the Governor that Great Britain is his country of origin and (2) In the opinion of the Governor is of good character and is likely to be an asset to the community." So he could be someone from Hong Kong, Vietnam or even the Falkland Islands. But the point that I am making, Mr Speaker, is that he has no connection by blood with Gibraltar and yet he would have more rights than a child who is born to a Gibraltar mother. Finally, but to make it even worse, Mr Speaker, under subsidiary certificates granted by the Governor under the existing Ordinance, where such a certificate has been granted to my supposed Hong Kong, Falkland Islander or Vietnamese, a subsidiary certificate shall also be issued under Section 35 to the spouse of such a holder, to any male unmarried child under the age of 18 and to any unmarried female child of such a person." Mr Speaker, the amendments, as I said at the beginning, make what is already a discriminatory situation even worse. I put it to this House, Mr Speaker, and to the Government that it is the spirit of the amendment that is wrong. We should be looking at one of equating the sexes and not discriminating between them. We should be looking to reverse the situation. Mr Speaker, a non-Gibraltar woman who marries a Gibraltar man has automatic right of residence, whereas in the other direction, it is working completely different. We should be looking at equal treatment of the sexes and not distinguishing between one and the other. Mr Speaker, we are talking about rights of residence and not Gibraltar status. Let us be quite clear. Moving on now, Mr Speaker, to clause 21 of the Bill before this House and the proposed amendments to section 67 of the Principal Ordinance, as the Attorney-General pointed out in his introduction, allows, by regulation, to provide for certain things like agreements and directives of the EEC in general terms, but if one reads the proposal, Mr Speaker, the powers are far too wide, and this comes as no surprise to us, for us to accept as something that can be done by regulation. To illustrate what they mean, Mr Speaker, in section 67 which is being amended and as it stands in the legislation, under the heading of 'Rules', says "The Governor may make rules for the better carrying out of the provisions and objects of this Ordinance" etc. etc. and it gives two examples under what headings rules can be made. "(1) Prescribing the manner in which applications for permits shall be made". In other words the forms that can be used which is purely administrative, and secondly "Prescribing the fees to be charged", again purely administrative. Under the amendment, Mr Speaker, we are asked in one part of it to give powers to provide by regulation "Such parts of it as are specified to give effect to European Community Law and", and I stress this, Mr Speaker, "the terms of any agreement entered into by or on behalf of Gibraltar, with another state in respect of matters falling under this Ordinance". The terms of any agreement between Gibraltar and another state if it

is vaguely to do with employment, can be dealt with purely by regulation in the Gazette without coming to this House. That, in itself, with nothing else about this amendment makes it abhorrent to the Opposition and therefore we cannot support it. Again, it comes as no surprise to the Government, Mr Speaker, that there are a number of clauses, namely, clause 3 and then clause 12 right through to clause 20, all of which deal with establishing fines with reference to a standard scale and not to an actual figure in the legislation and as is known, the Opposition does not support this measure and let me repeat again our policy. It is not because of the concept itself of having a standard scale, we would support the concept of a standard scale, but what we do not support is the fact that the standard scale itself can be changed by regulation. If the standard scale were to be changed by Ordinance we would be able to accept the concept. Finally, and as a minor point, Mr Speaker, for the attention of the Attorney General and his consideration before the Committee Stage, under Clauses 5 and 6 of the Bill, Mr Speaker, the question of frontier workers certificates, it occurs to us that it might be useful to include in the legislation a definition of what is a frontier worker to avoid possible confusion in the future. We accept that it does not mean someone who is working at the frontier itself, but it could lead to confusion in terms of someone who is residing on one side of the frontier but working on the other as against to someone who is actually residing and employed by someone on one side of the frontier but then working on the other side. Thank you very much, Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, a number of the points made by the hon Member on the general principles of the Bill are not of course about the general principles of what is in the Bill, but of the general principles of what he thinks ought to be in the Bill and is not in the Bill, which is not quite the same issue, so therefore I am certainly not going to be addressing what he thinks we should have legislated for and have not, because he kept on making a number of references after referring to the changes that are taking place on the question of the automatic grant of a permit of residence to a man that is married to a Gibraltar woman. The law does not provide for the treatment of a marriage in the other direction where it is the man that is a Gibraltar and the spouse who is not. Therefore the automatic right was not equality of the sexes because one had an automatic right and one did not have an automatic right. The other right was discretionary. It is now discretionary for both and in fact the experience that we have had by monitoring the situation in the last two years is that something like 30% of these marriages seem to end five years and one week after they were entered into.

HON P R CARUANA:

Is that a serious statistic?

HON CHIEF MINISTER:

Yes.

HON P R CARUANA:

Five years and one week?

HON CHIEF MINISTER:

Yes. That is right. By removing the automatic right of permanent residence the residence is then continued under Section 15 but it can be continued if the marriage continues. So somebody may be willing to marry somebody and wait five years so that at the end of the five years he requires permanent residence in Gibraltar and then gets rid of his spouse. It can only be men doing it to women, women cannot do it to men because they do not have that right. If you are a foreign female, you cannot pick up a not very attractive Gibraltar male and then ditch him in five years, it is not allowed by law. And this we do not allow either of the two sexes to do it with this amendment, so that should please the Opposition Member who is hoping to see as doing something about equality of sexes. The Immigration Control Ordinance is one which requires wholesale treatment and we are not seeking to do it here. We hope to be in a position at some stage to go back to the grass roots but we have attempted at least to remove some of the anomalies like the fact that until the passage of this Bill, and hon Members will have realised, you still needed an entry permit to be here between the hours of sunrise and sunset. So although we no longer shoot the gun and push everybody out, the law still says we have to do it.

HON LT-COL E M BRITTO:

Will the Chief Minister give way? In relation to that point, Mr Speaker, it does not really apply because sunset is defined in the legislation as the time we shoot the gun, so as we do not shoot the gun the sun never sets.

HON CHIEF MINISTER:

Well, that is quite appropriate because the slogan used to be that the sun never sets on the British Empire and we are all that is left of it. The point about the frontier worker may be something that we can include in the rules if we decide to proceed with that. Effectively, what we have done now is create the ability to go down this route if we need it and it is primarily because of our concerns about our problems in controlling the labour market and controlling exactly who is a frontier worker and who is not a frontier worker. I think the hon Member is right in saying that there may have to be a definition included. There is a definition already in Community Law and therefore the most likely thing is that we would simply reproduce that definition.

HON P R CARUANA:

Just to say this, Mr Speaker, that in his opening words the Chief Minister suggested that to address the principles of a Bill on the basis of what is not in it as opposed to what is in it, is somehow an unusual parliamentary tactic. Of course it is not. It is common practice for Bills to lose people's support not because of what it says but of what is left out. The most obvious example and recent example is in the United Kingdom. The Labour Party is much keener on the Maastricht Treaty than is the Conservative Party. They nevertheless voted against the European Communities Treaty (Amendment) Act - which I think is the name of the Act by which the Maastricht Treaty is being implemented - because it did not include the Social Charter part of the Maastricht Bill and I therefore just wanted to make as an anecdote that it was quite legitimate to withhold support from a Bill on the basis of the principles that the Bill does not address. The issue here is whether the Immigration Control Ordinance of Gibraltar should continue to discriminate between the children of Gibraltarian fathers on the one hand and the children of Gibraltarian mothers on the other. And I think that if a Bill is going to be brought before the House relating to this area at all, it ought to once and for all eliminate the anomaly that exists that somehow my son has greater rights than the children of my sister who may be married to a non-Gibraltarian. It is an anomaly which I think this community will wish to see eliminated from the laws at the earliest opportunity.

MR SPEAKER:

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

HON ATTORNEY-GENERAL:

Mr Speaker, I would only reiterated that men have the right under Section 15 and of course, under Section 26, as amended. So even though in fact, Section 24 has gone and as the Chief Minister said, that in fact of course gave persons rights to be married for five years, not to be separated, not to be divorced and then to say "I will have my permanent residency and now goodbye. That is gone but they still have rights under the amended Section 26 and the other one that I have mentioned. I will give way.

HON LT-COL E M BRITTO:

Just to clarify the point because I am not quite clear on the point that he has made. Under Section 20 of the existing Ordinance, the Governor may at any time cancel any permit issued under the Ordinance. So why cannot the five year and one day marriage that suddenly conveniently dissolves once the permit of permanent residence is issued to the non-Gibraltarian, be cancelled under Section 20?

HON ATTORNEY-GENERAL:

It would have to be for cause in my view.

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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

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.

THE GAMING TAX (AMENDMENT) ORDINANCE 1993

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Mr Speaker 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 is a fairly simple amendment, Mr Speaker. All that it aims to do is to bring Section 7 into line with Section 6. I think that I should explain that under Section 6(b), there is provision for exempt or qualifying companies to be free from payment of general betting duty. However, in Section 7 there is no similar provision and the amendment before the House extends the concession to qualifying or exempt companies acting as bookmakers when they engage in pool betting. I commend the Bill to the House.

MR SPEAKER:

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

HON LT-COL E M BRITTO:

Mr Speaker, we take the point made by the Financial Secretary and we will be supporting the Bill but maybe when he exercises his right to reply, he might be able to expand slightly on what he has said. Is it, as we understand, that the need has arisen because there has been interest by a newcomer to the market in an exempt basis and this has been the subject of concessions in the negotiations or is it just a general point of legislation? It will not surprise the Government, Mr Speaker, to learn that at the Committee Stage, we shall be voting against clauses 2 and 3 of the Bill for the reason which I explained in my previous contribution that it introduces once again fines with reference to the standard scale.

MR SPEAKER:

If not other hon Member wishes to speak I will call on the mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, my understanding of the position is that there has been some interest by a certain operator to take advantage of offshore facilities for this particular purpose and the Government's view is that this is something that should be provided for anyway as a general measure and to provide it in a manner which is consistent with what is already there for general betting. I could not frankly understand this distinction between general betting and pool betting. I would have thought that the two went together but given that the law provides for two separate forms of betting, we have found it necessary now to amend Section 7, bring it into line with Section 6, as I said earlier and if there is somebody interested and if the Government is prepared to agree, then the law will make the provision that is required.

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.

THE COMPANIES (TAXATION AND CONCESSIONS) (AMENDMENT) ORDINANCE, 1993

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Companies (Taxation and Concessions) 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 purpose of this Bill is to alter the arrangements for the payment of the annual tax and to increase the penalties payable where the tax is not paid by the due date. At present tax exempt companies are required to pay tax twice a year by the 31st March and the 30th September. It is now proposed to change this so that payment has to be made by the 1st April in each year in advance. On its own this amendment should help reduce the administrative workload and provide a more cost effective service. Penalties for late payment or default are being increased. The latest figure show that more than 50% of exempt companies fall behind or default when annual tax becomes due. It is clear that the current level of fines is not a sufficient deterrent and under the new provisions annual tax payable can be doubled on default. The Bill, nevertheless, retains the discretionary powers of the Financial and Development Secretary to waive such part of the additional fees due taking account of the circumstances of the default. 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 F VASQUEZ:

Mr Speaker, we in the Opposition have no difficulty with the general principles of the Bill and we shall be supporting it. Two observations, however. The first obviously is that we, as usual, and I have to make the observation, cannot agree to clause 2 of the proposed Bill, which makes reference to the standard scale for the reasons stated ad nauseum by us, Mr Speaker. Secondly, I will be making a suggestion for the redrafting of the proposed clause 4, the amendment to Section 10, which I will be saying is in fact unworkable. I shall try and take the opportunity of taking aside the Financial and Development Secretary and discussing it with him but certainly proposals will be made for the redrafting of that proposed legislation and also a couple of small amendments to clause 7 but I shall discuss those. I do not think that they are in any way difficult, Mr Speaker.

HON P R CARUANA:

There is just one point that I would make, Mr Speaker, whilst addressing the principles and that is really a matter of logistics. If we legislate this before the 1st October, which seems likely that we will, it raises the question of what happens in relation to the current year's tax. In other words in October, do you have to pay one year's tax? I think that if it is to be clearly understood that this would not come into effect until the tax due in respect of 1994. Quite apart from everything else, most operators, most trust companies and lawyers will already have billed their clients in respect of 1993 and it may be difficult to recover a larger amount in respect of the October instalment. It depends on how this is going to work. If the suggestion is that the full year's tax does not come into effect on the 1st April 1994, then there is no problem. There would be logistical problems if it came into effect before that. I think it almost implicit that it will not come into effect until the 1st April 1994. Oh, it is only February. Then my point remains that. Therein may lie a problem that some operators may already have pushed out requests for April for their instalments. Not everybody tells their clients to fund them at the beginning of the year for the October instalment as well and we may now be in a position in February where it may be difficult or it may be problematic, it would not be impossible, I suppose, to impose this by the 1st April. It may therefore be worth considering delaying the implementation to give a little bit more notice. The problem is that it has got to be delayed or what could be done is have the commencement date on the 1st October and have the tax payable forward from the 1st October for the whole year as opposed to forward from the 1st April for a whole year. So we could base this on the 1st October or on the 1st April. That would give us all between now and the 1st October to obtain funds from our clients to do that.

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, on the first point, I would like to say that perhaps I can save the hon Member some time. I suspect that he has difficulty with the proviso to Section 10(3)(b) and in fact, I have to confess that this has been taxing my mind for the last day, which is the time that I have had to research this. I would like to say that the Government proposes to delete the proviso because we feel that the default provision is already catered for under Section 15. On the second point my advice to the Government would be that rather than delay implementation, it should, perhaps, increase discretion. I think that the implementation date should be the 1st April and the Financial

and Development Secretary should bow to the difficulties that certain operators may have in getting their clients to pay on time. I would have thought, Mr Speaker, that if, as the hon Member has explained, most lawyers or most company managers bill their clients well in advance and therefore cannot cope with a two month advance warning period, that kind of pattern would have been reflected in the revenue that we are supposed to be collecting. Clearly, that is not the case. That does not mean to say that there will be some people with genuine difficulties and I think the Government will address those difficulties sympathetically. I commend the Bill to the House.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

The House recessed at 6.30 pm.

WEDNESDAY 3 FEBRUARY 1993

The House resumed at 10.45 am.

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 Offences (Amendment) Bill, 1992; The Criminal Procedure (Amendment) Bill, 1992; The Drug Trafficking Offences (Amendment) Bill, 1992; The Civilians Registration (Amendment) Bill, 1992; The Estate Duties (Amendment) Bill, 1992; The Supplementary Appropriation (1992/1993) Bill, 1992; The Imports and Exports (Amendment) Bill, 1992; The Carriage of Goods by Sea (Amendment) Bill, 1992; The Misleading Advertising Bill, 1992; The Employment (Amendment) Bill, 1993; The Immigration Control (Amendment) Bill, 1993; The Gaming Tax (Amendment) Bill, 1993 and The Companies (Taxation and Concessions) (Amendment) Bill, 1993.

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

THE CRIMINAL OFFENCES (AMENDMENT) BILL, 1992

Clause 1

HON P R CARUANA:

Mr Speaker, clauses 1 to 33 deal with the substituting of a figure with an amount in the standard scale. The

Opposition will be abstaining in respect of all of those sections for reasons that the House is now well acquainted with and as far as we are concerned, they can all be taken together.

Clauses 1 to 33

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 J Blackburn Gittings
The Hon E Montado

The following hon Members abstained:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clauses 31 to 33 stood part of the Bill.

Clause 34

HON H CORBY:

On clause 34, Mr Speaker, I will be voting against.

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 J Blackburn Gittings
The Hon E Montado
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The following hon Member voted against:-

The Hon H Corby

Clause 34 stood part of the Bill.

Clauses 35 to 88 were agreed to and stood part of the Bill.

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

THE CRIMINAL PROCEDURE (AMENDMENT) BILL, 1992

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

Clause 2

HON ATTORNEY-GENERAL:

Mr Chairman, I intend to move an amendment to clause 2 by inserting after the word "Ordinance", the words "(hereinafter called the Principal Ordinance)" and by inserting after clause 2, the following new clause "Amendment to Section 260". "Section 260 of the Principal Ordinance is amended in subsection 4(a) by omitting the words "Director of Labour and Social Security" and substituting therefor the words "the person appointed by the Government from time to time for the purposes of this section".

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

New Clause 3

HON ATTORNEY-GENERAL:

Amendment to Section 260. Section 260 of the Principal Ordinance is amended in subsection 4(a) by omitting the words "Director of Labour and Social Security" and substituting therefor the words "the person appointed by the Government from time to time for the purposes of this section".

MR SPEAKER:

We assume now that the clause has been read a second time.

HON P R CARUANA:

Thank you, Mr Chairman. I think it is important to put into context the significance of this amendment. Section 260 of the Principal Ordinance, that we are amending, deals with the care and protection orders against children and other juveniles and it presently reads, "If a juvenile court is satisfied that any person brought before the court under this section by the Director or a Police Officer, then the court can make several orders". What is at stake, therefore,

here, is who can bring a juvenile before the court for the purpose of obtaining a juvenile order. At the moment, the child would have to be brought before the court by either the Director of Labour and Social Security or by a Police Officer. The effect of the amendment, is that the child can now be brought before the court either by a Police Officer or by such person as the Government may from time to time nominate. The Opposition believes that in respect of wide ranging powers as to who can seize children from their parents and bring them before the courts, that the legislature ought to stipulate who has that power and it ought not to be left to the executive from time to time, as the amendment suggests, to nominate people who may or may not be civil servants. There is not even a requirement that the person appointed by the Government should be fit and proper as there is for the person into whose care the child has to be put. We, therefore, believe that this amendment which has been, I suspect, hastily brought in order to delete the reference to the Director of Labour and Social Security and given what we were told yesterday about the fate that that particular department has suffered, clearly, there is a need to change because there may no longer be a Director of Labour and Social Security. There might, therefore, be a practical need to change the Ordinance by naming somebody else but that nomination should not be done on the casual basis that the amendment says; namely any person that the Government may from time to time nominate and accordingly the Opposition will vote against the amendment.

MR SPEAKER:

Any other comments?

HON ATTORNEY-GENERAL:

No, Mr Chairman.

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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramage
The Hon F Vasquez

New Clause 3 stood part of the Bill.

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

THE DRUG TRAFFICKING OFFENCES (AMENDMENT) BILL, 1992

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

HON ATTORNEY-GENERAL:

Mr Chairman, I have in fact an amendment to clause 1. The amendment is that the Bill be amended by inserting after clause 1 the following clause 1A.

"Amendment to section 3

1A. Section 3 of the Principal Ordinance is amended in subsection (1) by inserting after the words "realisable property means" the words "property whether situated in Gibraltar or elsewhere"."

Clause 1A as amended stood part of the Bill.

Clause 2

HON ATTORNEY-GENERAL:

I have, Mr Chairman, an amendment in clause 2, by inserting after the word "person" the words "unless the defendant can, by the production of such evidence as the court may in its discretion require, satisfy the court that the property was not and is not subject to taxation in Gibraltar or in any other jurisdiction in which the property is or from which it can".

HON F VASQUEZ:

Mr Chairman, you may recall that the Opposition has some difficulty with this proposed amendment, in that it purported to oblige the defendant or the convicted person in circumstances being convicted of a drug trafficking offence, to prove that certain assets in its possession had actually paid tax and we raised the objection that there may be circumstances where assets in its possession simply were not assessable for tax. We are satisfied, Mr Chairman, that the amendment proposed by the Attorney-General covers that eventuality and in those circumstances we will be supporting the clause, as amended.

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

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

THE CIVILIANS REGISTRATION (AMENDMENT) BILL, 1992

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

Clause 3

HON LT-COL E M BRITTO:

Just a minor observation, Mr Speaker. There is obviously an omission immediately after the word "section" in the first line of the clause. There is no reference to which section we are referring to. It is obviously section 3, Mr Chairman.

HON ATTORNEY-GENERAL:

Mr Chairman, it should be section 3.

Clause 3 to 6 were agreed to and stood part of the Bill.

Clause 7

HON LT-COL E M BRITTO:

Mr Chairman, for reasons already describe ad nauseum we will be abstaining on clause 7.

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 J Blackburn Gittings
The Hon E Montado

The following hon Members abstained:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 7 stood part of the Bill.

Clauses 8 and 9 were agreed to and stood part of the Bill.

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

THE ESTATE DUTIES (AMENDMENT) BILL, 1992

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

Clause 2

HON F VASQUEZ:

Mr Chairman, this clause refers to at the first proviso to regulation 13(1) of the Estate Duties (Property Value and Rates) Regulations 1992. Those are the regulations, Mr Chairman, which purported to take the stuffing out of the Estate Duties Ordinance and put them in regulations for the reasons that have been stated many times before in this House, the Opposition cannot support that amendment.

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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 2 stood part of the Bill.

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

THE SUPPLEMENTARY APPROPRIATION (1992/1993) Bill, 1992

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

Schedule - Improvement and Development Fund

Head 106 Subhead 4 stood part of the Bill.

Head 107 Subhead 6 (New)

HON LT-COL E M BRITTO:

Mr Chairman, in the second reading of the Bill I gave notice that I would be asking questions on this subhead. It was to the previous Financial and Development Secretary but I assume from the nods on the other side that people are ready. Can I ask first of all, Mr Chairman, whether the proposed database is a full graphical database or whether

it is a text database? And secondly, Mr Chairman, to what extent is it going to be used? In other words, how much property is it intended to cover within the database?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I had taken note of the request by the Honourable and Gallant Colonel Britto for some details of this equipment. I will just simply stick to the financial aspect of it. I think the Minister would like to explain more the details of what is involved. The expenditure breaks up into two payments. One of £110,000 to Lazer Scan Limited for the hardware, equipment, installation, delivery, training, software costs and the provision of a geographic information system and a mapping service. The other payment of £85,000 was made to Bovis Urban Renewal Limited for the assembly of the property database. This involved the transfer into a computer of all data contained in different departmental files regarding legal, land, building and infrastructure and information and specialist computer and technical staff were commissioned by both firms to undertake this complex task.

HON M A FEETHAM:

Mr Chairman, I think it is beneficial to understand the philosophy and the thinking behind this particular investment and I think that I should take you back to the point when we first came into office, but before doing so, I think that I should confirm that the system is both a geographical and a text database system, not one or the other, but both. For the information of the hon Member, I should explain that this investment was done because one of the major drawbacks we had when we inherited office was the lack of coordinated information on the state of Government's properties and the absence of any concrete database and the existing cumbersome storage of information on infrastructure services. That is to say, each department had its own infrastructure planning devices or methods and there was no coordinated centralisation of that information and each one used their own scales in order to implement the infrastructure system. There was constant complaint about planning taking a year and that was because, first of all, we really had to change the system into one and then answer a planning permit. The biggest asset that Gibraltar has is in fact the properties that it has and those properties have to be evaluated and that gives us the total assets of the Government. Therefore, if I may say so, the total assets of course, of the people of Gibraltar. We decided that we needed to approach this in a more efficient and less cumbersome way. A project was therefore instigated by my department coordinated and assisted by Bovis Urban Renewal Limited. The initial brief was to create an inventory of all properties within the old town walls and it was soon apparent that a geographical information system would be the ideal processing tool. Lazer Scan then

came on the scene. They are the organisation that provides the type of programme for the computer system and the mapping that is required. On advice taken through our own sources in the United Kingdom, they are the people that are leaders in the field to advise us accordingly. What we did initially therefore was to proceed with a feasibility study designed to identify the exact needs of such an inventory and how it could be used within a geographical information system to generate further information, not just put information, but to generate further information. The first pilot scheme, for the information of Opposition Members, that resulted, covered only a small section of the town. That is to say, by going through a small section, it actually began to provide the wider structures that we wanted to put into place. What we did was highlight immediate problems in map digitising of the areas because we were using, of course, eighteen and nineteen century maps that were available in the department in many, many cases as a basic reference source. Nothing had been done for a very long time. The Lazer Scan team had to devise a formal standardisation of the infrastructure plans as these were all at different scales using widely varying symbolical and of uncertain quality. The next stage then, having identified that, was to incorporate the forms that Bovis tailor made to gather all the information for the property base. That is to say, Bovis went about bringing into place a system that could centralise all the information that was available to be able to get into the computer base. This was done by faithfully reproducing these on the screens. The Lazer Scan team could both verify the effectiveness of the forms as a method of gaining information and also ensure that the system remains familiar to those who were obviously going to ultimately use it. That is to say, people in my department. Many of these had rarely used a keyboard, let alone a geographical information system and will need to be convinced of the value of this approach. The resulting organisation was designed to store details eventually of the five thousand properties which exist within the town walls. That is to say, what ultimately emerged from all this was that we designed a situation where we could store all the properties within the town walls, many of which form, of course, blocks of flats and offices. The inventory stores, details of sites, ownership, condition and age and within each property block, how many units are used, what rent and rates are chargeable and a history which is very, very important, of all the planning applications for that building up to date. That is to say, at the press of a button a planning application history of a particular property can be brought out and to give all the information that is required. That is very, very important in today's world where we are very, very fast moving into a situation that we have to be extra quick in giving information to possible investors and to possible plans. The feasibility study and pilot scheme proved that the system was able to achieve the desired results. The customised database is capable of also accepting surveyor information via the onscreen forms, produce also specialised reports concerning the property within the town and can assist decision making on scheduling of maintenance, repair and rebuilding works.

Following the pilot scheme, a phase implementation has been designed to allow the initial data capture of infrastructure maps for the whole area. That is to say, we are now putting in all the infrastructure maps into that. So not only are we going to get all the information about the properties, but we are also going to get all the information about telephone cables, electricity cables and so on running through the property. These are captured through the in-house mapping system. Finally, the hardware currently installed includes a digital vax station, whatever that means. I have seen it, it is a marvellous piece of equipment, but for Opposition Members that is what it is called and a large format digitising table. Additional terminals are planned so that other departments can switch on and get the information from the central point and a programme of training courses will be established. Let me say, that as a result of what has been done in Gibraltar, according to the expert, it is not just an exceptional example of what ought to be done, but as a result of which we have gained patent rights on the system and there has already been approach from one or two authorities; one is in Australia and another one in the United Kingdom that want to implement the system that we have brought into Gibraltar.

HON LT-COL E M BRITTO:

Mr Speaker, I do not for one moment question the need for the effectiveness of the system that the Minister has been describing. I accept that the information that he has given us has been given to him and we also accept the need for such a system. I am, however, not so impressed, with respect to the contribution of the Financial and Development Secretary. I did give in writing on the 4 December details of the questions that I was going to ask and one of those details was that I was asking for a breakdown of all items of hardware and software valued at over £10,000. I am not very impressed by having everything lumped into one figure of £110,000. Secondly, I also asked for a breakdown of what was capital outlay and what was running costs and what was the initial setup costs with the same breakdown of figures and I would ask whether those figures are available now or if the Financial and Development Secretary can undertake to make them available to me subsequent to the meeting.

HON CHIEF MINISTER:

Can I just clarify that in fact this is a turn key contract. We agreed a price. We can then go back to the people who put it in and say "How much were the paperclips on the paper that you brought in?" and no doubt we can get that done, but irrespective of whether they spend £10,000 paying the man who wrote the programme and £5,000 the person who inputted the programme, from our point of view, we agreed a total turn key price like we have got in a number of other projects where there is a final bill. We can get a breakdown of every single element in that final bill, but we will negotiate the elements. I think that needs to be made clear.

HON LT-COL E M BRITTO:

Mr Chairman, that may be very well, but I am going on the advice and information made available to me, that the figure as a whole seems unduly high even for a system of this sophistication. Therefore I ask once again whether the Financial and Development Secretary is prepared to give me a breakdown, not of paperclips, but of hardware and software of what is involved; what number of works stations and prints stations are available and moreso whether the Financial and Development Secretary is satisfied that we are getting the best value for money in terms of hardware and software and what steps the Government has taken to see whether this equipment is the best value for money on the market and what other competitive equipment has been looked at?

HON CHIEF MINISTER:

Mr Chairman, it is a matter of judgement whether if he had been elected into Government instead of us, he would have got a better system than the one we have got. Obviously, we took at the time technical advice on what was available and what was the cost and the advice that we had at the time showed that this compared very favourably. It is certainly nothing that anybody in Gibraltar who may or may not be involved in computers and who may or may not have gone to see the hon Member could have done because this happens to be a system produced by a specialist company linked to Cambridge University called Cambridge Lazer Scan that is practically one of two or three in the world that does this. There were limited options available to us. The people that actually devise the concept for which we invited different submissions from the two or three people in the world that can do it, are a company called Bovis Urban Renewal that again specialises in doing this in the world and has only been done in two or three places in the world and we are one of those two or three. I do not think that there is anybody in Gibraltar who may or may not be very close to the hon Member and who may or may not be involved in selling mini computers, who could have competed for this work. The acting Financial and Development Secretary was not involved in that exercise at the time and the questions that the hon Member put in writing to the previous Financial and Development Secretary, who was so concerned to keep the House fully informed, is something he bothered to do nothing about before he disappeared over the horizon. So obviously he did not care how well informed the hon Member was once he went to greener pasture in some quango in UK which does not have to report to Parliament. So the answer is since this is, Mr Chairman, a question of providing the hon Member with information, there have been no commissions to anybody, we have nothing to hide. He can have all the

information. In the judgement of the Government of Gibraltar for which we take full responsibility politically to our electorate, this is good value for money.

HON LT-COL E M BRITTO:

Mr Chairman, despite the smokescreen, I am still not getting answers and obviously I am not going to get answers to the questions that I have asked. Under the circumstances the Opposition will abstain on this particular clause.

Head 106 Subhead 4 stood part of the Bill.

Head 107 Subhead 6(N) stood part of the Bill.

On a vote being taken on the Schedule 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 J Blackburn Gittings
The Hon E Montado

The following hon Members abstained:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The Schedule stood part of the Bill.

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

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

THE IMPORTS AND EXPORTS (AMENDMENT) BILL, 1992

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

HON P R CARUANA:

Only in respect of clause 2 that there is a reference to Merchant Shipping Ordinance 1992, that there is not yet such an Ordinance and even if this House does legislate a Merchant Shipping Ordinance, it will not be the Merchant Shipping Ordinance 1992, it would now be the Merchant Shipping Ordinance 1993, and that therefore I think that that is a nonsensical reference in one law to a non-existent law.

HON M A FEETHAM:

Can the hon Member repeat please?

HON P R CARUANA:

Section 2(h); there is a reference to the Merchant Shipping Ordinance 1992 which does not exist as a law and even if it comes into existence, it would not be the Merchant Shipping Ordinance 1992, it would be the Merchant Shipping Ordinance 1993 or indeed 1994 or not at all if the fears expressed by the Minister opposite yesterday are realised. So, if the Government, insists on relating references in law to laws that do not exist, we think is bad legislative practice. At least, it ought to refer to it by accuracy of date if nothing else.

HON M A FEETHAM:

We may have to either amend the observation or make no reference to it and amend it subsequently.

HON P R CARUANA:

May I suggest to the Government Members that they do not yet amend any existing laws by reference to the Merchant Shipping Act and that in due course, they might even pass a hybrid amendment. Perhaps in the Merchant Shipping Ordinance itself amending any Ordinance in which there is a reference to the Merchant Shipping Ordinance 1894 and onwards do read a reference to the Merchant Shipping Ordinance as it will then be in 1993. Otherwise, we are going to get into an awful mess changing Ordinances piecemeal.

HON M A FEETHAM:

I would rather leave out the expression "Merchant Shipping Ordinance 1992" and put in "the relevant legislation" or words to that effect.

HON P R CARUANA:

Yes. The legislation regulating Merchant Shipping in Gibraltar or something like that.

HON M A FEETHAM:

Mr Chairman, therefore I propose that after the word "expression" we delete all words up to "1992" and replace them by the words "the relevant legislation".

Clause 2 as amended stood part of the Bill.

Clauses 3 to 7 were agreed to and stood part of the Bill.

Clause 8

HON P R CARUANA:

Clause 8 purports to delete a paragraph (c) and makes no attempt to reletter the paragraphs after that. So that it would jump straight from (b), the next one would then be (d). It may well be that that is done on purpose so as not to have to reletter. But if it is done for that reason, I think that is also bad legislative practice. I think paragraphs in laws should be numbered or lettered successively and all we have to do is say and every subsequent subparagraph shall be relettered accordingly. We still keep an (a), (b), (c), (d). Otherwise if we use this technique generally in the legislation, people will not know whether laws have simply left out a little (b). The purpose of lettering is that it should be successive.

HON ATTORNEY-GENERAL:

I am told in fact that it is normal legislative practice to omit the clause number and just leave it blank and go on to the next one.

HON P R CARUANA:

I take notice of who is sitting behind the Learned Attorney-General. I have never come across an act of this Parliament or of the United Kingdom in which that is so. That is not to say that it does not exist. To say that it is legislative practice, I think, is an overstatement. It might exist in a legislation. I think, regardless of what may be legislative practice elsewhere, that it is bad legislative practice. It is lazy legislative practice, for avoiding one small further amendment, to leave the laws with unsuccessful reference. What is the problem with relettering successive lettering.

MR SPEAKER:

Could I make a point now? Will Ministers who have got to consult civil servants move from the bench to behind the bench and also Members of the House must not refer to civil servants. The persons responsible are the Ministers themselves. So in future any Minister who wants to consult a civil servant will have to leave the bench and go behind the bench and consult him.

HON P R CARUANA:

Mr Chairman, let me say that I had sought to make no attempt to identify any particular civil servant by my own intervention. I simply take note of what I can see with my eye in front of me. The point is not whether the legislative practice exists elsewhere or not. The point is whether we need to get into a muddle; whether we need to place our laws in a state where numbering and lettering

is not successive. The fact that it takes place elsewhere is not, as we have now learned, a good enough reason for doing it in Gibraltar. What is the difficulty with saying and subsequent letterings shall be relettered accordingly. What is the problem?

HON ATTORNEY-GENERAL:

It is not just a question of it just taking place elsewhere. It takes place here as well and I can give the hon Member an example later on.

HON P R CARUANA:

If the Learned Attorney-General is not prepared to address for the second time in this morning's session, the merits of the arguments put to him and simply wishes to rely on the fact that he can find one example to contradict. If the Learned Attorney-General does not wish to address the merits of arguments that come from the Opposition let him just say so, but I am not prepared to bicker with him on the question of whether he can disprove me on my statement that there has never been an example, which is not what I have said in the first place. I take note that the Learned Attorney-General considers that there is no merit in my proposal and therefore let them just do as they please. No big deal.

HON ATTORNEY-GENERAL:

Good! Alright, the bickering is over. I have had no chance to find the hon Member more than one example but in fact if he wants more examples he can have them and I hear what he said.

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 J Blackburn Gittings
The Hon E Montado

The following hon Members abstained:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 8 stood part of the Bill.

Clauses 9 to 17 were agreed to and stood part of the Bill.

Clause 18

HON M A FEETHAM:

Mr Chairman, I have already given prior notice that I intend to move an amendment to clause 18 as follows:

"By -

- (a) inserting after the word "airport" the words "or adjacent to British Lines Road or at such other place as the Collector may, by notice in the Gazette, determine from time to time";
- (b) omitting the words "a Government store" and substituting therefor the words "an approved place";
- (c) omitting the fullstop at the end of paragraph (b) and substituting therefor a semi-colon;
- (d) inserting a new paragraph (c) as follows:

"(c) in sub-section (3) by inserting after the word "airport" the words "or adjacent to British Lines Road or at any other place designated in accordance with sub-section (1)".

Mr Chairman, for the benefit of Opposition Members, if I can sort of enlighten them as to why we are bringing this motion. These things happen as we go about processing legislation. In fact, what it does is it authorises the Collector to remove goods found by night or during close hours in the area adjacent to British Lines Road and in other places as the Collector may determine. The goods found there at could be removed into an approved place. That is to say the Customs Warehouse. At present however, only section 34, provides for goods to be removed when they are found at Waterport, North Mole or Airport, but there is no mention of goods found near the area adjacent to the overland commercial gate. It can become an enormous problem as you well know. What it does is that the amendment corrects this. It is then up to the owners to remove the goods from the Warehouse once they realise they have been removed in the first place by the Customs. The cost then of moving the goods into the Warehouse would be charged to the person who leaves the goods at British Lines Road in the first place without being legally entitled to do so.

Clause 18 as amended stood part of the Bill.

Clauses 19 and 20 were agreed to and stood part of the Bill.

Clauses 21 to 23 were agreed to and stood part of the Bill.

Clause 24

HON P R CARUANA:

I do not know if the Minister has got the Principal Ordinance in front of him or whether he has not; but consistently with what happens elsewhere in the Bill, deletes references to Government's stores and private bonded stores. In this section 50, there is a reference to goods deposited in a Government store or private bonded store. Private bonded stores is a definition that is deleted now from the Ordinance by a previous amendment but the reference to private bonded store is not deleted by the proposed amendment. If we simply purport to delete the words "a Government store", we therefore leave in this section, the reference to all private bonded stores which is now inconsistent with the new regime of the Bill. So the Government may wish to amend by adding the deletion of the words "or private bonded store".

HON M A FEETHAM:

What we are doing there is in fact changing the procedure vis-a-vis the storage of goods. The hon Member is saying where we are going to be storing...

HON P R CARUANA:

No. I am not addressing the merits of the substance of this section, what I am saying.....

HON M A FEETHAM:

I understand what the hon Member is saying. We do not really need.....

HON P R CARUANA:

We have deleted the definition so the Government ought to amend this.

HON M A FEETHAM:

Yes, that is correct. I need to add an amendment to this section that we have got in the Bill by removing after the words "an approved place" all words up to "or approved bonded store". By omitting the words "or approved bonded store".

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

Clauses 25 to 43 were agreed to and stood part of the Bill.

Clauses 44

HON P R CARUANA:

The Opposition votes at this stage against the repeal of sections 46 to 49, for a reason again that is well known

that this is part of the regime to change rates of import duty and do things of that kind by regulation.

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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 44 stood part of the Bill.

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

THE CARRIAGE OF GOODS BY SEA (AMENDMENT) BILL, 1992

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

Clause 2

HON F VASQUEZ:

Mr Chairman, an observation similar to the one the Leader of the Opposition made some minutes ago. That is of course that clause 2 purports to refer to the Gibraltar Merchant Shipping (Safety) Ordinance, 1992, and this of course is not law. So obviously this House cannot pass a law referring to another law which does not exist and perhaps Government may consider making a similar amendment to the one that they agreed in respect of the previous law.

HON M A FEETHAM:

Mr Chairman, "the relevant legislation relating to ships", I am advised, could be one way of getting round this particular problem. "The relevant legislation relating to ships registered", I think, reinforces the word "ship".

HON P R CARUANA:

Yes, especially given the fact that this Ordinance will only apply to ships registered and not visiting.

HON M A FEETHAM:

Exactly.

HON P R CARUANA:

I think that would be preferable as a device, rather than to have non-existent laws.

HON M A FEETHAM:

Mr Chairman, I propose the deleting of all words after "section 99" up to "Ordinance, 1992" on the second line, and substituting them with the words "the relevant legislation relating to ships registered".

HON F VASQUEZ:

I think it ought to be clear, Mr Chairman, that it is to delete all words including Section 99. Should that not be to ships registered in Gibraltar?

HON M A FEETHAM:

Yes, in Gibraltar.

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

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

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

THE MISLEADING ADVERTISING BILL, 1992

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

Clause 3

HON F VASQUEZ:

Mr Chairman, the Opposition do have an amendment to propose in respect of clause 3. This is a matter that was discussed at the Second Reading of the Bill at some length and with some humour. The Opposition is afraid that, whilst the objects of this Bill obviously are laudable and we support them in that the law must take steps to avoid misleading advertising which is detrimental to the interest of consumers and individuals, it is felt that as drafted, the law goes too far in that it gives any individual, in circumstances where an advertisement who happens to be misleading, the opportunity to apply to court and ask the court to intervene in certain ways in which the court's discretion might be limited. As drafted, we feel, the law states that as long as an advertisement is misleading, then the court may be forced to intervene and we gave the examples, Mr Chairman, of various circumstances where advertisers can be said to mislead. They exaggerate. They make nonsensical statements

about their products which we consider to be entirely harmless and which we consider the public is intelligent enough to be able to distinguish but which taken literally, may be said to be misleading advertisements and which may in certain circumstances give rise to rather litigious individuals to take these complaints to court. I gave the example, for example, Mr Chairman, of 'Guinness is good for you'. A slogan used by Guinness for many years but somebody might come along and say, "We have put Guinness to prove that Guinness is in fact good for you, because alcohol has been shown to be bad for you in certain circumstances". That is the sort of what might be termed as misleading advertising which we do not consider to be pernicious in anyway, which we consider the public is intelligent enough to distinguish and which we do not think the law or the Directive as enacted by the Commission is designed to interfere with. Article 6 of the Directive reads as follows: "Member States shall confer upon the court or administrative authorities powers enabling them in the civil or administrative proceedings provided for in Article 4:

- (a) To require the advertiser to furnish evidence as to the accuracy of factual claims in advertising if, taking into account the legitimate interests of the advertiser and any other party to the proceedings such a requirement appears appropriate on the basis of the circumstances of the particular case."

In other words the Directive directs the national state in each case to enact their laws giving individuals the right to complain to their courts as to misleading advertising but it reserves to those courts the discretion to intervene only where they consider it appropriate to do so, so that the court will have discretion. They could say that "Guinness is good for you" might be termed misleading, but we consider that there is no serious.....

MR SPEAKER:

I must insist that Ministers who want to consult civil servants must go behind the bench. This is a golden rule. We must remember that there is a tendency sometimes to criticise civil servants in the House and unfortunately the civil servant cannot attend to..... Therefore that is an important rule which we have to abide. The person responsible for whatever happens here is the Minister.

HON F VASQUEZ:

Mr Chairman, just to wind up my comments. The point is that. From our interpretation of the Directive, the Directive to the member State is to enact laws which give their courts discretion to intervene in circumstances that they consider that the circumstances merit. It is our view, that, as drafted, this Bill does not give the court that discretion. Clause 3(1) reads, "A person, whether or not

he has suffered or is likely to suffer loss or damage as a result of misleading advertising." If I can just stop there. That is perfectly acceptable because I am told that the object of the Directive is not only to protect consumers but to protect competitors from unfair advertising. So whether or not he has suffered or is likely to suffer loss or damage, "may make application to the Supreme Court for an order of the court directing any person who in Gibraltar and whether on behalf of himself or someone else is engaging in misleading advertising or who in the opinion of the court is about to so engage to cease from doing so or not to do so as the case may be." That is what it says. It refers only to misleading advertising. It does not specify, as the Directive does, that the court should intervene only where it considers it appropriate to do so. With that in mind, Mr Chairman, I propose an amendment to that clause to make the clause read as follows "A person, whether or not he has suffered or is likely to suffer loss or damage as a result of misleading advertising, may make application to the Supreme Court", and this is where the amendment comes in, "and where the court is satisfied that such an order is appropriate to safeguard the interest of the public, the court may make an order directing any person who in Gibraltar or whether on behalf of himself or someone else that engages in misleading advertising or who, in the opinion of the court, is likely to be engaged, to cease from doing so or not so to do, as the case may be". If I can just make one further comment, Mr Chairman, it has been pointed out to me that of course the Directive is not designed to protect solely the interest of the public at large but the interest of competitors, who may themselves not be adversely affected in a direct way by the advertising. I move this amendment, should read "and where the court is satisfied that such an order is appropriate to safeguard the interests of any person" rather than the public. That, Mr Chairman, is the amendment that I propose. And that, Mr Chairman, the Opposition feels grants to the court, the discretion that it was designed to have by the Directive.

HON CHIEF MINISTER:

No, Mr Chairman, it does not do that. It does more than that and what it seeks to do, whether the hon Member intends that it should do it or does not want to say that that is what it is intended to do, in our view, is not all what the Directive is about, and what negates what the Directive is about. I do not know whether one has to say in a piece of legislation that the court has to be satisfied that it is doing the right thing. If one needs to do that as a matter of course, then I presume that there is a need to put it here and to put it in every piece of legislation. But, the amendment of the hon Member goes much further than that, because he is saying that the court has to satisfy that the order is appropriate in order to achieve a specific purpose, that it should protect the interests of the public or any other purpose the hon Member may wish to add, whereas

the point is that people should not engage in misleading advertising. The court makes an order stopping the advertising if the advertising is misleading. Who is the judge that determines if the advertising is misleading or not? Well the judge is the judge that hears the case. I, as a non-lawyer, do not know whether one needs to tell judges that if they are going to stop somebody doing something, they must be satisfied that it is appropriate to do so. If we need to do that then I would say the first part of his amendment is acceptable from the Government's point of view. That is that the court should only make an order where it is satisfied that it is appropriate to make it, but, frankly, if courts go about making orders, whether they are appropriate or not, one must question whether we should change the judge and not the clause. As a layman with no legal expertise at my disposal like the hon Member has.

HON F VASQUEZ:

That is obvious.

HON CHIEF MINISTER:

Yes, that is obvious. I suppose it is obvious that to think that judges need to be removed must mean that I am a layman. Basically, we are not prepared to accept the amendment as moved, because the amendment, as moved, gives the court discretion, not just as to whether it is appropriate on the basis that the advertisement is misleading, but on the basis of whether it does any harm, as it were. So, it seems to me, that the legislation is not simply there to say that we are going to stop the misleading advert because this is not in the public interest or because somebody has been harmed by the misleading advertising. It is intended that advertising should not mislead. And certainly it is very difficult to say that the public is not hurt, so one cannot stop him. Therefore if one takes somebody to court on the basis that the advertisement is in fact patently and manifestly misleading and one has then to prove to the court, to the satisfaction of the court, that it is in the public interest to stop it. I would have thought it very difficult. If I was in the hon Member's profession and I had the advertiser as a client I would be able to argue that if by definition, if the claims are very exaggerated, then the public interest cannot be affected because it is so obvious that it is exaggerated and nobody is going to swallow the thing. You then enter into a field of argument as to whether anybody that has actually been damaged either as a competitor or as a consumer by the misleading nature of the advert - I do not think that this is what the Directive seeks to do. The Directive seeks to introduce a standard into advertising which at the end of the day we are making it, frankly, as complying with Community law and making it as little onerous as possible for the trade because we are not going to go round taking people to court. Somebody has to feel sufficiently worked up about it to go to the court and then I assume that the court, in listening to

a case like this, would only make an order if a convincing argument was put and they were satisfied that the order was necessary. But if that is not axiomatically the case from the wording, then certainly we will support that we tell courts that they should be satisfied that they doing the right thing when they do things.

HON P R CARUANA:

If the Chief Minister will permit me a small intervention that may sound as a lecture, although it is not intended to be so, I think he is wrong. There are laws that give courts a discretion to exercise their commonsense and there are indeed laws that do not give the courts a discretion to use their commonsense and when a law says 'may', the court is free to exercise its commonsense, and when the law says 'shall', the court is not free to exercise its commonsense. The court has got to do what the law says shall requires it to do. What we have here in clause 5, Mr Chairman, is a law that says, "in any proceedings on an application under clause 3, the court," and then on both (a), (b), and (c), uses the word 'shall' in little (a), in the third line, "taking account of legitimate interests shall direct the advertisers to produce", (b) "shall treat as inaccurate any factual claims" and (c) "shall..". Let me just categorise that for the benefit of the Government Members. That means that the court must do so whether or not it thinks it is required. The court is not at liberty to interpret or to give a different meaning to what the legislature state as a matter of fact. If there is ambiguity as to what the legislature says, then the court has a discretion. If we tie that up to clause 3, what it means, is that when there is something that the court is required shall treat as inaccurate, the court must make the order under clause 3, because there is no discretion under clause 3. That is recognised by the terms, Mr Chairman, of the Directive, because the Directive recognising that says, "and any other party to the proceedings, such requirement appears appropriate on the basis of the circumstances of the particular case". The Directive therefore makes it clear that the tribunal should be given, in the law that legislates this Directive, a discretion to separate the good applicant from the bad applicant. Just let me give another example. There is a particular brand of lager that is said "to reach parts that other beers do not". There is another advertiser that says that cats have been found to prefer this or that. Those are things, they are clearly incapable of being subjected to the test of accuracy. Because what this law says is that anything that cannot be factually established is deemed to be inaccurate and anything that is deemed to be inaccurate shall be prohibited by the court. Therefore if an advertiser makes a casual observation eg "This washing powder washes whitest", and it cannot prove it as a matter of fact; that is deemed to be inaccurate and as it is deemed to be inaccurate, the court must disallow it. This is not a matter of grave political concern to us and if the Government consider that they do not wish to concede to our view that an amendment

is required, all we are really saying is, we are surprised that those particular three lines, given that the Ordinance follows quite closely the wording of the Directive, in the Directive have been excluded from the Bill. That is all. This is not something that we are inventing. The Directive has those three lines in it and our Bill does not. We think that we are therefore imposing a higher standard of law than the Directive requires us to impose. There is a limit to how long we can spend here trying to persuade the Government of that line. This is not a political hand grenade. There are not tricks or traps of a political kind in our views on this matter. Those are our views. We do so in an attempt that the laws of Gibraltar should not be stricter than the Directive requires and certainly if the Honourable the Chief Minister thinks that our amendment does not deal adequately with the point, well that is a question of fiddling about with the amendment. I give way.

HON J E PILCHER:

Mr Chairman, I am, obviously, not a legal practitioner, but I think, at the end of the day the law has to be logical. The Leader of the Opposition is failing to understand the point that I think is being made by the Government. If we put an order under clause 3(1), it says, "a person whether or not he has suffered or is likely to suffer loss or damage as a result of misleading advertising". The first thing that the court has to do is to look at to whether it is misleading advertising. Then you go back to the definition and if the definition says, "misleading advertising means any advertising which in any way, including its presentation, deceives or is likely to deceive the person to whom it is addressed or whom it reaches and which by reason of a deceptive nature is likely to affect their economic behaviour of which for those reasons injures or is likely to injure a competitor". So, obviously, if you put an order in court and say this is misleading advertising, the first thing that the judge has to rule is whether under clause 3(1), it is misleading advertising. That is the first thing that he has to judge on. If it is not, then clause 3(1) does not apply. And if it is, then clause 3(1) does apply and he has to take account and shall do the things that follow, Mr Chairman. Therefore, as the Leader of the Opposition said, it is, I suppose at the end of the day, the legal definition. We do not agree that his legal definition is correct and neither does our legal advisers. Therefore there will be no change in this clause, Mr Chairman.

HON F VASQUEZ:

Mr Chairman, just to round off. It was my proposed amendment. I just wish to make a point. The Government have taken objection to our suggestion that in fact the Bill as drafted in Gibraltar provides a higher test than that directed by the Directive and the fact is that the Directive includes the words "and such a requirement appears appropriate on the basis of the circumstances". The local Bill does not. It is as simple as that.

HON CHIEF MINISTER:

I am afraid, Mr Chairman, we are not prepared to leave it like that. The local Bill does not do anything that the hon Member says it is doing and if he wants us to take his proposals to improve legislation seriously, which we are always prepared to do, because that is the purpose of listening to his arguments, then he must show us what he is talking about. Clause 3(1) as it stands in the Bill, does not tell the court to do anything. It does not say that the court may do something or the court shall do something. It says what the complainant may do. The complainant may go to court. That is what clause 3(1) now says. His amendment seeks to introduce the power on the part of the court to make an order and the court may make an order already under clause 3(2), where in the opinion of the court, it is necessary to do that. I do not know how he expects that in clause 3(1), we should say "where the court is satisfied that the order is appropriate". It makes the order and then in clause 3(2), we say, "where in the opinion of the court, it is necessary in the interest of people who likely to be misled to make the order". He is not suggesting we get rid of clause 3(2)?

HON F VASQUEZ:

I just want to pose one question. If the Chief Minister, Mr Chairman, is saying that the order under clause 3(1) does not, as it were, direct the court to give the order in those circumstances, perhaps he can point us to the section which does empower the court to make the order. Our interpretation of clause 3(1) is very clear. Where a complaint is made and where it is shown to the court that there is a misleading advertisement, the court will make the order. Otherwise, if that is not the interpretation, perhaps the Chief Minister will tell us under what section the court is empowered to make an order to force an advertiser to cease from doing so or not to do so as the case may be. Those are the words in that clause. Where is the court empowered to make the order, if not under clause 3(1)?

HON P R CARUANA:

Mr Chairman, we have expressed our view on this matter. It is quite clear that positions are becoming entrenched. I accept that the Chief Minister and his colleagues on the other side of the House are not lawyers and that he has to rely on advice. My opinion is that he is in receipt of bad advice, but I accept that he has to rely on it because it is the only advice available to him in this respect. Therefore, given that he does not accept, our point is based on a legal interpretation of what these words mean. It is clear, that if he does not think that we are right in our legal interpretation, then he must oppose the need for our amendment. That is a matter of logic. I do not see that we can across the floor of this House now persuade him that our interpretation of this is correct because it is a matter of interpretation, therefore, Mr Chairman, let the record show that this is the view of the Opposition

and let the record also show that on the basis of legal advice received, which we think is bad advice, the Government have come to a different conclusion and let the voting be in accordance with that. Otherwise we will be here all day exchanging views on this matter.

HON ATTORNEY-GENERAL:

With great respect, Mr Chairman, the remarks of the Honourable Mr Pilcher, are correct in my submission. If we look at clause 3(1), "a person whether or not he has suffered or is likely to suffer loss or damage as a result of misleading advertising", then one has to look at what "misleading advertising" means. "Misleading" means any advertising which in any way, including its presentation, deceives or is likely to deceive the person to whom it is addressed". The two wonderful examples given by my learned friend are lager which "reaches parts that other lagers do not reach" and that some "cats prefer kittycat to some other make of cat food". Are the Opposition Members really suggesting in your wildest dreams that a person who takes eight cans of lager can seriously go to our Chief Justice the following day and say "My Lord, with respect, it has not reached the parts I wanted it to". I think, with great respect, the Learned Chief Justice and the Additional Judge are going to say to my hon friend that there is a thing called vexatious litigation and there is a thing called vexatious litigators and my hon friend is quickly falling into that category. The point is, as my hon friend said, you have got to prove deception. You have got to prove it is likely to deceive. Is he really saying that if in fact one uses the wrong washing powder, that one goes screaming after the Supreme Court in Main Street, because the underpants are not quite the colour you thought they should be?

HON P R CARUANA:

Mr Chairman, let me say, immediately that it is refreshing at least that at last we have provoked the Learned Attorney-General, who has a constitutional duty in these matters, to rise in this House in defence of a piece of legislation that appears before it. What is less impressive is that his intervention should be based on a hasty reading of the legislation as the House is in session. Clearly, not read by him before, because if he had, you would realise just the nonsense on which he has based his intervention. The answer to his jeering and his taunting is, yes sir, and that is why we criticise the amendment, precisely because it has the ridiculous affect, that the Learned Attorney-General, has helpfully to us just derided. That is exactly the effect that this Bill, as it is presently, drafted has. I therefore note with interest that the Attorney-General considers that it produces a ridiculous result and the effect of clause 5, is precisely to give somebody, that thinks that OMO has not washed his underwear as white as it might have otherwise been, the entitlement to go to court and require the court to order OMO to prove that it washes whitest and if it cannot

HON J E PILCHER:

Mr Chairman, if the hon Member will give way?

HON P R CARUANA:

I will in thirty seconds. And if OMO cannot prove that it washes whitest, then the advertisement is inaccurate and if it is inaccurate, it is misleading and the answer is that the Learned Attorney-General ought, with the greatest of respect to him, take the quality of legislation that this House enacts a little bit more seriously than his intervention suggests that he does. That is exactly the effect that this Bill has. We have stated our views clearly. We note that the Government take a different view, let the record ...

HON J E PILCHER:

Mr Chairman, all that the Leader of the Opposition, who is a legal practitioner, has to do, Mr Chairman, and not waste the time of the House which I think he is doing particularly in his last intervention, is buy a packet of OMO tomorrow and put this piece of legislation to the test and I assure him, and I am not a legal practitioner, that what my hon and learned colleague has said is true. All he has to do is try it, Mr Chairman.

MR SPEAKER:

I think we have ventilated the clause and the amendment sufficiently now. So we will vote on the amendment first.

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

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The following hon Members voted against:-

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

The amendment was defeated.

On a vote being taken on Clause 3 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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 3 stood part of the Bill.

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

Clause 5

HON F VASQUEZ:

Mr Chairman, in relation to clause 5, and in relation to the Chief Minister's earlier intervention, where he presumed that the court would have the authority only to intervene where it considers it appropriate to do so, but in clause 5, the word 'may' could be substituted for the word 'shall'. So that exactly the court intervenes where it considers that it would be appropriate to do so. At the moment it is directive of the court and it gives the court no discretion whatsoever. The Chief Minister, Mr Chairman, has said, that as far as he is concerned the court only intervenes where it considers it right to do so. Well then let us give the court that power by introducing the word 'may' instead of of the word 'shall' where the word 'shall' appears in clause 5. My amendment is to substitute the word 'may' for the word 'shall' wherever the word 'shall' appears.

HON J E PILCHER:

Mr Chairman, I have to categorise the Honourable Mr Vasquez as a vexatious litigator as well, because I feel that at the end of the day, the point already made covers that clause as well, because under clause 3(1), what we are arguing and what our advice is, is that the court would first have to rule whether it is misleading advertising. If it is then they have no option but to 'shall do this' and 'shall

do that'. The argument is that if it is found to be misleading advertising, then they have no option but to do that. If it is not, they would rule that it is not under clause 3(1) and the action put by any person would not proceed, Mr Chairman.

HON P R CARUANA:

Perhaps the Minister or those who advised him in law would say why, given all this that they are saying, the European Commission found it necessary to insert those three lines in the Directive. Waste of paper because obviously if what they are saying is true, it is a waste of paper.

HON CHIEF MINISTER:

What we are saying to the hon Member is that as far as we are concerned, we are satisfied that the law does what the Directive requires it to do and no more and we reject the view that this is more onerous than the Directive and indeed, the Government policy is that we stick with the letter of Directives as closely as possible, not to make Gibraltar's legislation more onerous than is required. That is a matter of policy and we are advised that that policy is accurately reflected in this legislation. Let me say that what we cannot certainly take seriously is when an Opposition Member stands up as the hon Member has just done and says remove 'shall' wherever it appears. That means that the court which says now, "shall not", in determining whether or not advertising is misleading take account of the intentions of the advertiser, the court is prohibited now from taking the intentions. We now give the discretion to the court that they may if they wish take the intention of the advertiser.

INTERRUPTION

HON CHIEF MINISTER:

No, no, what I have said is that I assume that if one makes an application to the court and the court in hearing the case takes a decision, in the exercise of that decision, I assume that the court acts in a reasonable manner and does not have to be told that it has to be reasonable. The law may say what the court may do or may not do or what the court shall do or shall not do in arriving at those decisions. The fact is that the court is prohibited from taking into account the intention of the advertiser in clause 5 and there is no logic in the hon Member saying that 'shall' shall be replaced by 'may' there, because then it would mean that the court could, presumably, in one case take the intentions of the advertiser and in the subsequent case not take it.

HON F VASQUEZ:

(Inaudible intervention)

HON CHIEF MINISTER:

That is right. As between individuals.

HON F VASQUEZ:

(inaudible intervention)

HON CHIEF MINISTER:

No, I am glad, Mr Chairman, that with the views of what courts do, I do not spend as much time in court as the Opposition Member does, because certainly I do not think that we are talking about the same thing and I am astonished that he should be trying to produce an argument based on technical knowledge of the subject and not be able to tell the difference in logic and in language between the two things. The court gets an application saying "I complain because this is a misleading advert" and the court then uses discretion in coming to a judgement as to whether that application should be, in fact, proceeded with, whether the advert is misleading and so on; but in making those decisions, the court will take into account what the Community Directive says should be taken into account and ignore what the Community Directive says should be ignored. It is quite obvious that we have put that they shall not take into account the intentions of the advertiser because that is one of the things that is reflected from the Directive. It is quite extraordinary how arguments of that nature can be put. We are, of course, not accepting the amendment to replace every 'shall' by every 'may'. We might be able to accept it if he said that instead of doing it by primary legislation we do it by regulation.

HON ATTORNEY-GENERAL:

Mr Chairman, can I just respectfully draw the attention of the hon Member to clause 5(a), and I refer him to the penultimate word in that paragraph which says, in fact, 'may': the court 'may' require. If he reads it, instead of mumbling that advice, he will agree with me.

HON P R CARUANA:

Mr Chairman, the observation that the Learned Attorney-General has just made, is completely irrelevant to the argument. It does not even address the right point. What I am not prepared to do is to debate points of law across this floor of the House, especially not, with somebody that has not read the Bill until we have reached this House.

On a vote being taken on the proposed amendment the following hon Members voted in favour:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby

The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The following hon Members voted against:-

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

The amendment was defeated.

On a vote being taken on clause 5 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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 5 stood part of the Bill.

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

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

THE EMPLOYMENT (AMENDMENT) BILL, 1993

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

Clauses 2 and 3

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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clauses 2 and 3 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 IMMIGRATION CONTROL (AMENDMENT) BILL, 1993

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

Clause 2

HON LT-COL E M BRITTO:

Mr Chairman, perhaps the Attorney-General can enlighten us on the wording of everything that appears in quotes in clause 2 and specifically where it says "a person specified by reference to his nationality" in Schedule 1. I find no persons specified by nationality in Schedule 1.

HON ATTORNEY-GENERAL:

Schedule 1, I think, in fact, was a list of the European Community countries Mr Chairman, I am not quite certain from the question asked by the hon Member and I do not mean to be fastidious, I do not quite understand what he is saying. Could he possibly explain it again?

HON LT-COL E M BRITTO:

Yes, Mr Chairman. It is a genuine inquiry. The clause refers to a person specified by reference to his nationality. I find no persons specified by nationality in Schedule 1. It says "Community national means a person specified by reference to his nationality."

HON ATTORNEY-GENERAL:

Belgium, Denmark, Eire, France, Holland, Italy, Luxembourg, United Kingdom, West Germany

HON LT-COL E M BRITTO:

Are countries, not nationalities.

HON ATTORNEY-GENERAL:

I understand that. What it is not saying is that Belgium is a person, a person who lives in Belgium is a person. Is that the point that he is trying to make?

HON LT-COL E M BRITTO:

It is a list of countries; it is not a list of persons specified by nationality. That is the point that I am trying to make. Mr Chairman, the original definition says "A Community national means a national of the member State of the European Community being a State specified in Schedule 1." Now that to me is perfectly clear English, but the amendment, "A Community national means a person specified by reference to his nationality in Schedule 1", is double Dutch.

HON CHIEF MINISTER:

It is not double Dutch. It is not even single Dutch even though Dutch is one of the Community languages. The reason of course for the change is that a Community national is now limited to nationals of member States and the member States are listed in Schedule 1. The new definition will come into effect when a new Schedule 1 is in place and the new Schedule 1 which is provided for in the amendment to section 67 of the principal Ordinance in clause 21, will mean that it will have to be by nationality and not by member State, otherwise we will not be able to include those who are not member States.

HON P R CARUANA:

The fact still remains that as the Immigration Control Ordinance will now stand, there will be a reference to Schedule 1, which one would expect to find in different terms to the Schedule 1 that is now there.

HON CHIEF MINISTER:

The hon Member is right in that if he goes to Schedule 1, as it stands at present in the principal Ordinance, then the definition is a nonsense and it does not fit. The explanation is that when the definition is actually brought in, the Schedule 1 that makes sense will also be brought in at the same time. Therefore the schedule will refer to nationalities and not member States because the definition will no longer refer to member States.

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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 2 stood part of the Bill.

Clause 3

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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 3 stood part of the Bill.

Clauses 4 to 7 were agreed to and stood part of the Bill.

Clause 8

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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 8 stood part of the Bill.

Clauses 9 to 11 were agreed to and stood part of the Bill.

HON LT-COL E M BRITTO:

Mr Chairman, to make things easier, in clauses 12 to 20, the Opposition will be voting against because of the reference to fines in standard scales and in clause 21 we will be voting against because we consider the powers given by subclause (c) are far too wide to be given by regulations and not by primary legislation. In clause 22 again for the same reason as clause 8 we will be voting against because of the effects which I went into in great detail in my intervention at the Second Reading.

On a vote being taken on clauses 12 to 22 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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clauses 12 to 22 stood part of the Bill.

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

THE GAMING TAX (AMENDMENT) BILL, 1993

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

Clauses 2 and 3

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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clauses 2 and 3 stood part of the Bill.

Clause 4

HON P R CARUANA:

I ask myself whether in clause 4, the proposed amendment to Section 7 in line 3, where it says "made with the bookmaker", it should not perhaps read "a bookmaker". "A duty to be known as pool-betting shall be charged on every bet which is by way of pool betting and is made with a bookmaker, other than a bookmaker who"

HON CHIEF MINISTER:

I would imagine that the hon Member is right otherwise it would mean, I imagine, that there could only be one bookmaker who was not a bookmaker that was an exempt company, which may well be the case at the moment.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, in fact, I did say in the Second Reading that the amendment was exactly in line with section 6. Obviously, it is not and therefore I propose to amend the section 7(1) by deleting the word after "with" and before "bookmaker" in the third line and substituting therefor the word 'a'.

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 COMPANIES (TAXATION AND CONCESSIONS) (AMENDMENT) BILL, 1993

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

Clause 2

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 J Blackburn Gittings
The Hon E Montado

The following hon Members abstained:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 2 stood part of the Bill.

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

Clause 4

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I gave notice earlier on that I proposed to

amend clause 4 by deleting all the words in the new section 10(3)(a) and substituting the words "on the date of application for the issue of a certificate". Having reflected on this overnight, I think, it will make much more sense, certainly from an accounting point of view, if we have a simple fee payable on application and with no allowance being made as has been the case in the past for part-payments depending on the dates on which one applied or the certificate was issued.

HON P R CARUANA:

Mr Chairman, we are quite happy to support what the Financial and Development Secretary is attempting to achieve with that, but we would prefer that he makes it clear that that subsection is dealing only with first instalments. As he proposes it would now read "The annual tax payable in accordance with subsection (1) or (2) as the case may be shall be payable on the date of application for the issue of a certificate". It might be an improvement if it read "In respect of the first year's tax on the date of application to the issue of the certificate". That would make it clear that (a) relates only to the first instalment of tax. So really what we are now doing is that we are changing the regime a bit and the first year's instalment is payable with the application. We are just making it clear that it relates only to the first year. It is almost implicit but I think that would improve it. Paragraph (b) refers to "thereafter in advance on the 1 April". Paragraph (a) can only relate to the first year's instalment. That is right. The practical effect of it is and I think we ought to because otherwise it just reads "The annual tax payable shall be payable on the date of issue of the certificate". Pedantically it is capable of being read to mean how many years, but we will support the amendment even if our suggestion is not taken into account because we support the objective and really it achieves it with the existing wording, albeit, subject to pedantic misinterpretation. But it would be pedantic, I accept that misinterpretation would be pedantic.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Obviously, the point is understood. The way the amendment reads is understood and it is just for the first year. But to make it clearer perhaps we could say "on the dates of application for the issue of a certificate in the first year". Mr Chairman, I propose to amend section 10(3)(a) by deleting all the words in the section and substituting the words "on the date of application for the issue of a certificate in the first year". I have a further amendment on clause 4. I propose to delete the proviso at the end of that clause.

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

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

Clause 6

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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 6 stood part of the Bill.

Clause 7

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I have a consequential amendment to section 15(2)(b)(ii) and to make it simple I propose to delete all the words in that clause and substitute the words "all arrears of annual tax are paid". So I am basically deleting the words inbetween.

HON P R CARUANA:

The fine for late payment: if somebody does not pay their tax on time, he will have to pay (i) and (ii). Paragraph (i) now is no longer twice, it is now the arrears and (i) is a fee of the amount of tax due in respect of each year of default.

HON F VASQUEZ:

One other comment, Mr Chairman. Subclause (a) refers to in subsection (1), by omitting the letter '(g)' and substituting therefor the letter '(h)'. That is referring to section 15 which in turn refers to "in case of any such act of default by or in respect of any exempt companies as mentioned in paragraphs (a) to (g) inclusive of section 6". I am not aware that there is a section 6(h). I maybe wrong and I stand to be corrected because it may be that we have not made an up-to-date amendment. As far as I am concerned, there are only subparagraphs (a) to (g) of section 6.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, there was an amendment to section 6 in 1990, I have not got the precise date. It is number 39 of 1990 and it introduced (h). Basically (h) was provision for failure to submit at the end of the accounting year a certificate signed by the directors to the Financial and Development Secretary.

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

Clause 8

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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

Clause 8 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 to report that the Criminal Offences (Amendment) Bill, 1992; the Criminal Procedure (Amendment) Bill, 1992, with amendments; the Drug Trafficking Offences (Amendment) Bill, 1992, with amendments; the Civilians Registration (Amendment) Bill, 1992; the Estate Duties (Amendment) Bill, 1992; the Supplementary Appropriation, (1992/1993) Bill, 1992; the Imports and Exports (Amendment) Bill, 1992, with amendments; the Carriage of Goods by Sea (Amendment) Bill, 1992, with amendments; the Misleading Advertisement Bill, 1992; the Employment (Amendment) Bill, 1993; the Immigration Control (Amendment) Bill, 1993; the Gaming Tax (Amendment) Bill, 1993, and the Companies (Taxation and Concessions) (Amendment) Bill, 1993, with amendments, have been considered in Committee and they have been 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, 1992, with amendments; the Drug Trafficking Offences (Amendment) Bill, 1992, with amendments; the Civilians Registration (Amendment) Bill, 1992; the Imports and Exports (Amendment) Bill, 1992, with amendments; the Gaming Tax (Amendment) Bill, 1993 and the Companies (Taxation and Concessions) (Amendment) Bill, 1993, with amendments, the question was resolved in the affirmative.

On a vote being taken on the Estate Duties (Amendment) Bill, 1992; the Supplementary Appropriation (1992/93) Bill, 1992, and the Carriage of Goods by Sea (Amendment) Bill, 1992, with amendments, 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 J Blackburn Gittings
The Hon E Montado

The following hon Members abstained:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The Bills were read a third time and passed.

On a vote being taken on the Misleading Advertising Bill 1992, the Employment (Amendment) Bill, 1993 and the Immigration Control (Amendment) Bill, 1993 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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:-

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The Bills were read a third time and passed.

On a division being taken on the Criminal Offences (Amendment) Bill, 1992, 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 J Blackburn Gittings
The Hon E Montado
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The following hon Member voted against:-

The Hon H Corby

The Bill was read a third time and passed.

The House recessed at 12.55 pm.

The House resumed at 3.25 pm.

PRIVATE MEMBERS' MOTION

HON P CUMMING:

Mr Speaker, I have the honour to propose the motion which stands in my name and reads as follows:

"This House:-

1. Notes with regret and disappointment the decision of the UK Government to close HMS Calpe and the speed and manner in which this has been carried out; and
2. Calls upon the UK Government to preserve the remaining institutional links, both military and others, between the UK and Gibraltar and to consider those links not simply in terms of items of defence expenditure, but as a manifestation of its continuing responsibility and political support for Gibraltar in the face of hostility from a foreign country, which responsibility cannot be measured solely in economic terms; and

3. Seeks reassurance from the UK Government that given the economic and political importance of the airfield to Gibraltar, it will not pull out of its existing financial responsibility for maintaining the airfield."

Mr Speaker, it would be nice for the sake of variety, if nothing else, for the Government to back a motion presented by the Opposition. In the past we have had motions hijacked from the words "This House" onwards and turned into a rather fulsome, self-praise and a rather absurd motion from the words "This House" onwards. I would dare to think that this could be the kind of motion that the Government could see its way to supporting. Nonetheless, I would like to make a few words of opposition to the local Government which after all, Mr Speaker, is my job. In brief outline, we are saying here to the UK Government, "Look you have taken away the dockyard, you have taken away the resident battalion and you have run down the PSA. Now you are closing Calpe and all this has done us an awful lot of damage and we would like to ask you to stop. Especially we would like to ask you, do not even think of giving up your financial responsibility for running the airfield because although as a community we aspire to self-sufficiency, that type of self-sufficiency is still a long way off. We have received one shock after another and we would now like to ask the UK to give us a long rest before we receive other such shocks". Of course the Government has expressed regret about the closure of Calpe. The Honourable Juan Carlos Perez published his regret and of course the Government does regret the closure of Calpe. It is muted regret. It is resigned regret, very resigned regret and it seems to me, Mr Speaker, that there is a correlation between the degree of resignation of the Government to MOD withdrawals and the speed of MOD withdrawals. Of course, the Government must be busy restructuring the economy but at the same time it should be busy exerting itself in political activity to stop or at the very least to slow down, further MOD withdrawals. The Government has totally neglected political activity aimed at slowing down MOD withdrawals on which we heavily depend and in the meantime whilst it stands aside shedding crocodile tears, the MOD continues with its programme apparently designed to withdraw itself from Gibraltar lock, stock and barrel in a timescale which does a lot of harm to our economy and with which we cannot keep up. In the inauguration of the Honourable the Chief Minister's first term of office, he said that Gibraltar could now start to recover a sense of dignity. He could perhaps more accurately have said, "From now on Gibraltar will be plunged into a continual state of insecurity." Whilst the Chief Minister was in the Falkland Islands counting sheep, he could not of course resist the temptation to give lectures on the economy to the poor Falkland islanders. We are told that he highlighted the importance of achieving self-sufficiency in the pursuit of self-determination and that is great.

The GSD also believes that and that is fine. But, it seems to me, Mr Speaker, that the pursuit of self-determination has become for the Chief Minister, not just a legitimate political aim but an overriding obsession. So he forces the pace towards achievement....

HON J C PEREZ:

HMS Calpe! I just want to remind the House of what we are talking about.

HON P CUMMING:

I think that if you have read the motion, Mr Perez. Mr Speaker, the Hon Mr Perez has obviously not acquainted himself fully with the contents of the motion. So the result is then that the pace of the economy is constantly forced forward in a way that just will not do. There is no amount of massive borrowing or frantic marketing which will give us sound economic growth overnight. Certainly not in the timescale which is so far enabling us to keep up with the MOD withdrawals. Now whilst the Government pursue self-determination at a pace almost reckless, of course our standard of living, as we can only expect, is coming down and especially the standard of living of the unemployed who have to live with just scrapping the bottom of the barrel. When the closure of the dockyard was first announced, Sir Joshua Hassan rushed to London and made, in a series of meetings, many political representations. When he returned to Gibraltar he returned directly to the House of Assembly from the airport and the gallery here was packed. I was sitting out there in the gallery anxiously like all of us were, to hear the results of his representations and I am sure, like most of us, we were very disappointed with the package offered in place of the dockyard. But there was a package, that is the point. There was a package. The UK Government realised it could not just pull out and wash its hands. It had a moral obligation to see that jobs were replaced; that money continued to circulate and it could not just leave us high and dry. So there was, because of the intervention of the local Government, an extension to the life of the dockyard. There was a job-creating scheme. Disappointing, yes, but there was a package of measures. Since then the resident battalion has been taken away. PSA has been run down. Now Calpe is to be closed. There has been no equivalent consideration, step by step of how the UK Government could live up to its moral responsibilities in alternative job creation and in general care of our community. Why is this so? The only factor in the equation which has changed is of course the attitude of the Gibraltar Government. This Government is nationalistic. It is proud and in the meantime the unemployed tighten their belts. Nationalism is a philosophy which has done enormous harm especially in this

century as the cause of wars and as the cause of xenophobia. In Spain today the remains of the National Movement in their thinking are the main cause, I would suspect, of our problems with Spain and this nationalism if fomented is going to lead us to many problems in the future. When the admiral appeared on television in reference to the closure of Calpe, he said in defence of its closure that similar units in UK have also been closed down. But that of course bears no comparison. The closure of Calpe and the closure of comparable units in UK simply do not bear comparison. If the Admiralty and the admirals have been told by the Government, "Look cut down on the Navy" then of course this they will do using their professional judgement and to them it makes no difference whether they cut a unit in Gibraltar or a unit somewhere in the UK. But the UK Government cannot wash its hands of that responsibility and when Mr Malcolm Rifkind visits us in the near future, no stone should be left unturned to impress upon him the responsibility, the moral responsibility that he bears for ensuring that our economy can survive. The closure of Calpe is not just an economic loss, although it is that. It is an educational loss, a cultural loss and above all a symbolic loss. It cuts one more link with UK being as it is an integral part of the Royal Navy. There will now be no Gibraltarians present in the NATO Communications Centre in the middle of the Rock and to the more paranoid amongst us, gets us thinking on not very nice thoughts about our future. In UK when military units are axed under the present system of "Options for Change" it cannot be compared to when they are closed here in its economic effects. Every person made redundant in the UK goes on the dole. Here we have no dole. If there are many redundancies in any areas, the Government helps with job-creating projects and of course the whole nation of lots of resources in some way share the load and of course this is just simply not the case in Gibraltar. The GSD recently warmly welcomed the visit to Westminster by the Chief Minister to address the parliamentary lobby of the Gibraltar Group and it appears that there was great interest in what he had to say. Many MPs turned up to listen to him and the event has been hailed as a great success and of course the GSD welcomed that and continues to welcome it. I did not hear of any representations made to those MPs, at that time, with a view to stopping or at least slowing down MOD withdrawals from Gibraltar. Unfortunately, a large interest in Gibraltar shown by MPs, on closer examination, does not automatically translate into unconditional support for Gibraltar's case as we see it. It is necessary, therefore, to methodically and systematically support the Gibraltar lobby in Parliament to keep them continually informed to try to interest more and more MPs in our case and not to assume that because they are interested, automatically, they will support Gibraltar's case from our point of view. The Gibraltar lobby, in the past, has been of enormous service to Gibraltar where under Sir Albert McQuarrie they were able even to stop the redoubtable Mrs Thatcher in her tracks. During

the years of the closed frontier, Britain did not hesitate to support and sustain Gibraltar because at that time one third of our economy which was not MOD related was under attack from Spain. It had been dealt a severe blow by Spain and Britain therefore did not hesitate to support and sustain. But what is happening now is that two thirds of our economy which has been involved with the MOD has now been dealt a series of severe blows by the UK itself at the time when a third of our economy, not MOD related, is still under attack from Spain, so that the attempts to increase the size of the economy is obstructed by them. So, therefore, the thinking behind the support and sustain policy is the same today but even more so if only we wished to press UK on those grounds. The problems of removing the MOD from Gibraltar at the speed which is being done and to the extent which they may be thinking, sends ambivalent signals to Spain, because Spain, has never believed that the reasons that UK will not entertain passing Gibraltar over to them has anything to do with the rights of the local community. In the famous red book where Spain gathered together all the documents in the 1960s of their claim to Gibraltar, they made crystal clear that they simply do not believe that. Now when they see the MOD being removed from Gibraltar it gives them a signal which they may interpret to be that UK is now no longer interested in maintaining the base and is no longer interested in supporting and sustaining Gibraltar. This confirms them in their hard line attitude to Gibraltar where they think that by bullying they can subdue us to go in a direction which we are not willing. These are of course recessionary times and some may think that this is not a time to be pressing for aid. But we must keep this in proportion. Gibraltar is a drop in the ocean and Britain is still a powerful and rich nation. John Major has recently been visiting India and during that visit, the media has been obviously focusing on British/Indian relations and the aid that Britain gives to India. It is to the tune of £100m annually. That is to a country which has large resources and above all is independent and towards which Great Britain has no direct responsibility. Whereas to us it has a direct responsibility. We saw yesterday the Honourable Mr Montado, swearing his allegiance to the Queen. The Queen on her coronation swears an oath of allegiance to us. This relationship works both ways if we wish to take advantage of it. When the Honourable Leader of the Opposition visited the Foreign Office last year, we were surprised to find that in fact no request for aid had been submitted from this Government because we do not need it or because asking for such aid is not according to their philosophy. Do we not need, for example, a new hospital? Is not a new hospital a big investment in our future? Do we not need desperately a dole so that those facing redundancies have some security behind them? But of course the best aid that we could receive would be through the MOD. That is to say that they maintain their position here. It is not as if they have not been making good use of the MOD facilities here recently

since the Falkland War and the Gulf War, the Libyan tension and now units on their way to Bosnia have been making full use of Gibraltar. Even in those cases where the Admiralty and military professionals advise that a certain cutdown is in order, nonetheless for political reasons of support to Gibraltar, Britain can be persuaded not to look on the matter simply from the professional point of view of the military but from the political point of view of sustaining and supporting Gibraltar. There has been, in any case, at the moment, in the UK much discussion whether "Options for Change" and the decisions made to cut down on the British services have in fact already gone too far and left Britain unable to respond, as she would like, to unrest and military problems throughout the world. So now is a good time to say to UK that things have gone far enough and we would ask them that they do not go any further. A request for compensating aid every time one job has to be axed in Gibraltar because of them, is not like requesting aid for example in Somalia. Undoubtedly, if we reached that need of aid, it would be forthcoming, not just from the UK but perhaps even from Spain, who knows? The situation of aid is entirely different. It falls into a completely different category when we address ourselves to the question of aid from the UK. This is not the beggar's bowl. It is a polite request that they should carry out their responsibilities to us and meet their moral obligations. I would call upon the Government not to mislead the people of Gibraltar on this issue with an inappropriate nationalism or a political megalomania but to extend the scope of their activity to a two pronged approach so that while we do strive to accomplish selfsufficiency, at the same time, we ask the UK to meet their obligations and slow down or stop their withdrawal from Gibraltar. I would ask the Government, in view of the seriousness of this matter, to support the motion and, 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 P Cumming.

HON LT-COL E M BRITTO:

Mr Speaker, as hon Members on the other side are aware, I have in the past have had considerably connections with the MOD in a personal capacity for a reasonable period of time, indeed like you yourself, Mr Speaker. Perhaps it is fitting that it should be I who should take the opportunity of this motion to pay tribute to the men and women of HMS Calpe for the work they have done during all these years that HMS Calpe has existed which indeed was recognised by this House in granting the Freedom of the City to HMS Calpe. I know the spirit in which volunteers - which of course is what all the members of HMS Calpe are - work in such a sphere. I know the spirit of self-discipline which powers them, which motivates them and knowing this I think I probably in this House realise better than any other Member either on this side

or that side, the considerable effect both in morale and in spirit that the speed and the manner in which the closure of HMS Calpe was announced has and the effect that this will have had on those volunteers - those men and women of HMS Calpe. It is indeed to their credit and to their discipline that despite the adverse effects that it will have had that we have seen no public demonstration from them in any way adverse to their masters - the MOD. But we on this side certainly, Mr Speaker - and it is expressed in the terms of the motion - view with considerable regret the way in which HMS Calpe has been closed and indeed the fact that HMS Calpe is going to be closed at all. We view with some concern the element of contradiction in some of the remarks by Admiral Sanders when announcing the closure of HMS Calpe. In one word he was telling the people of Gibraltar that HMS Calpe was no longer needed and a couple of sentences later, he was saying that should the job that HMS Calpe was doing now were to be needed to be done again in the future, then it could be done by bringing a UK team or bringing UK servicemen out to do it. I can speak freely on this because in my time with the Gibraltar Regiment, I have had no contact at all with any of the topics that I am touching now so I am not bound by any secrecy. I am speaking purely in a personal capacity. It seems to me that the jobs or some of the jobs anyway that HMS Calpe are doing, will still be needed even in a minor role in the future. Because of this, Mr Speaker, I cannot help once again, from a personal viewpoint, wondering whether the motivation or the reasons for closing HMS Calpe go far beyond the economic which would be stupid anyway because we are talking about £200,000 annual budget which is nothing, absolutely nothing in terms of the MOD budget. So it must go far beyond the economic and it must be verging on the political and I wonder indeed, Mr Speaker, whether this is one more step towards the eventual transfer of the maritime control of the straits away from Gibraltar and to a point in one of the other neighbouring countries. Because of this, Mr Speaker, I would like to call from this side of the House for MOD to demonstrate that this is not so. That these are not the reasons for the closure of HMS Calpe. I would like to see HMS Calpe rather than closed, being kept in, if necessary, a minor role with reduced numbers. Rather than the ship be sunk out of sight that at least the fore-castle be kept afloat and that the presence be kept as a manifestation of the spirit of Gibraltarians to serve Gibraltar or in the defence of Gibraltar. Finally, Mr Speaker, I would like to dwell briefly on what seem to be coming - the final moments of HMS Calpe because I have little optimism that my call for maintaining HMS Calpe in a small role would be held. There has been quite a reaction in some sections of the press, Mr Speaker, for the members of HMS Calpe, as it were, to mutiny, - to refuse to go on a sort of final parade to show their disdain and disgust by not having some sort of final parade. Indeed, Mr Speaker, I agree up to a certain point. It would be a little bit difficult, not to put it any more strongly, for the members of HMS Calpe to do or to appear or take part in what I would call in inverted commas a normal parade. The sort of thing that we see on the Queen's Birthday or on the

Ceremony of the Keys where a certain number of VIPs, both military and civilian, both Gibraltarian and non-Gibraltarian sit and the unit parades. That would indeed be very difficult for people to do with dignity knowing that they are indeed seeing their own demise. But there is the other side of the coin, Mr Speaker, and I put it to those sectors of the press that have been advocating a withdrawal from the scene with nothing at all. I put it to them that the members of HMS Calpe have a lot of pride in HMS Calpe. They are not disappointed with themselves or with their ship. They are not in any way ashamed of what they have done and they, I am certain, would not like, one Tuesday in the middle of March, to lock the door of their premises at Queensway and go home in the middle of the night like - I was going to say rats leaving a sinking ship, but would create the wrong impression and I do not mean it in any way to be insulting - sneaking away in the night as if they were ashamed of HMS Calpe. I am sure that is not the way they feel, Mr Speaker, but because of pressures from some sectors of the press, there is a lot of confusion amongst the members. I put it from this public standpoint, Mr Speaker, that what would be ideal from the point of view of HMS Calpe would be for them to form up somewhere in the north of Main Street in the area of Casemates and for HMS Calpe to march proudly and exercise their right to the freedom of the city which this House of Assembly has given them, to march up Main Street, to stop outside this House of Assembly, Mr Speaker, where I would hope Her Worship the Mayor would take the salute from HMS Calpe in representation of the people of Gibraltar where she could receive in return the scroll of freedom which this House gave HMS Calpe, for safekeeping somewhere in the museum. Then HMS Calpe would be going out with dignity and with the support of the people of Gibraltar who I would hope would come out in the hundreds along Main Street to show not only their support for HMS Calpe but also their disappointment and regret that HMS Calpe is going to disappear. In this way HMS Calpe would go out with dignity, with the support of the people of Gibraltar, and with the support indirectly of this House through the Lady Mayor and then having handed over their scroll they could then carry on up Main Street and dismiss on Sir Herbert Miles Promenade. Then down into the premises on Queensway which is conveniently down the steps. In that way they would depart with dignity and with the support of the people of Gibraltar and I hope that that suggestion is taken in the right quarters.

HON P R CARUANA:

Mr Speaker, I would like to be very brief and limit my intervention to one or two points. The first is that the first paragraph of this motion is intended as an expression of continuing support from this House for the

present and past members of HMS Calpe. If there are those in the Ministry of Defence that value their contribution to this community only in terms of pounds, shillings and pence, then there are others in this House that do not and that, therefore, this House continues to support HMS Calpe as a concept and continues to support the individuals within it. I have to say, speaking for myself, that I regard as almost disingenuous the attempt to justify the closure of HMS Calpe by reference only to its cost which I think is overstated at £200,000. I think there must be a little bit of imaginative accounting to come up with that as the real annual cost of running HMS Calpe. But I will say this, if I am wrong on that and it is only that the decision to close HMS Calpe has been taken by reference only to cost, then I say that that is an insensitive and inappropriate approach for the Ministry of Defence to have taken to a decision of that kind. The second part of this motion is intended, hopefully, to send the signal from this House that the British Government through the Ministry of Defence should not consider that financial considerations are the only ones that they need to address or the only ones that they are required to address when further dismantling their presence in Gibraltar. The whole of that second paragraph, Mr Speaker, is calculated to state that proposition in terms which hopefully Government Members will be able to support because it is all too easy, Mr Speaker, at a time when the Ministry of Defence is unquestionably retrenching in the United Kingdom and elsewhere and given that the majority of the British presence in Gibraltar is channelled through the Ministry of Defence, it is simply too convenient and too available an excuse that they say "Well we are closing down in Gibraltar but we are also closing down in Devonport." The fact of the matter is that there are two considerations which they have to take into account in the case of Gibraltar which they do not need to take into account in the case of Faslane or some other defence facility in the United Kingdom. Firstly, the political impact in terms of how others, notably Spain, may choose to interpret that as signalling diminishing British support for Gibraltar politically and secondly that when the Ministry of Defence is a principal employer, a principal contributor to the economy of a town or a region of the United Kingdom, the Ministry of Defence does not pull out and that is the end of the involvement of the British Government. One department of the British Government pulls out and another department in the form of the Department of Trade and Industry and others, launch themselves into hyperactivity in the form of job-creation schemes, in the form of development aid and regional aid, in the form of even European Community financial assistance designed to minimise the impact of that Ministry of Defence withdrawal from that area. The fact remains that this Government, this community does not have available to it the financial resources to deal with the consequences of an MOD pull-out in the same way as the British Government would deal with an MOD pull-out from a town in England or some other part of the United Kingdom.

That is a consideration which by itself, in my submission, disentitles the British Government from dealing with defence pull-outs in Gibraltar by reference to the same criteria as you would deal with them in relation to pull-out from parts of the United Kingdom. The third part of this motion, Mr Speaker, is intended to put a marker down that let not this list of defence pull-outs, consequential as they are to us in economic terms, stretch to areas in which not even the British Government could consider that without making other sacrifices that we should not be called upon to make contrary to our wishes, it could actually extend to something like the airfield. Because whatever we might think about the closure of HMS Calpe, we can continue to function without it. Whatever we may think, even about the pull-out of the regiment or the pull-out of PSA, those are things which have an impact on our economy and time will tell the extent to which we can overcome the difficulties and what price we have to pay in the meantime whilst we place ourselves to overcome those difficulties. I believe that if the British Government and the Ministry of Defence extended to the airport the same criteria of simply deciding whether it should continue to pay for it on the basis of whether it is justifiable in simple military requirements, military requirements of the United Kingdom military machine, then that could easily result in the Ministry of Defence concluding that as it has no military need for the airfield that it should just pull out of its financial responsibility for it and say to the Government of Gibraltar of the day, "Well here it is under the Lands Memorandum we are transferring the airfield to you". That may well impose, in fact, I would venture to suggest would impose without perhaps coming to some other arrangements which would be unpalatable and hence the unfairness of choice, to a financial strain on a Government of Gibraltar, either presently or in the future, which would in effect deprive us of the politically and economically important asset that is the airfield. Therefore, Mr Speaker, in the third paragraph of the motion we call upon the United Kingdom Government to take note of the importance that this House attaches to the airfield and to the fact that it must continue to support it at least until such time as a Government of Gibraltar in the future indicates to the Ministry of Defence that we are now ready, able and willing to assume that burden for ourselves. Mr Speaker, this motion is intended, as drafted, to enjoy the support of Government Members and when we come to voting on the motion, Government Members will of course not lose sight of the fact that what we are voting on is what the motion says and not

HON CHIEF MINISTER:

What Mr Cumming said.

HON P R CARUANA:

Well what Mr Cumming said or even his style of presentation or something that I might have said or my style of presentation that Government Members may or may not agree with in respect of the details.

HON CHIEF MINISTER:

Mr Speaker, I am answering for the Government. Let me just say that the Leader of the Opposition is wrong in saying that it is not a question of whether I like the style or I do not like the style of Mr Cumming. Mr Cumming has not spoken to the motion before the House. If one were to limit oneself to what he had said, effectively we would be dealing with a censure motion on the policies of the Government of Gibraltar, not a censure motion on the Government of the United Kingdom for closing down Calpe. The Government has no difficulty with the motion and the Government has no difficulty with the contributions of Colonel Britto and the Leader of the Opposition but certainly the Government cannot vote in favour of a motion where the mover of the motion explains what the motion is about to seek the support of the House and in the course of the explanation reveals that, for example, he has now decided that the problems that Gibraltar faces is because I am a resigned, indeed a very resigned, muted nationalist suffering from megalomania. I am supposed, having been persuaded by that, to vote in favour of the motion. Frankly, I think the contribution the hon Member has made in support of this motion must rank as unique in the annals of the history of debates in this House. I think it is worth framing it, Mr Speaker. It is either the ravings of a madman or else he intends to use whatever opportunity there is to stand up on his feet to launch an attack irrespective of the relevance of the attack to the subject matter that we are discussing. That is not the way we are supposed to function in the House. The hon Member is entirely in his right to come here and bring a motion censuring the Government on its policies on unemployment. It is his right to do it. Nobody can stop him! He can bring hundreds of motions on every single subject but what he is not normal under the rules of the House and of any other parliament anywhere else is that you say, "We are bringing a motion which is a consensus motion to give support and warmth and solidarity to the people who are being told "Calpe is being closed overnight and you have been packed off home" and the way to get this warmth and solidarity and consensus is that we launch an all out attack on the Government of Gibraltar" and effectively if one is going to say there is a connection between the two, it means we are responsible for closing Calpe. The logic, if one can assume that it is possible to transit such a concept to the Honourable Mr Cumming, which I doubt, but the logic, if he makes an effort, must be that since his opening remarks stressed all the things that we are doing wrong in a motion that regrets the decision of the UK Government to close HMS Calpe, it is

because the ultimate responsibility for that decision rests with us. Fine! That is a possible view of life which he is entitled to have but he can hardly expect us to vote in favour of that view and of course that is substantiated when he draws attention to the fact that he reckons that the reason why the United Kingdom is not increasing its military forces in Gibraltar as opposed to reducing them, is because of our resigned, muted, anaemic character. We are not a fighting lot, so we do not take them on, we are scared of them or whatever it is, or else we are too nationalists and too proud. It is neither one nor the other! The Member does not live in the real world and he is doing no service to the people who voted for him and to Gibraltar's future if he actually goes out trying to persuade people that the reason why the United Kingdom is pulling out of Gibraltar, which it is, is because we are not doing enough to get them to stay here and not pull out. I can tell the hon Member that if he had taken as much interest in Gibraltar's political future as I have since 1972 and had followed what has gone on in the House, he would know that in fact when I was on the other side of the House, I was concerned about a deal being done on the airport and this House passed eight unanimous resolutions, all of which were drafted on the basis of persuading the Government of Gibraltar to side, as it were, with the view being expressed with the Opposition in the knowledge that it is not always easy to do that in Government. Obviously on no occasion did we attack the Government of Gibraltar on the subject, but it did not stop the Government of the United Kingdom signing a bilateral agreement with Spain which is in flat contradiction with all eight motions. All of them! I did not turn round and said "Well the reason why the UK Government has signed an agreement with the Spanish Government is because the Government of Gibraltar is resigned and muted and this and the other. What I attacked the Government of Gibraltar about, at the time, was having said no in the House then defending it outside and it would be wrong if we as a Government said in the House, "We think it is wrong for the British Government to close down HMS Calpe" and then once they close it, we came out publicly and said, "Well in the circumstances this is the best we can do." No, we are not saying "In the circumstances it is the best we can do". What we are saying is "Yes, it is wrong, yes, we agree with this motion." But what we cannot accept is that if we are going to say "The important message that this House must send out to the UK Government on the one hand is that we are, frankly, disgusted with the way you are behaving in relation to your commitments in Gibraltar" and on the other hand to the people in HMS Calpe, "Look we have got a great deal of sympathy for the way that you have been treated which we think is shameful." If that is the message from the House, then that message cannot go out on the basis of the analysis carried out by the mover of the motion who is supposed to be the person bringing the subject to the House, trying to persuade us why we should all vote in its favour.

We are, in fact, going to vote in favour of the motion because we think we owe to the people in HMS Calpe and we owe it to the people of Gibraltar, no thanks to Mr Cumming, frankly, because on the basis of what he had to say, the correct response from the Government would be to move an amendment altering the motion and he started off by saying that he hope we would not come along and change every word after "This House" and put something in its place because this motion was supposed to be a motion on which we could all agree. Then he gave us every single reason in the world why we should do it, having told us he hoped we would not do it. Of course, Mr Speaker, in the motion there are things that I think we need to respond to in order to put the record straight as far as we are concerned. The Opposition Member, in moving the motion, talked about getting aid for a new hospital, getting help for people who do not get the dole. Saying that India is a very rich country. Certainly he should stay there a little bit longer and then he would find out there are one million people homeless in New Delhi and one hundred thousand every day dying of starvation. He says that the British give £100m to India for whom they have no responsibility, which has lots of resources and we do not get anything. Well, frankly, I do not think we are in the area of competing for money from rich European countries to third world countries, like India or Somalia, I do not think we are in that league. We certainly believe that the United Kingdom Government is not fulfilling its obligations to Gibraltar and to the Government of Gibraltar to help it overcome the difficulties that are being faced by our economy. We believe that they are not being fair to us. We do not believe that they are not being fair to us because I do not ask for it and Sir Joshua Hassan did. We do not even believe that they are not being fair to us because he was knighted and I am not. We do not even believe that either. We believe that they are not doing it because the view of the British Government today in 1993, is not the view of the British Government that was there in 1983, because we believe that if the Argentinians had invaded the Falklands in 1992, they would have stayed there. But because they invaded in 1982 and Mrs Thatcher was there, the British Government gave the people of the Falklands in 1983 the equivalent of £450m. They gave £30m to two thousand people which is the same as if they had given us £450m. They have given more to the Falkland Islands in one week than Sir Joshua Hassan with all his running backwards and forwards achieved in his forty years. So it has nothing to do with whether you rush off to London to get help or you do not rush off. They did not even ask for it. They just got it because Margaret Thatcher said "We sent our lads over there. We have lost 265 lives and now we have got to put our money where our mouth is and make sure that that place survives." Let me say that when the money that Mrs Thatcher provided ran out they have not had a penny. In-between counting sheep, for the benefit of the Opposition Member I managed to discover

that and quite a number of other useful things which I think will help us in our dealings with the United Kingdom when we are able to draw attention to differences in treatment in more than one area. If I deal with the hon Member's point about getting aid so that we can provide dole for people, let me say that our concern is not so much getting aid so that we can provide dole for people, it is so that they stop sending us people who are on the dole. The problem we have got today in Gibraltar is, as I have mentioned already publicly in reference to the unemployment situation, is that we are getting forty to fifty unemployed UK people coming to Gibraltar every month. Therefore, they compete for us with jobs and that is something that needs to be addressed. Forget sending us money for the dole. It is the people on the dole that they should not send us and they have got a lot of those to send us. Over three million and going up at the rate of 50,000 per month. Clearly, all these are important things that are legitimate for this House to consider, but frankly I do not think that it is relevant to the situation that has been faced in the closure of HMS Calpe. Certainly the Government of Gibraltar was given an indication of this on the offing shortly before it happened. There was hardly any prior indication given and we made our views known in the strongest possible terms. In fact, I even made reference to a proviso that there is in the Colonial Navigation Act which allows the colony to set up its own navy to see if that would help in my usual nationalistic, megalomaniac way. But even that did not work, I am afraid. We are certainly entirely in consonance with the views expressed by the Leader of the Opposition and Colonel Britto as to the way that this has been done and the fact, I cannot say frankly that I question the motives of the British Government and I think this goes beyond the economic and it is politically, like Colonel Britto has said. I certainly think that for the British Government saving £200,000, if that is what it costs, is totally relevant in the context of what they are facing in the management of their economy which is a deficit of £1b a day. So the cost of HMS Calpe is the deficit of about five minutes of the United Kingdom, if that is the saving that they make. I do not think that the fact that the MOD presence is being run down in Gibraltar justifies the idea that Spain can take comfort from that and, therefore, that we are being abandoned to their mercies by the UK Government. But certainly we should do nothing ourselves to encourage the legitimacy of such a view. It is certainly not a view that I share because I honestly believe that ultimately the best safeguard that the Rock of Gibraltar has got are its people and nothing else. Therefore if that resolve of the Gibraltarians in their attachment to their homeland is something that Spain hopes to see weakening one day, then the position of the GSLP is that that will never weaken whatever happens to the MOD. I regret to say, Mr Speaker, that although we are voting in favour of this motion, as it comes to paragraph 3, what Mr Cumming said and indeed what the Leader of the Opposition said suggest to me that they really have kept up with the statements that we have

made on this particular subject to date because Mr Cumming says that the purpose of this, which we will of course transmit to the British Government, is to tell them "Do not even think about giving up your financial responsibility for the airfield." They have already thought about it. So if the message you want me to give them is "Do not even think about it", then I can give you the answer now already. They are thinking about it. They have thought about it and I have already said so publicly. So why do Opposition Members want me to go and tell them not to even think about it? It has already been thought of.

HON P R CARUANA:

That is not what the motion says.

HON CHIEF MINISTER:

No. It is not what the motion says. This is what the mover of the motion explained was the message that we should be taking back. I took it down when he said it and he said "When we carry this motion, what we expect is that the message should be taken back to the UK. I assume this because since I am supposed to be this megalomania, he is obviously preparing my speech so that I can behave like one - and I am supposed to go up to John Major and say "Look Major do not even think about closing my airport." In which case John Major collapses in front of me presumably. I am afraid they have thought of it so that step I cannot take to please my friend Mr Cumming. The position as regards the airfield is that the UK Government has only agreed to pay for it up to 1995 and I cannot tell this House and the people of Gibraltar with a degree of certainty what will happen in 1996. Between now and 1995 you are going to have a process of privatisation, if you like, of military activities, but it will still be funded by the Ministry of Defence. Therefore, the contractors will move in and at the end of the contract period we will wait and see. Our position as a Government has been to say to them "Look we are very clear, we cannot move in and take responsibility for this. We are prepared to look at it when the time comes and then of course if the people of Gibraltar are then so well-off that they can afford to have the airport and run it and you want to give it to us, we will look at it at the time, but at the moment if you say that you do not want the airport, you can have it, the position is that you give it to us in the morning and we close it in the afternoon." It is as simple as that. There is no choice. There is no way that we could find money to run that airport because the cost would have to be found by savings and there are insufficient savings without big inroads into areas of social

responsibility which are simply sacrosanct, like education and so on. There is no choice. The analysis of the Leader of the Opposition is absolutely right. If that was the choice it is no choice. I think it is important to stress that that is something that has already been spelt out to them crystal clear. So if tomorrow they were to come back and decide to do it, it would not be because they did not know what the impact was. They know what the impact is. They have been told what the impact is. It has been demonstrated to them factually with figures so there is no question about it and therefore we have to assume that if they do not want us to be either without an airport or without an education system and they do not want us to be faced with that choice and they do not want us to be driven into politically unacceptable agreements which we would not be driven into because we are not the kind that gets driven into things, then they would not go down that route. So as far as we are concerned the message to Her Majesty's Government seeking a reassurance from them that they will not pull out of their financial responsibility for maintaining the airfield is one which we fully support because we have already spelt out in the starkest possible terms what would be the consequences of such a pull-out. Therefore, they could not in any way argue if they went down that route that they did not realise what the effect would be on us. They do know what the effect is. All I am saying to members of the House is that the fact that they know that the effect is as drastic as it is, does not mean that I can guarantee to anybody that it will not happen. Obviously we consider that the motion brought by the Opposition seeking this reassurance is one which is of great value because it shows the unanimity that there is in the House independent of other differences on this particular point and therefore we welcome the fact that that is there and that we will be able to take it forward as the united view of this House. On the second paragraph, Mr Speaker, I am not sure that the defence expenditure declines necessarily are linked with the political responsibility that the UK has because I honestly believe that in many respects our greatest friends are within the Ministry of Defence. That is to say quite often the battle is between the Ministry of Defence and the Treasury in the United Kingdom and the Treasury are looking at it from a purely domestic point of view. It is a difficult thing to get across but I can assure the House from my experience of dealing with the British Government now for five years and perhaps more intensively than was the case in the past since they do not just make the occasional visit at a political level, I actually know on first name terms most of the drafters of the policies in the different departments, which sometimes is quite a useful thing, is that we are not dealing with a monolith. Although for us we tend to see what hits us from UK as the UK doing this or the UK doing that, the reality of it is that quite often there seems to be a domestic battle with different departments recommending different sorts of actions. There certainly was that, I can assure the

House, in respect of the financial services. There was within the UK a group preparing a policy document for the Cabinet to decide on recommending that the best way for the UK to protect itself in terms of the application of financial services legislation in Gibraltar was simply to scrap the role of financial services legislation in Gibraltar and supplement it with a photocopy of the UK and we would cease to exist as an independent entity. Now the people who are saying that were not saying that because they wanted to be hostile to us or because they wanted to hand us over to Spain. They probably did not know whether we were next to Spain or next to Malta. They were looking purely at their own domestic responsibilities and saying, "How can I have a 100% safe system for my Minister." Therefore whatever the damage it does to them, that is not what I am paid to do. I am paid simply to look after my patch of the jungle. At the end of the day the people who are dealing with us in the Foreign Office were given a very clear signal that whether they intended that to be a declaration of war or not, we would certainly assume it to be a declaration of war and act accordingly. Therefore, that effectively meant that the thing was looked at in a different light and somebody came along and said, "Well wait a minute we cannot just look at it from a point of view of what is good for UK. We also have to look at it from the point of view of what is good for Gibraltar and what is bad for Gibraltar and if in fact it is going to have such a negative impact on Gibraltar's ability to survive, the reality of it is that we are going to have to have an all out constitutional showdown with Gibraltar on its ability to legislate." My argument was they were effectively throwing the Constitution out of the window. If the UK can decide when we can legislate and when we cannot, then let them legislate totally and we pack up. The result of that was that a consensus was reached where the policy then put to the Government of Gibraltar by the UK Government was not the one that one section was advocating or another section was advocating but one which tried to reconcile the conflicting things. This, I think is part of the problem that we sometimes face in dealing with situations that we do in the United Kingdom. So if we are dealing with Merchant Shipping, the fact is that we are dealing with the Maritime Section of the Department of Transport who will have a particular input. In the different decisions it is quite clear from my experience that the Ministry of Defence per se is more sinned against than sinned. We have no particular reason to defend them one way or the other, frankly, but we have to say that from our knowledge, they have generally speaking consistently put up a fight against the cuts and generally speaking supported a diminution of the severity of the cuts and they have not done it using our arguments. That is to say they have not argued because of the poor Gibraltarians, because they are going to be on the dole or because...no. They have argued that Gibraltar is still a worthwhile facility. That the level

of investment is good value for money and that it does not make sense to cut. I am sure that that kind of argument has gone on internally as well in the case of HMS Calpe and I regret that it appears to have been lost and there is certainly a not very good track record of successes in these things. From recent events, the MOD is consistently losing one after the other. When one analyses, Mr Speaker, in May the closure of PSAI, which is of course more serious than this because there are people losing their full-time jobs, what logic can there be in making everybody redundant and then the work that the people who were redundant were previously doing gets given to a new contractor for three years? Then presumably in three years they have to make another lot of people redundant. In other places they have been successful in getting the MOD to assume that work and that is what the Union here tried to do. What had support from the Government of Gibraltar and had quite a lot of support from His Excellency the Governor and from within the MOD establishment was to keep in more of the work in-house. Unfortunately, people were told in London that it was a political decision and that is it. At the end of the day it is a matter of policy. We do not want to do work with direct labour. So we are going out to contract and that is the end of the story and we have lost that one. So I think the message with which we totally associate ourselves in voting in favour of this motion is one that we understand and sympathise with the shock of the people of HMS Calpe, who only two years ago were celebrating a motion in this House on their twenty-fifth anniversary when we handed them the Freedom of the City, with every expectation that they would be there for another twenty-five years. As the Opposition Member has said they should end their role with dignity and I think it is a matter for them to decide how best they do that but they should know that we certainly see the end of that as something that, unpalatable as it is, we are going to have to face this on more than one occasion from now on and the sooner we come to terms with that reality the better. But we do it with our head high. The UK does need reminding of, frankly, the way it is reducing its presence in Gibraltar and not giving any help at all. We simply asked, Mr Speaker, over a year ago for assistance in making a technical assessment. That was the first thing they did in 1983 for the dockyard when the dockyard closed before they decided to provide any money and before they decided what needed to be done to replace the hole left in the economy when the white paper came out in 1981 on the MOD cuts. The first thing was they contracted a specialist firm called PEIDA to carry out an assessment of the impact and to make a series of recommendations as to the measures that could be taken and what they would cost in order to cope with that negative impact. We have asked them to do a similar exercise which is stage I and the answer is - they have not turned it down flatly-but they have said, "We are not convinced that there is a need to do a study to establish what the impact is and even if there was a need to do a study we are not convinced that we

should be the ones paying for it and not you." "Well the reason why you are paying for it is because you are the one who is doing the cutting, not me." So that shows that it is not a question that they do not give us any money because they have got a pot of gold there waiting for us, as it were, come over or high horse and ask for it. This is not the case. The case is that we have actually submitted proposals in writing for Stage I of any such exercise of getting assistance which is to do an analysis of the assistance that might be required and that has not had a positive response. If that does not happen nothing else can happen and that is something that they would need to do really because at the end of the day, they are certainly not going to give us money because I dream up a scheme and I put a price on it. If they ever get round to giving us any actual tangible help it will have to be on the basis of them sending out people here who then go back and make recommendations to them. What we have said is, "Look at what we have already done. It is a good thing for us to have somebody, if you like, being able to look at it with more objectivity, from a distance and then look at what would be the ongoing impact of more MOD cuts, PSA, the RAF and so on and then let us see what we can do to counteract any of those." Well that has not been accepted yet and in fact hon Members will be aware that when the House of Commons delegation was here recently that was one of the areas that I asked them to give us support on and to raise with the UK. I do not know whether they have done it and if so whether the chances of getting that assistance has improved but it is not very much to ask for. Just for them to pay for a couple of economists to come out here and do a study and a report. So on that basis I would assure the mover that frankly if I thought the UK was willing to give us £2m or £3m a year, I am certainly not too proud to hop on a plane tomorrow and go and ask for it. I confirm, Mr Speaker, that we will support the motion.

MR SPEAKER:

If there are no other contributors I will ask the mover to reply. May I point out that in replying and I mean it also for all the other motions, the mover cannot introduce any new matter that is not mentioned in the original speech.

HON P CUMMING:

Mr Speaker, I did not imagine that because the Government should vote in favour and therefore go off to UK and UK would collapse round and change their policy forthwith and do all the things that we ask. That in itself is good. It is nice but it is not going to achieve the followup and the attitude and the policies that we want.

I hope I have not said that I blame the Chief Minister for the withdrawal of the MOD. That is not what I have said. I have referred to the timescale and to the extent and it seems to me that by not giving sufficient attention to these matters the Hon the Chief Minister lets the British Government off the hook just that little bit too easily in its responsibilities towards us. I accept from the Hon the Chief Minister that he has made all these representations, that he has been on the ball to suggest to them ways that they can help and so on. But there is still the question of the lobbying because if we know that there is something that we want from them that they are going to be not all that keen to give, there is all the work on the lobbying in which we can inform Members of Parliament and encourage them to help us. It seems that very often Members of Parliament are not informed of our situation. They do not know what the issues are here. They do not know how we feel about them and though there is sympathy and interest we have to couple that sympathy and interest with the policies that we seek to achieve. They have to be given the full picture and this is a political activity which we feel that the Government neglects. I have not said, Mr Speaker, that India is a rich country. I said it was a country with large resources and that it could work upon to make itself a rich country. What I wanted was to put in a sense of proportion. My sole objective was to introduce a sense of proportion to the question of aid from UK to Gibraltar in these recessionary times. I do not think, Mr Speaker, that there was anything wrong on my part in pointing out to the Government that it could increase its activity to do the things that this motion may achieve because this is a very straightforward motion and with a simple explanation of course it is to be hoped - we never know with this Government - that this would automatically receive their support. Indeed it has and we are glad of it but nonetheless I would prefer to address the issue of representations and lobbying in UK rather than simply for the Government to support a motion that I put forward. So to sum up, Mr Speaker, we recommend a two-pronged approach. Our economy, the restructuring, pursuit of self-determination by achieving self-sufficiency but at the same time a concerted effort not just by dealing with the Government but by dealing with the Parliament through lobbying to achieve a slow-down of their withdrawal and a commitment towards maintaining the airfield. I commend the motion to the House.

Mr Speaker proposed the question in the terms of the motion moved by the Hon P Cumming which was resolved in the affirmative and the motion was carried unanimously.

HON F VASQUEZ:

Mr Speaker, I have the honour to move the following motion:

"This House:

1. Reminds the Chief Minister of his statement in this House in 1984 when he was Leader of the Opposition, that: "..... the Gibraltar Socialist Labour Party is fully committed to GBC Television. We think it is essential in keeping and maintaining the identity of the people of Gibraltar that that service should be maintained";
2. Notes that the Government's subvention to GBC has been frozen at the same level since 1985/86 and the licence fees since 1979;
3. Calls upon the Government, in the interests of keeping and maintaining the identity of the people of Gibraltar, to provide adequate funding to GBC Television so that that service to which they were in 1984 "fully committed" can continue to be provided by the staff of GBC who have both the professionalism and the ability to do so given adequate resources."

Mr Speaker, there is a sentiment and a concern that underlines the motion which I sought to bring before the House and that is, Mr Speaker, that the Opposition feels very strongly that public service broadcasting is essential to Gibraltar. That is a sentiment which not only the Chief Minister has expressed on various occasions when he was Leader of the Opposition but also which this House has on a number of occasions expressed in various debates and motions. It is an inescapable truth, Mr Speaker, that in a small community such as our own which is striving to establish and consolidate its national identity, public service broadcasting is absolutely essential. It plays a vital role in the propagation of local affairs in putting forward local comment, in fostering local debate, in providing local news and information and in developing local sport and culture. The fact is, Mr Speaker, that even though, people on their television sets now have any number of channels to choose between, the vast majority of Gibraltarians still come back to Gibraltar television and radio to pick up the local news, to plug into local affairs, to listen to local debates, to watch local cultural events on television and generally to keep in touch with issues of local importance. It is, in my submission, Mr Speaker, a fact that GBC television is an extremely important factor in forging the national identity of Gibraltarians. This House has debated this point many times in the past. As recently as in July 1991, this House approved the motion and acknowledged the vital role that public service broadcasting plays in the life of the community particularly with regard to local current affairs, information and news, cultural and sporting activities. So, I think everybody in these chambers, Mr Speaker, would agree with me that GBC television is performing a crucial role in local affairs, in forging local identities and it is absolutely essential

that it be allowed to continue and prosper. So that is, as it were, the central concern in sentiment but running in tandem with that concern is the concern, Mr Speaker, that the present administration simply is not providing satisfactory financial arrangements to ensure the survival of GBC. The premise that we have to begin with, Mr Speaker, is the following, and that is, that GBC Television has never been self-financing. It has always needed a subvention and it probably never will be self-financing. At the moment, however, Mr Speaker, the Corporation lurches from crisis to crisis. It has to come cup in hand to Government on a number of occasions every year just to keep it afloat to pay its monthly overheads and as a result of which both the staff and the management are extremely demoralised. The fact is, Mr Speaker, that because of this continued week by week financial dependence on Government, it has lost any semblance of forward planning capability and, let us face it, it has lost any semblance of independence. The first quality of any independence, Mr Speaker, is financial independence. The independence which we feel in this House, Mr Speaker, is essential. It is an essential ingredient of a successful public broadcasting capability. It is the view and I shall deal with it in the course of proposing my motion, that Government has been niggardly, has held back on the provision of proper financial arrangements for the Corporation but before I turn to that, I think it is essential also, Mr Speaker, to deal with a certain perception that one feels crawling into the local community. It can be said almost a campaign of misinformation, it might be said, as regards GBC in certain sectors of the media to the effect that GBC is overstaffed, is overpaid and is unproductive and I think that is something which this House needs to deal with to consider the matter objectively. The fact is, Mr Speaker, that the Chief Minister at the opening of the House in March or April of 1984, expressed the view, when he was Leader of the Opposition that he was in no doubt about the professionalism and the ability of the staff that GBC employs and the fact that if we compared television per unit cost in Gibraltar with anywhere else in the world, we find that the service is expensive because we are small, it is not expensive in absolute terms. Those were the views that the Chief Minister, then the Leader of the Opposition, expressed in 1984 and those are the views that the Opposition now continues to hold. The fact is, that in the view of the Opposition, Mr Speaker, GBC has an extremely productive and professional staff and a very competent pool of employees. We are talking of a small community such as our own, keeping a television network afloat, producing the technicians, the cameramen, the editors, the engineers, the presenters, every facet that a Corporation requires and doing it cheaply and doing it efficiently. It is a pool of local expertise, Mr Speaker. If GBC ever closes down, that pool would be dissipated. These people have invaluable experience. The fact is, that as we have seen in the past, local employees of GBC television are much in demand. If they

go to England and look for work in regional television, because of that experience and expertise which they have acquired in Gibraltar, it stands them in very good stead and they get snapped up. The fact is, Mr Speaker, that if GBC ever were to close down we would lose that pool and expertise that we have built up in Gibraltar over thirty years and it would be almost impossible to start from scratch an alternative television public broadcasting network. That is the first thing. The second thing in reply to these allegations and these suggestions that GBC is overpaid and unproductive and overstaffed, is that all independent experts that have come to Gibraltar over the last few years who have looked at GBC, have confirmed one thing and that is, that for GBC the output for the resources available is very good indeed. It is simply wrong objectively to say that GBC is unproductive. For what they have available GBC have an exceedingly high productivity and the fact is, Mr Speaker, the productivity now is higher than ever because only two years ago, when last debated in this chamber, GBC had sixty full-time employees, the number now stands at thirty-nine full-time employees. Over twenty full-time employees have been cut off the payroll and in addition to those thirty-nine full-time employees, there are sixteen part-time staff. It is felt, Mr Speaker, that it is simply impossible to reduce any further the money for GBC without reducing and affecting the service which is provided. Basically GBC has now been pared down to the bone and is running at absolute minimum staffing levels. It is a myth therefore, Mr Speaker, to say that GBC is either too expensive or is inefficient. The fact is, that if GBC in 1984, as the Chief Minister said, was good value, in 1993 nine years later, it is even better value because it is actually in real terms, as I should explain, GBC is actually deriving less money from Government than it did then. So if it was good value then, it is certainly better value now. If this House accepts that GBC television is essential to the local community, what needs to be assessed therefore is the commitment of the political decision that has been taken to keep the Corporation afloat and that is the problem that needs to be addressed and that is the problem that this motion is seeking to address. What is the Government of Gibraltar at present doing to finance GBC Television? As we have seen in 1984, the Chief Minister expressed the view that it was not expensive enough in absolute terms. In those days, Mr Speaker, the GBC subvention was £570,000 annually. That in those days it was approximately 1% of total Government expenditure. For that year Government expenditure was £55.6m and they were providing £570,000. So approximately 1% of total Government expenditure was directed at GBC. Today, Mr Speaker, we find that the subvention has not been increased by a single penny. We see the annual subvention still being paid at £570,000. I see that Government Members opposite are shaking their heads. There is an annual supplementary subvention to cover the wage increase from year to year. That is something paid from year to year but is then withdrawn, so that for example, if this year

the subvention is £570,000 and there is an 8%, let us say, salary increase which necessitates an increase in the salary bill of another £120,000. That is paid by Government but that is not added to the £570,000 subvention, so that the following year, we are left with the problem that there is another salary increase but this year's salary increase of £120,000 has to come out of the annual £570,000 subvention. In other words, it is not index linked. It is pegged at £570,000 with an additional supplementary subvention to cover annual wage increases but not rolled up wage increases. So in effect, the subvention is paid at £570,000. They have not seen an extra penny barring of course the supplementary subvention which is only a proportion of the annual subvention. What certainly is true, Mr Speaker, is that Government has decreased the priority of GBC in terms of Government expenditure. That £570,000 spent now not only is it worth less in terms of spending power but the fact is that it represents a far smaller proportion of total Government spending today. What proportion is impossible to say, Mr Speaker, because as we know the gold purse of Government spending has been changed and we do not know from year to year exactly what the amount of Government expenditure is. Certainly there are things included in Government's expenditure for 1985 in the £55m that I have quoted which now do not, according to the Government rather secretive accounting procedures, do not count as Government expenditure. The fact is, that we know and it is clear that Government expenditure is now far in excess of £55m per year. It is probably much more like £100m a year and the subvention is still paid at £570,000. So it can be said both in real and in absolute terms, Mr Speaker, that the annual subvention for GBC over the years that this administration has been in Government has been halved and the position at present, as a result of that, is that the subvention is simply inadequate even to pay salaries. It can also be said that not only has Government failed to increase the subvention but actually that annually that subvention that Government puts forward to GBC is costing the Government less and less as years go by. Salaries are increasing in GBC all the time. At the moment they stand at approximately £800,000 a year. Well of course, Government is clawing back immediately a proportion of that in PAYE (approximately £140,000) so just on the GBC operation as it is today Government is on the one hand paying £570,000 and on the other hand taking back immediately £140,000. In real terms the cost to Government of the subvention from year to year is actually decreasing. Given this rather sorry state of affairs because obviously the subvention is the chief source of income for GBC, what chance has the Corporation surviving as it is today? Well the Corporation, Mr Speaker, has two other sources of income. It has obviously the licence fee. Mr Speaker, the licence fee has not been touched since 1979, as the motion points out. In 1979, the consumer paid the equivalent of 57p per week to have GBC television in terms of licence fee. Fourteen years later, Mr Speaker, he

is still paying 57p per week for the privilege. The fact is, Mr Speaker, that not only has the licence fee not been increased, it has not even been collected properly. It will be seen from the Abstracts of Statistics, Mr Speaker, that the number of television licences is going up annually. In 1991 the numbers stood at 7,900 and it has been increasing every year, presumably on accumulative basis. Every licence that is issued counts as a new licence in Gibraltar. Mr Speaker in 1990, GBC obtained in licence fee revenue amounting to £222,000. In 1991 when there were more licences that figure had decreased to £208,000 and in 1992 when there were even more licences it has decreased even further to £170,000. That is the equivalent basically last year in 1992 to GBC collecting licence fees on 5,600 television licences. That means 2,500 licence holders are not paying their licence fee and that accounts for a third of the television licence income for GBC. So not only is the subvention in real terms going down on an annual basis, the licence fee we should be increasing as a number of licences in Gibraltar is issued is also going down in absolute terms. Mr Speaker, there is no attempt on the part of the Government to increase the licence fee to bring it into line to reflect the fact that since 1979, it has not been increased by a single penny. Again this calls into question the commitment, Mr Speaker, of this administration to keeping the idea of public service broadcasting afloat in this community.

I am turning now to the third source of revenue for GBC television. We come to advertising. Current advertising revenue for 1992 for GBC, Mr Speaker, was £180,000. That was divided £120,000 for television and £60,000 for radio. That is a total annual figure of £180,000 for 1992 contrasted almost unbelievably, Mr Speaker, with a figure for 1990 of £800,000, which means to say that GBC television's revenue from advertising has been reduced by a factor of 75%. It is now getting a quarter of the revenue it used to get from advertising two years ago. The reason for that violent diminution in advertising income can be summed up quite simply. The first is, that GBC finds itself competing against a number of other mediums that previously did not exist. Now, the average Gibraltarian household has access to any number of television stations by satellite and the new licence television stations in Spain. So obviously there is more competition. The viewing public has a much larger choice of viewing but that is only a small factor. The main factor that has affected GBC television advertising revenue is of course the BBC encryption arrangement which has had a twofold effect. If the Hon Member opposite disagrees he will no doubt give us the benefit of his wisdom later. The information that we the Opposition have, Mr Speaker, is that the effect of the encryption has been two-fold (a) it has lost GBC television a vast proportion of its audience because there were many thousands of people up the coast who used to watch GBC television in their homes.

As things have transpired we have only sold 5,000 decoders. The fact is that very few people from up the coast have bought decoders and that is the market that was an advertising market over there for GBC television which has been lost. Not only has it been lost, but the advertisers know exactly to what extent it has been lost because you know exactly how many people are watching GBC television up the coast and in Gibraltar because we know exactly how many decoders have been sold and it is as simple as that. That alone has lost GBC television the bulk of its revenue. Because of the encrypting arrangements of BBC, there is less air time for GBC. 40% or 60%/70% of the air time on GBC now is dedicated to BBC and there is less time available for GBC to air its own advertisements. All these factors put together has spelt financial disaster for the advertising revenue for GBC and we have seen in the short period of two years the advertising revenue come down from £800,000 per year to just £180,000. Whose fault and on whose doorstep blame for that development must be placed is probably not for this House to determine. It is notable however, Mr Speaker, that in 1991 when this matter was last discussed, the Hon the Minister for Government Services claimed the credit for taking the decision to encrypt. At the time it was seen as being the saviour of GBC. As things have turned out, it has become pretty clear that it is going to be the millstone round its neck. It has certainly not provided the financial saving which was expected at the time.

To summarise, GBC's present financial circumstances. It has an annual subvention of approximately £650,000, a licence fee income of £170,000 and advertising income of approximately £200,000. That is being optimistic. Total revenue for the Corporation of £1,020,000. For a Corporation that for the year ending the 31st March 1993 had budgeted expenses of £1.4m. Very clearly, Mr Speaker, GBC is being strangled slowly and the life is being squeezed out of it. Annual budgets are set from year to year in the knowledge that the income the Corporation will derive will be insufficient to meet the budget and overheads. Mr Speaker, no more savings are possible. I think that the time has now passed. In the past the Members of this House, I was not in the House at the time, would discuss the topic and one of the things that would arise were accusations of overstaffing, lack of productivity, overpayment etc in GBC. Those days have gone, Mr Speaker. This Opposition is very clear in its view. It is impossible to save any more on salaries. It is impossible to cut down any more jobs in the Corporation. No more savings are possible and on an annual basis, Mr Speaker, the Corporation is faced with, obviously annual salary reviews that are negotiated by the Union. There is a generous pension scheme for every GBC employee amounting to 15% of his salary which is paid to the GBC pension scheme. That is something negotiated by the Chief Minister at the time when he was with the TGWU, a very generous pension scheme negotiated....

HON CHIEF MINISTER:

Will the Hon Member give way just to get the record

straight? I am afraid that is one that I cannot take the credit for. That was negotiated by themselves internally. That is to say, the workers and the management gave themselves a very generous pension scheme with Australian Mutual Provident before they became members of the Union. When I discovered this I was totally overwhelmed that they had done so well for themselves but it was not surprising because the management that negotiated with the Union were also beneficiaries of the scheme. I cannot take the credit for that.

HON F VASQUEZ:

Mr Speaker, then I retract. It was my understanding that that very generous pension scheme was something that the Chief Minister, in his office as Branch Officer of the TGWU had managed to secure on behalf of the employees. It turns out otherwise, but there is nevertheless a very generous pension scheme which the Corporation is saddled with. On an annual basis as a result of this situation, Mr Speaker, the Corporation is simply not in a position to undertake any capital expenditure whatsoever. The result of all this, Mr Speaker, is that the management is left with no independent managerial capacity or control. It is forced almost I understand on a monthly basis to go off cup in hand to Government and say, "Look we are in need. Please forward next year's subvention. We cannot pay the salaries". It is deprived of any sort of managerial independence on a day-to-day basis. This House has in the past, on a number of occasions, discussed the concept of editorial independence for GBC. What is the point of even considering that, Mr Speaker, if the Corporation simply is tied by its purse strings to Government? It is a concept, Mr Speaker, which is simply irrelevant in circumstances where the management is having to look over its shoulder every minute of the day to make sure that there are funds coming from Government to enable it to survive on a day-to-day basis. It has to be said, Mr Speaker, that what we see is the story of the financial neglect of GBC by the present administration. As I have said today, GBC, despite the Chief Minister's and the GSLP's often stated commitment to the idea of public service broadcasting in this community, is actually contributing less in real terms to GBC than it did in 1984. It is our view, Mr Speaker, that if the subvention and licence fees had been maintained at the level that they existed when the GSLP came into office, then GBC simply would not be in the financial predicament it now finds itself. Really the situation calls into question whether there is a political will on the part of the administration to keep the idea of public service broadcasting television in this community alive. No doubt, Mr Speaker, Government will say that they are taking certain initiatives to try and secure the future of GBC television. We have already commented on the encryption service. That at the time was seen as something which was going to be the financial saving of GBC. I think the reality has proved to be something very different

indeed.

The more recent development which no doubt the Minister will seek to refer to is the question of Strait Vision. I think I need to deal with that because it is the Opposition's view that Strait Vision has done nothing but place yet another financial millstone round the neck of the Corporation for reasons that I will explain. The fact is, that it is the Opposition's understanding that the idea of Strait Vision was something which was hoisted upon the Corporation by the administration of the day. It was not their idea. It was something that was put before them by the administration. No doubt, Mr Speaker, as part of its ongoing privatisation ideology. It seems to concur with Government policy in other sectors. I ask the question what commercial sense has this establishment of Strait Vision made for GBC? We have seen that and we know that Government provided Strait Vision with a very soft loan of £440,000. The money was forwarded through GBC who was then required to forward the money to Strait Vision. If nothing else, Mr Speaker, this demonstrates that in certain circumstances this administration is prepared to put money into broadcasting in Gibraltar. It is our view that that money would have been far better spent on GBC itself than on the creation of Strait Vision for reasons that I shall turn to now. As matters stand now, we have Strait Vision which is supposedly an independent television production company, working, it would appear at first sight, profitably and economically. No doubt, Government will say that this is an example, a shining example of what privatisation can attain. But let us look at the reality of Strait Vision. The fact is that Strait Vision produces programmes and sells them predominantly to GBC television but, how does Strait Vision survive, Mr Speaker? It received the loan of £440,000 which is guaranteed by GBC. GBC pays all the salaries of Strait Vision. All that has happened, is that various employees previously with GBC are now labelled Strait Vision employees but their salaries still come out of the subvention. That costs the Corporation £156,000 a year, Mr Speaker. GBC pays all the pension contributions for all the employees and GBC even, I understand, pays the dues from Strait Vision to the Performing Rights Society. It is down to that sort of level. Every outgoing of Strait Vision comes out of the resources of GBC. On top of which and the final irony, Mr Speaker, GBC has to pay Strait Vision for any Strait Vision productions that it broadcasts. So not only is it paying all the overheads of Strait Vision but as the final irony on top of it, it is forced to pay for the product at the end of the day. The effect of this is very simple, Mr Speaker, that all that it has done is created the supposedly very efficient and profitable private enterprise but on the other hand it has just increased the overheads of GBC television, because whereas in the past its own employees were creating and producing these television programmes now they are labelled as Strait Vision employees. As far as the Corporation is concerned, Mr Speaker, Strait Vision has made no commercial sense whatsoever. It has led to a duplication of effort and

greater expense on the part of GBC and increased its overheads. We certainly cannot begin to understand the commercial logic of the arrangement. The fact is that from our understanding the arrangement has only one end in mind and that is to create the financial pretext for creating a new structure for television in Gibraltar and public service broadcasting. It seems to be preparatory to completely breaking GBC's finances leading up to the closure and the privatisation of GBC, something which we consider not only objectionable in itself but entirely unnecessary because the fact is that as broadcasting stands in Gibraltar, there is nothing a private enterprise can do that the Corporation is not already doing. Therefore, privatisation simply cannot work, if it is forced to work in the same constraints that GBC is working in at the moment. That £440,000 loan that went to Strait Vision would, Mr speaker, in the view of the Opposition had been far better spent being injected into GBC television to provide them with the financial lifeline. Clearly, Mr Speaker, the finances of GBC are an enduring and very serious problem. What is clear, and I repeat the point, because I think it is one that needs to be made clearly, is that it can no longer be seen in terms of effective management. No organisation can survive, Mr Speaker, on shrinking resources. The fall in incomes from the various sources that GBC has suffered is through no fault of its own. What this administration in the Opposition's view, Mr Speaker, has to decide, is the extent to which it is prepared not simply to pay lip service to the idea of public service broadcasting, to put its hand in its pocket and to pay for it. That is a decision of policy which to our mind the Government simply have not explained satisfactorily yet. I know, Mr Speaker, that the Government are going to say that they are simply not prepared to enter into open-ended commitments. Quite rightly, that they are not prepared to write a blank cheque to GBC. Mr Speaker, I want to make clear that the Opposition takes seriously the financial responsibility of running Government finances. It is simply totally irresponsible and unrealistic to expect the Government of the day simply to make open-ended commitments to GBC. We are not calling for that. That is not to say, Mr Speaker, that the Government cannot take concrete steps to establish a medium term financial plan, in concrete terms not unlimited finance which will provide GBC with the financial stability for a fixed period to improve the morale of the staff and management and to allow management to proceed with the various proposals. I know that possible ideas for the breaking even and the future financial stability of the Corporation have been discussed with the Minister. And what are these steps, Mr Speaker? I think there are four concrete steps which the Opposition feel Government could immediately be taking to immediately improve the financial picture for GBC. One obviously is to increase the subvention. As I have said before in 1984 and countless times since, the administration has reiterated publicly its commitment to public service broadcasting. It repeats the commitment but it will not repeat the financial commitment required to give it effect. The fact is, that the 1985 subvention of £570,000, in

money today is worth approximately £800,000 and that if it was right to spend that sort of money in 1984, in our view, it would be right to spend that sort of money in 1993. That is talking in terms of not increasing the subvention in any real terms but to pegging it, in other words, giving it the same priority that the Government in 1984 gave it, give it that same priority. Give it the same chance of surviving. Having established that subvention at an up-to-date level of approximately £800,000 then to index link it for three years in order to give the Corporation a medium term security that it knows that from year to year that next year they are going to have enough time and enough money to pay the salary increase without having to go to Government to beg. Despite paying that salary increase, they are going to have the same amount of capital available to spend on overheads and capital expenditure. Increase the TV licence, it has not been touched since 1979. The consumer is paying 57p per week for its television. It is our understanding and again no doubt the Minister will correct me if I am wrong, that when the 1992/1993 budget was discussed and the figure set for the year ending March 1993 that it was suggested that the licence fee would be increased. I see the Minister shaking his head. That is the understanding that we have. Certainly there is no reason at all why the licence fee should not be increased. And why has the licence fee been pegged to 1979 levels? If there is any commitment at all to keep the Corporation afloat surely you have to give it the subsistence that it was receiving 15 years ago in real terms? It is right to say, "We support the idea of GBC television but we will just cut it off financially to make its existence and its survival totally impossible". I know that the Minister is going to throw in my face arguments that the public are saying why should they pay for GBC when they watch satellite television or when they watch other television stations. Well the fact is that the vast majority, the majority of viewing figures in England not rising either and many people in England complain that they do not watch BBC, that they watch ITV or they watch satellite. They have to pay their licence fee to subsidise BBC and the fact also is that in England satellite television companies based in England are paying the English Government enormous licence fees for the privilege of broadcasting from England as are independent television stations. Here in Gibraltar, the consumer is receiving the benefit of all that and it is simply not paying for it. I think it is perfectly plausible, perfectly logical and perfectly condonable for Government to say "Look, we have decided that public service broadcasting is something that the community needs because it protects the identity of the Gibraltarian and therefore it is something that we have to pay for and even though you might only watch GBC television for two or three hours a week to watch the news, the fact is that we all have to pay an annual TV licence fee of £70 a year and that is what it costs". In my submission, Mr Speaker,

Gibraltarians would accept that because although as we have seen in the past and the House has commented it in the past, Gibraltarians are very quick to criticise. The fact is that, it is certainly my suspicion personally and the view of the Government, that if the question ultimately was put to the Gibraltarian public they would say, "Yes, we need GBC television". It is something that is important to us. They would accept what we all believe in this Chamber that public service broadcasting is important to the community especially a community of our size faced as it were with a sovereign claim that we have against us and with the necessity to establish and consolidate its national identity. Most Gibraltarians would agree and they would put their hands into their pockets. There would be no attempt, Mr Speaker, on the part of this administration to even contemplate that, to give the Corporation the chance, the even keel it needs to make a go of it. Finally the last point, Mr Speaker, is to improve the collection of licence fees. We have seen that a third of all licences are not being paid and there must be steps that the Government can take to make sure that licence fees are paid and that people are prosecuted and that there is an efficient system for collecting those licence fees because at the moment the Corporation is losing a third of its licence fee income. So with those steps, Mr Speaker, which again I hasten to reassure and to add that the Opposition is not making unrealistic, unreasonable demands that Government simply put its hands in its pocket and give open-ended undertakings. No Government can possibly give that type of undertaking. The fact is though that this Government has failed to provide the sort of medium term financial provision for GBC that the Corporation needs to survive on a day-to-day basis and it is something that it owes to GBC. It is something that it owes to the community and it is something that can be done without increasing spending in real terms. It is just re-establishing spending at the levels that it existed in the early 1980's. By doing so we can ensure the survival of GBC television and in those terms, Mr Speaker, I commend the motion to the House.

The House recessed at 5.30 pm.

The House resumed at 5.50 pm.

Mr Speaker proposed the question in the terms of the Hon F Vasquez's motion.

HON J C PEREZ:

Mr Speaker, the Gibraltar Broadcasting Corporation because it exists from public funds is under the same rigid financial constraints as every other department in the Government in terms of expenditure since 1988 or should be, let me say, because that has not necessarily been

the case. But the Government does not differentiate between the kind of financial responsibility that it demands from its heads of departments in every other Government department and the kind of savings that it is striving to get from Government departments. It is not going to differentiate from the Gibraltar Broadcasting Corporation which exists out of the public purse. It has not got an open-ended commitment. I said this, not the last time we debated it, but the last time the Opposition put a question that the Gibraltar Broadcasting Corporation will not be kept open and alive at any cost. There is a limit to what the taxpayer can afford or should be able to afford. Having said that, let me say that as usual the information that the hon Member used is incorrect. The Gibraltar Broadcasting Corporation did not have its licences last increased in 1979. It had its licences last increased in 1984 from £20 to £30, so the wording of the motion is incorrect for that reason alone. The Corporation spent in 1988/89 £594,000, in 1989/90 £621,000, in 1991 £640,000, in 1991/92 out of Recurrent Expenditure £759,840 and out of the Improvement and Development Fund £921,527.29. The forecast, Mr Speaker, for this year's Recurrent Expenditure budget is going to be £722,700. It is a state of affairs which is not acceptable to the Government of Gibraltar. I mentioned the figure of 1991/92 because that is when the restructure took place. The salary bill for the Gibraltar Broadcasting Corporation today is near £1m. Had the restructure not taken place the salary bill would be £1.5m. So already with the restructure we have made inroads in cutting the cost of GBC because the hon Member is wrong in saying that the encryption was the result of the collapse of advertising. The collapse of advertising happened before the encryption and the encryption is a result of the collapse in advertising. It is not that advertising collapsed because we introduced encryption. An encryption was suggested by the professionals and accepted by the Government. It was not the decision of the Government as the hon Member is suggesting. It is that advertising had come down so low that the cost of buying programmes to put on GBC TV was £300,000. The cost of employing people to get advertising was £350,000 and the advertising had come down to £200,000. So if we managed to save the cost of £300,000 in buying programmes and supplement them by an encryption which would cost £75,000 a year, there was an annual recurrent saving there for GBC and we then managed to do away with the £300,000 or £350,000 that we spent in getting the advertising then. At least the advertising that we got was net income because the Gibraltar Broadcasting Corporation in the arrangement that it has with getting the advertising that it does, does not pay a penny towards getting that advertising. Not even commission unless it reaches a certain level and that level has not been attained. The hon Member mentioned the figure of a high £800,000 in advertising. That is a fictitious figure, because that year between employees and commissions alone the cost of getting £800,000 was near £500,000. So the net result was that the income to GBC was £300,000 because it had cost so

much to get the advertising in the first place. All these things were looked at at the time of the restructure last year which is when efforts were made by the people in the Corporation to try and get a cost effective solution to the problem. The Government got advice from the professionals in the Corporation about what should be done. We acceded and accepted reluctantly some of the things that were proposed to the Government. The Government did not take any initiative whatsoever of its own to introduce any of the things that were introduced in GBC. This all came from people in GBC at different levels in the organisation and the Board proposed to the Government that certain measures should be taken and that these measures would result in a saving, which they did. They resulted in a saving but then the number of part-timers in the Corporation has increased. That was not my decision. The number of hours on overtime has increased. That was not a decision of the Government. The same people that go to the Opposition with erroneous information also come to me to tell me that people who are on a full-time job are also employed as a part-time when they do a second job elsewhere. Well this was not the idea of having a restructure in the first place. There is no control whatsoever and no accountability which is what the Opposition have been shouting about in how the money that is passed on to GBC is expended. The Government cannot be held responsible for the state that GBC is in today because we have listened carefully to the suggestions that have been put to us. We have invested large amounts of public money already in trying to find a viable financial solution to the Corporation. We do not control the way that the Corporation spends the money that we give them and in that sense they continue to have independence and we have never attempted in any way to use the purse-strings or the money that we give them to interfere editorially or in any decision that they take. They are free to take those decisions themselves and the accounts of GBC are later laid in this House for all of us to scrutinise. However much the accounts are right, if you are not a party to deciding how you spend the money, then you are not a party in getting the result and the hon Member is right in saying that they are living from month to month. Yes, every month they come and I have to sign the cheque and I am not responsible for how that money is spent. That is not a situation that we can continue to tolerate.

The hon Member says that Strait Vision has been a drain. If one listens to the hon Member, one would think that all the money that we spent last year, the £759,000 and the £921,000 must have gone into GBC and then out into Strait Vision. That is not true. His information is incorrect. Strait Vision was formed for the pure reason that there was a suggestion from some members of the staff that they thought that they could work better in a different environment and that they could in that same environment go out and do commercial work and earn part of their living by getting fresh income from other activities other than the production of television. That

and not that we want to privatise everything, is what attracted the support of the Government. The loan that was given to Strait Vision was all invested, most of it has been invested in new machinery for the production of programmes for television. It is not that they have invested it in things which they are using for something else. So indirectly the benefit of that new machinery is already supposed to be gauged in the Gibraltar Broadcasting Corporation. Let me say that eleven employees and all the programmes that have been done for £183,000 a year in the context of a total of thirty-nine employees and nearly £1m a year salary is not a bad way to go as far as Strait Vision is concerned. Those are the facts. The programmes that Strait Vision have produced in agreement with the General Manager have been the number of programmes that the Corporation decided should be the ones that they should produce for the pay that they were getting and that level of programme was more that they were already doing in GBC as GBC employees. So their salary and pension contribution, which is what GBC was paying them, is all that GBC has been passing to Strait Vision. For their salary they were already committed by the contract entered into between the management in GBC and Strait Vision - without interference from the Minister and with the approval of the Board - they were committed to produce more programmes than what they used to produce themselves in GBC. They have met that commitment. They were committed to do all the work related to advertising and they have met that commitment. Now if over and above that GBC has asked Strait Vision to do more programmes from what they themselves decided to contract to Strait Vision, then it is quite right that Strait Vision should turn back and say they want GBC to pay for that service because it was not contracted.

HON F VASQUEZ:

A question to the Minister, Mr Speaker. Is the Minister saying then that GBC is not paying Strait Vision for those television programmes that it is receiving from Strait Vision?

HON J C PEREZ:

GBC is paying Strait Vision the pay of the seconded employees, the pension contributions of the seconded employees, the social insurance of the seconded employees and in exchange for that they get a minimum quantity or a contracted quantity of television programmes and of advertising programmes. If GBC then require more programmes than those that they themselves included in the contract then they have to pay for more. That is a contract entered into between GBC and Strait Vision.

HON CHIEF MINISTER:

Mr Speaker, it is not a contract with the Government of

Gibraltar, let me make clear. If the Opposition has been fed false information and on the basis of false information they brought a motion to the House, they should have made sure they had the facts.

HON P R CARUANA:

Mr Speaker, the Opposition is not fed false information. The Opposition had a meeting with management and separately with the staff side to gain information and we are told as a matter of fact that GBC is paying the salaries, the pensions and all the list of things that the Minister has admitted to, plus one that he does not admit to - the Performing Rights Society obligations. Only a week ago somebody was telling ... somebody who I would hope, given that the Minister is not involved in the management of GBC and sworn to us that he is not, is better acquainted with managerial details of that kind than the Minister. But anyway and we were told "Look we have to pay £76,000 to Strait Vision for the programme output."

MR SPEAKER:

May I remind the Leader of the Opposition that he can speak on the motion later but an intervention for this is purely and simply to clear up a point briefly.

HON P R CARUANA:

Mr Speaker, I was trying to clear up the Chief Minister's point that we were having false information. We have the only information that we can have which is given to us straight by the horse from the horse's own mouth.

HON J C PEREZ:

I think, Mr Speaker, either the horse has run rampant or the Leader of the Opposition does not know what he is saying. That is not the information I get from two sources. One is from the accountant of GBC who is Mr Clinton and the other one is from one of the people of Strait Vision. The two sources that I get, one from one end and one from the other coincide. So he had better check his horse before it stalls again. Let me say, Mr Speaker, that I have no wish to say whether Strait Vision is doing well or not doing well. I have not got the facts and I have no reason to particularly want to defend Strait Vision but I would like the House to be able to consider this motion with the correct facts in front of them rather than with what it has been fed by people that might have a motive for not wanting Strait Vision there. Strait Vision has been created, not by the initiative of the Government but by the initiative of former workers of GBC themselves and with the support of people in GBC and the support of the Board of GBC. So it is not an initiative of the

Government either. The Hon Mr Vasquez was talking about the income from licence fees as if this were fluctuating in a very big way. It has not fluctuated in a very big way and the number of occupied addresses in Gibraltar is going to increase in this year 1992/93 when the whole of the Westside project is being occupied and the income of that will not be reflected in the increase in the number of licences that are due until they start collecting the new licence fees in September. Let me also tell the hon Member that when we reached the level of £210,000, I think it was a year ago, on licences the efforts of the Post Office to collect them were the most that could be expected. If we had to take legal action to try and collect the residual amount it would have cost much more money to have employed people to do that than what we would have got in respect of the income that was coming. GBC approached me and said that they thought that they could do a better job and legislation was passed in this House allowing the Gibraltar Broadcasting Corporation to collect the licences themselves. The transfer of responsibility for collection from the Post Office to the Gibraltar Broadcasting Corporation has already taken place and two of the staff that were made redundant in the last restructure were retained on a contract basis by the Corporation to do a list of all the television sets that were connected to different satellite equipment in Gibraltar and to gauge what were the television licences that were not being paid. It was found incredibly that a large number of Ministry of Defence residences were not paying TV licences. It was also found that this was mainly due to the fact that, although GBC is broadcast to the whole of Gibraltar in an encrypted fashion, they could be beneficiaries of it because they have their own service which is SSVc. The people who live in these houses thought that that was a service given by the army and that they were not liable to TV licences. That is one of the things that the Gibraltar Broadcasting Corporation are themselves going to follow up now. Having said all this, Mr Speaker, I find it rare and odd that the motion and indeed the hon Member should refer to all the points that the Chief Minister made in the inaugural speech of the House of Assembly, all but one, because it is not that we said something in 1984 and then in 1988 we decided to do something different. Not at all. What we said in 1984 we were doing in 1988 and perhaps people thought that we might not be doing it as rigorously as we are. But the indication to the financial control and to the accountability that we wanted and to public expenditure was given in the same breath and in the middle of the whole paragraph when the Chief Minister was talking about the Gibraltar Broadcasting Corporation. He said and I quote, "We expect GBC to provide value for money like we expect everything else to provide value for money". Well the Hon Mr Vasquez has mentioned the first part of the paragraph. He has mentioned the last part of the paragraph but conveniently omitted the middle of the paragraph which reflects Government policy as it was in 1984 when we were in the Opposition and as from 1988 when we came into Government. Mr Speaker, I am not saying that

the people in GBC are not professionals or are no good or do not go about their business in such a manner. I do not know what it is to handle a camera or to be a technician or anything else and I presume that people are doing their job in the best manner possible. I am not questioning that. What we are questioning here is that Gibraltar is striving towards self-efficiency. There are financial constraints on every Government department and everything that is dependent on the public purse and GBC is no exception and will be no exception. If we have to maintain GBC as suggested by the Hon Member by increasing the licence fee but the people that pay for that licence fee have no say and there is no method of consulting them or gauging whether they are receiving the service that they really want to pay for or not and if the taxpayer has no system to see whether the money that is going into the Corporation is being spent in the correct manner, then, Mr Speaker, I am sorry, but on the basis of continuing the Corporation as it is or in the way that the hon Member has expressed himself, the Government is not prepared to see broadcasting existing in that manner. We are prepared to try and see radio and television survive in Gibraltar if it is subject to the same controls as everybody else. No doubt the Opposition know - if they have met the management and they have met the staff - what we are striving to achieve for GBC and for the people there. For example the Union have already told us that they would want to make a proposal themselves. To come up with a proposal to produce radio and television within the money that is available today and if that means that we have to lower the service that we provide for the community then we will have to lower the service that we provide for the community because that is all that Gibraltar can afford today to give to radio and television. If they cannot produce radio and television with the existing budget, then we will have to look at the possibility of having to close GBC down. There are no two ways about it, Mr Speaker. It is a lot of money that is going there and the restructure exercise that was supposed to produce a viable financial proposition has not produced it after we have taken the advice of different people at different levels in the organisation on what needed to be done. First they tell me that they can save £300,000 by getting BBC. So we get BBC. Then they buy minutes in BBC. Now people say that they have not got sufficient minutes to put adverts but they do not say at the same time that the advertising is being sold very very cheaply and that advertising is in competition with other journals and other news media in Gibraltar. Well perhaps if the advertising was sold more expensively then the revenue for those advertising minutes would be greater. At least an attempt should be made

to do that. That is my view but I do not interfere in the way GBC is run and I was not privy to the decision of lowering the advertising rate when they took the decision. So I am sorry that I cannot go up and say "Look I have tried to implement the policy and I have failed or I have succeeded", because I do not control that and I do not

control that because I am conscious of the sensitivity of Government interfering in the Gibraltar Broadcasting Corporation or indeed in radio and television in every form in Gibraltar. Mr Speaker, the view of the Government differs in approach to the motion presented by the hon Member. It is a mistake to say that the money that has been put into GBC or the subvention has stayed static over a number of years. The Corporation are over the budgeted figure by something like £250,000 without having yet paid back the money that was advanced to them from previous years.

I have no option but to move an amendment to the motion of the hon Member. I propose deleting all the words after "This House" and substituting them by the following:

- "(1) recognises the consistent support for the continued provision of local radio and television which has been given by the Gibraltar Socialist Labour Party, in Government and in Opposition;
- (2) notes that despite constant efforts to contain costs and provide value for money increased subsidies have been required over a number of years;
- (3) considers that Government and GBC should continue their efforts to arrive at an economically viable operation which would continue to provide local radio and television".

Mr Speaker, I think this better reflects the efforts that have been made by the Government to arrive at a solution and the efforts that continue to be made by people in the Corporation and by the Government to come up with a viable solution now. It is better than just to say "Let us increase the subvention and let us increase the licences and that is it". I think one of the things that we need to look at for a cost effective solution is that, if at any time the licences are going to be increased - they are the sole responsibility of the Gibraltar Broadcasting Corporation to collect and - there must be a mechanism introduced for people to say whether they are satisfied they are getting the value for money that the Chief Minister was advocating in 1984. This should be done before any entity decides whether the licences should be increased or not. That the customer needs to be able to have a say whether what is being produced by the Corporation is really what they want. In 1984 Gibraltar had two options. Watching Spanish television or watching GBC and in that scenario, which was subjected to either Spanish news, GBC news or no news at all, there was a greater threat to our identity and the freedom of information flowing to the community than there is today when there are different sources of information which one can get. I would like to see television and radio surviving and I would like to see better accountability to the viewers but I would also like to be sure that people are actually viewing what we are producing because we are already spending £1m of public money. Whether it comes from the licence fee or whether it comes from Government coffers,

it continues to be taxpayers money and we are already spending nearly five of taxpayers money and we are not sure. The hon Member is convinced that people want to see programmes and everything else. I wish that were true. If people were really wanting to pay for what they are getting now that would be the easy way out for me. People would not object to an increase in licence. They would pay more for the service that they are given because they would be satisfied with the service. That is not the feedback that I am getting. People are paying for something that they are complaining about and we, not only the Government, have all a responsibility in this House for public money and to wake up to that reality. Mr Speaker, the amendment notes that the position of the GSLP is not much different to what it was in 1984 and that the Government has tried since 1988 to put money into the Corporation to restructure it so that it becomes a viable Corporation. It has failed to do this not because of lack of wanting but because it has perhaps erroneously accepted certain advice which it might not have been in a position to accept. We have been accepting advice, as I have said before, from different levels of the Corporation some of which we have taken on board. The Board of GBC has discussed it and it has been put to the Government and we have implemented it. We have then found out that certain decisions have been taken. I am not saying that that is the route of all evil, but certain financial decisions have been taken which the Government has not been privy to. We might be interfering on whether the news comes out or not, and therefore we have kept a distance from these decisions. Efforts have been made from a financial point of view. We appointed the Financial and Development Secretary to the Board. Well let me tell the House that the advice of the Financial and Development Secretary to the Government, before he left, was that GBC should be closed down because he did not see that the Gibraltar Broadcasting Corporation is a viable proposition and he recommended to the Government that the five that was being spent on GBC could be better spent elsewhere. But the Financial and Development Secretary does not make political decisions. The policy of the Government is not to close down radio and television and to spend that money differently but to try and contain the cost of radio and television to the money that we are spending today. So the amendment reflects the position of the Government today. It reflects the steps that the Government has taken and tries to get this House to support the efforts that continue to be made to try and find a solution to the problem. I must stress, Mr Speaker, that we are all living in very tight circumstances today. The Opposition make reference to the recession and to our economic problems but then they come up and say that the Government should put more money here and more money there, as if the recession and the economic problems are only there for them to use as arguments when it is convenient to them. Mr Speaker, from day one this Government has not hidden the fact that we were out to restructure the public service and to contain the money that was spent in providing service for the general public, to make that service more accountable and to make that

service more efficient. I am afraid that GBC cannot escape the same criteria that is being used across the board in Gibraltar. If people are affected the common thing for the Opposition to say is that the morale of people is low. It is better to have people with a low morale and spend less money than to have the economy going to dithers. We have got the wider responsibility of Gibraltar at heart and we want to keep radio and television going. We think we can do it. We think we can get the support of the people in doing it, but certainly the solutions being put forward by the Opposition of just increasing the subvention and increasing the licence fees is not the way to do it. I commend the amendment to the motion.

MR SPEAKER:

I would like to explain that there is going to be a different procedure to what we usually have to a normal amendment. A normal amendment tries to modify a motion. This, as you can appreciate is a totally different motion. Therefore what we have now is two motions and what we shall do then is that all hon Members can speak, including the proposer of the previous motion, the hon Mr Vasquez provided of course that there is no repetition and at the end I will put the amendment to the vote first and allow the proposer of the amendment to wind up. If the amendment is carried then that is the end of the debate. If it is not, then of course, the proposer of the original motion can speak and we shall take the vote then. We are now open to debate, and as I said, even the hon Mr Vasquez can speak again if he so wishes.

HON P R CARUANA:

Mr Speaker, I think I have understood what you have just so carefully explained to us. I understand you to mean that as we should be voting first on the amendment, if the amendment is carried as it will be by Government majority, then there will be no vote on our motion.

MR SPEAKER:

It is not.

HON P R CARUANA:

Well, yes, I do not mind, but it is inconsistent with your first ruling that there are now two motions on the table rather than an amendment. If there are two motions ...

MR SPEAKER:

If the Opposition feels strongly about that I really do

not mind. It is only going to take five minutes.

HON P R CARUANA:

As you have correctly ruled that there are two motions on the table, we ought to vote separately.

MR SPEAKER:

I think that is the practical way of dealing with it but if the Opposition feels strongly about it, I really do not mind.

HON P R CARUANA:

Thank you. Mr Speaker, I think that the Minister for Government Services exaggerates, I suspect, for theatrical purposes what it is that the Opposition have been saying. The Opposition have not been saying that the Government should give GBC a blank cheque book. We from the Opposition benches would not be willing to support the Government if that is what it was intending to do. What we are saying is that it actually does not bear analysis to argue that the cost to the taxpayer of maintaining GBC is escalating in terms of the Government's subvention. If you take the Government's subvention in 1984 at a time when the Chief Minister thought that it was good value, and it is compounded forward allowing for inflation and arrive at the figure that it would be. Not increasing the subvention. Not increasing the amount of money that the taxpayer pays in number to GBC. But if today you arrive at the sum of money which equals the same purchasing power as the £560,000 subvention was in 1984, I say that you would arrive at a figure which is either roughly equivalent to or perhaps even a little bit higher than the amount of money that the Government Members are now - generously they say - voting for GBC. There are no increases. There are no escalating costs. We are not saying increase the subvention. We are saying maintain it, maintain it at the level, in real terms, that it was in 1984 when the Government Members thought that if GBC was essential for the preservation of the local identity and thought that it then represented good value for money. If the Minister thinks that GBC should be subject to the same financial disciplines as other Government departments, well I would question him lumping GBC in the same category as other Government departments. But leaving that to one side which is not the central purpose of this point, the central purpose of this point being that GBC could not be immune from the financial straight jacket in which the economy presently finds itself. I agree, but I am not saying that that is what GBC is doing. I am saying that that is what GBC is not doing. What GBC is being asked to do is much worse than what Government departments are being asked to do. From 1984 onwards allowing for fluctuations in advertising revenue, sometimes they have been good and sometimes they have been bad. The cost structure of the

advertising revenue may have been unacceptable, all that may be true. The reality of it from the point of view of the Government's subvention is that GBC has in effect been asked to perform with a reducing subvention. A reducing subvention, when you take into account that the subvention has not maintained its purchasing power against inflation and that out of the subvention has had to be paid increases in staff costs, even though, I understand, that the Government does pay the current year's increase. So that, if for example, in July 1992, GBC awards its staff, whatever pay rise they are entitled to under the terms that govern them of 10%, and that adds, let us say for the sake of argument £10,000 to the wage bill, the Government will fund that separately, but only until the end of GBC's current financial year, that is to say, for nine months. Then it does not add that £10,000 to the subvention, so that whereas the previous year's subvention was £560,000, the following year it is £570,000 because there is a £10,000 extra of costs on board. No! The Government will then fund next year's increase, but the previous year's increase, which is now under the belt as fixed costs, is borne by the Corporation with its static subvention. Therefore, the Government's agreement to fund its annual increase amounts to little more than a financial trap because what is really said is, "Yes, you give pay rises, I will fund it this year, but next year you fund it from the fixed subvention". What the management of GBC should have done when they were first offered that, in my opinion, is reject it as the obvious trap that it is and the Board would then have been in a position to tell the Government "Look, we cannot operate this public Corporation on a deficit basis, either you increase our subvention to meet our operating costs or you take the political decision, which I recognise here and now, is open to a Government, this Government, the previous Government and the next Government to take politically that this community can no longer afford a GBC radio or television." But that would be a different matter. That argument cannot now be justified in reliance on some spurious and baseless argument that the Government is pumping increasing amounts of money into the Corporation. It is not. If you assess the value in present day terms of what the Government is pumping into GBC comparing it to what its value would have been then, I say that it is clearly establishable that GBC is not costing the Government more in real terms today than it was costing them in 1984. If we have stated erroneously that the television licences last went up in 1979, and the Minister is right, I am not going to contradict him. I suppose he has checked the facts. We were told by the management of GBC - I am not certain that we were not also told by the staff side - that the TV licence was last increased when GBC went colour in 1979. Unfortunately, in 1979 or 1984, I am not sure that I was paying television licences so I cannot remember when it went up, but that is the information that we have from management. I sincerely, therefore, hope that in contradicting that information which comes from management, the Minister is absolutely certain that his ground is correct. The

Minister speaks, Mr Speaker, of accountability at GBC and I am not sure what it means. I have read in a recent article in a local newspaper which is not entirely unconnected from Government Members, "Hypocrisy", I think the article said, "How can the Opposition call for more accountability from Government and at the same time suggest that the taxpayer should pay more money for GBC, as if accountability meant not spending money". I do not think that there is anybody at least in this chamber today who think like the writer of that article in that newspaper, that accountability means spending less money. Accountability means it being transparent. How the money is spent, not how much is spent. How it is spent is what the GBC accounts show. I would like the GBC accounts, just as I would like the Government's own accounts to be tabled a bit more promptly after the end of the financial period to which they relate, so that I can see the accounts at a time that it is still meaningful to use them for criticism purposes. If you get the GBC accounts twenty-four months after the period to which they relate or indeed the Government's own accounts twenty-four months after the period to which they relate, it becomes a little bit useless for the purposes of ensuring accountability in terms of justifying why money was spent this way or why money was spent that way. Mr Speaker, it forms no part of the views of the Opposition to subject Strait Vision to any inherent criticism. I do not have any reason to believe one way or the other that Strait Vision is doing a good job or a bad job except that I have noticed a change in the kind of programmes that come from it and frankly I think it represents an improvement. What I would like to know is why that improvement could not have been achieved within GBC given that it is exactly the same people. That Strait Vision can do commercial work, well why can GBC not do the same commercial work? It is the same people. Again that horse that only opened its mouth to give me false information, according to the Minister, tells me that every initiative that the Board of GBC and the management of GBC has taken to try and get involved in commercial activities have been squashed. I do not say necessarily squashed by the Minister.

HON J C PEREZ:

By whom then? Whose fault is it? The hon Member's?

HON P R CARUANA:

And the complaint originates before this Government came into power. That GBC had tried to go into.....

HON J C PEREZ:

.....before we came into power in 1988.

HON P R CARUANA:

I am not saying that this Government has obstructed GBC

for the first time in a move into commercial activity. What I am told is that over a very long period of time which extends to before this Government came into power in 1988, GBC has come up with certain initiatives for commercial activities and have always been refused permission. I do not say refused permission by this Government or at what stage in time, but why cannot GBC do or have done the same as Strait Vision is going to do in terms of commercial activity. Because it strikes us, not being by any means expert in broadcasting that there is going to be a degree of duplication. Strait Vision presumably has all the infrastructure necessary for a television production company and so does GBC. I do not know - receptionists, telephonists, studios, cameras, electricity bills, all the things and so does GBC: Who calculates Strait Vision's wage bill? Who does their administration?

HON J C PEREZ:

The hon Member's cousin does.

HON P R CARUANA:

Fine. Before he was doing it for GBC. There is duplication and it is not altogether clear given that GBC retains the cost (if my cousin does it I am sure he does it very efficiently). No argument has been offered by the Minister as to how given that what we are handling is a financial crisis in GBC, not a crisis where entrepreneurial flair was being stifled, not a crisis in which the creative capacity of employees in GBC to create was being stifled, the problem according to the Minister, as we understand it, is a cash crisis. I have not heard anyone even attempt to explain how the creation of Strait Vision except their potential for commercial activity in the future which I say could just as easily be pursued by GBC, assists in the financial crisis at GBC, given that GBC keep all the costs overheads that go with Strait Vision, that they pay their salaries, that they pay all these things which I am not going to repeat and that is that they have to pay or do pay, whether they have to or not, we will not get bogged down in that point, £76,000. I have been told this by both the management and the staff at separate meetings: All fifteen horses that were in both rooms could be wrong, it is possible. It becomes increasingly unlikely that they are all wrong on every item and that the Minister is the only one who is right on every item. It is possible. Even that is possible, but it begins to stretch the imagination. The Minister says that the output per cost at Strait Vision is higher than when those people were at GBC. Well of course it is, they have got no overheads to contend with. They have not got to spend. They have not got to run the broadcasting service. They have not got to keep or maintain transmitters. They do not have to have.....

HON J C PEREZ:

They did not before.

HON P R CARUANA:

But GBC still does and does now and GBC has a certain element of cost overhead that it must maintain in order that it can broadcast the film that Strait Vision gives to it in a can. Value for money? I agree with the Government that GBC must provide value for money and therein I suppose lies the crux of this matter. What value and how much money? In other words, when you have listed the positive advantages of public service broadcasting, how much is that worth to the community? I suppose it is possible, given that we had finite resources, that one might be forced to conclude that notwithstanding the list of advantages that GBC has, it is not inconceivable that one might have to conclude, notwithstanding that, that we cannot afford it as a community. There are lots of things that we would like to have in Gibraltar that we need that we cannot afford. The question therefore is what is the need for it and how much is that need worth paying for? There is where we come now to the political consideration. We say, we continue to have the view that was expressed by the Government Members as far back as 1984. They say it has got to be value for money and we agree but it was value for money in 1984. I say, subject to being contradicted, that in real terms the cost to the taxpayer, be it through licences, subventions, or both, has not increased since 1984, adjusted against inflation. If the problem is financial and value for money and it was value for money in 1984 and it is not costing the taxpayer more now, then the problem is not financial. Then the problem is that we now think that this product is worthless. It is now less valuable than it was then and we are willing to pay less to keep it or there is a change for some other reason unless the commitment is reduced for some other reason which I think would not be profitable for me now to speculate. The Minister says that the public of Gibraltar had new mechanisms to speak their mind as to whether they think GBC is worth saving. With the greatest of respect, they did not have it in 1984 and I have looked at Hansard in 1984 and I did not see the Chief Minister then expressing views which I would have supported then as I support now. I did not hear him qualify or couch his unqualified support - his commitment to GBC, his view that it was essential for the preservation of the identity. I did not hear him qualify his words in the language of "Wait a minute, let me go out into the streets and take a straw poll to see if people like the quality of this programme or that programme" and I did not hear him say "Wait a minute, I do not think it is worth saving because the feedback that I am getting", which is what the Minister has just said, is that people.... how many people? One

person? Two people? There are one hundred people.....

HON J C PEREZ:

73% of the population.

HON P R CARUANA:

Now we are coming to it. You really do believe that anything that you decide to do you now have 73% electoral support for? I have said before in this House that that is a perverse view of democracy. I really do not want to complicate this debate by reopening that allegation, but I think that it would be extraordinary and I do not think seriously that the Minister for Government Services holds the view that he has just, I think, humorously expressed. So, the position of the Government, he said is not much different now to what it was in 1984 and frankly an analysis of what he has said and what I have said and what has happened on the ground, I am sorry, does not enable him to sustain that position. The position of this Government today is markedly different to what it was as a political party in 1984. In 1984, they were saying that GBC was costing the taxpayer this sum of money. At the time when the economy was smaller and it represented a higher proportion of our GDP and it was saying that the sum of money was good value for money. Now at a time when it is paying no more money, GDP is probably five or six times higher and the cost to it of the subvention is much smaller in terms of the percentage of the GDP that it is paying. Now it says that it is costing too much money and it has got to go. Well he says cost savings value for money. GBC's own budget was £1.3m or £1.4m, of which £800,000 was staff. What scope is there for further reductions in that cost structure? Certainly, we could look around to see if there are surplus bodies lying around that could be made redundant. I would not know how to start staffing a broadcasting station. I am told, albeit perhaps by people with a self-interest, that the staff has been pared back to the lowest level that is consistent with providing the sort of service that GBC has hitherto provided. Obviously if one moves the goal posts one ceases providing daily news, debate programmes, other local programmes and outside broadcasting facilities for filming sports and filming political activities and filming children playing at schools. If one says, "Cut all that out," well of course, then one can operate with less people but what we cannot do is move the goal posts. We have got to decide what level of public broadcasting we want as a minimum. The suggestion that I have heard recently - which I do not attribute to the Minister as he may be hearing about them now from me for the first time - that the level of public service broadcasting on GBC television should be reduced, I think, could be achieved if the staff to about 24 in all is reduced. I think it is the latest proposal that has been put to me by the Chairman. I do not attribute it or give it any more merit than the fact that it has come again

straight from the horse's mouth. The level of public service broadcasting would be reduced to the television bulletin and perhaps one local programme, one debate a week. My own opinion, and of course this is a matter of opinion, is that that would be an inadequate level of public service broadcasting in Gibraltar. The Minister says that the Financial and Development Secretary had advised him to close GBC down because it was not a financially viable proposition. I do not think you need to be a financial whizz kid to have arrived at that conclusion. I do not know whether he was or he was not. All that I can say is that he did not need to be one to give this advice because frankly it seems clear that there is no organisation that can be a financially viable proposition if its costs increase annually and the purchasing power of its revenue decreases annually. I do not think you need to be either a Financial and Development Secretary or a financial whizz kid, I think a humble politician or even a humble lawyer would be able to tell you that that is a recipe for disaster. Costs and revenue moving in different directions is a recipe for disaster and therefore do not tell me that GBC is not a financially viable proposition. It is obvious that GBC is not a financially viable proposition but it is not a financially viable proposition because its revenue is not being maintained. Its revenue from the public purse is not being maintained at the level in real terms that it used to be, never mind about increasing it. It is not being maintained, that is why GBC is not a financially viable proposition and therefore, Mr Speaker, in concluding let me ask the Minister to do this. By all means express views that are different to our own because after all it ultimately boils down to a matter of opinion in policy, but do not, if the success of his argument depends on misrepresenting mine, then I will interpret that as a concession, as an admission to me on the merits of the argument, because no-one in the Opposition has suggested let alone said what the Minister has attributed to us that what in effect we want to do is write a blank cheque. Money no object, keep GBC going at any cost. No-one has said that. None of our arguments are based on that ridiculous proposition and none of our opinions are based on that ridiculous proposition and I think he has got to defend his corner on the basis of what we say and on the basis of what we say we believe and not on the basis of what he can theatrically misrepresent our views to be.

MR. SPEAKER:

Let me again point out that only the mover of the motion itself will be able to speak once we take the other vote. So Members who wish to speak on both motions can do that now.

HON P CUMMING:

Mr Speaker, in 1984 the GSLP believed that GBC TV was

essential to maintaining the identity of the people of Gibraltar and now in 1993, the Minister has implied that it is less important for that purpose and I would like to say, Mr Speaker, that I do not agree with that analysis. In the intervening years our political situation has become increasingly complex and requires more attention and debate and our identity as a people is as much in the melting pot now as it was in 1984 and as it was in Franco's day. In my view GBC was essential in 1984, is essential now and will remain essential in maintaining and building up our identity as a people till we emerge from our colonial status into a permanent constitutional position.

MR SPEAKER:

If no other Member wishes to speak I will call on the mover of the amendment to wind up.

HON J C PEREZ:

Mr Speaker, I am sorry that the Leader of the Opposition is not here because he did take a dig at me when he opened and he said that I exaggerate for theatrical purposes and frankly I do not think anyone has mastered that art better than he since he came into this House. I get agitated because I speak from the heart and that might be construed by the hon Member to be theatrical, but believe me, he should look at himself in a mirror before he tries to pin that one on every Member of this House on either side.

Mr Speaker, I say again, I have no interest whatsoever to defend either Strait Vision or any section within GBC or anything that has happened between contracts, between the Corporation and Strait Vision because I have not been privy to them. And therefore, what I am trying to give the House, is the information given to me from my own horses and certainly what I get from the horse's mouth is certainly not what the hon Member gets. That is quite clear. He seems to think that one has measured the productivity by looking at the overheads and everything else and I am measuring the productivity of the people that used to be in GBC by what they themselves used to produce and what they produce now which was a contractual obligation entered into by the Corporation without any interference from me. The element of overheads that he has mentioned that stayed behind in the Corporation is not true. Part of it went with Strait Vision and part of it was restructured at the time of the restructure. So that is not true. That was taken into account in the restructure. That there should be an element of duplication, perhaps there is, but that was thought at the time was the most feasible proposition because as the hon Member says what GBC is having is a financial crisis. I agree, it is not a very good thing to duplicate, other than if you already were duplicating in terms of the Corporation itself. It is not that we have employed more people to do the same thing. We are employing the

same people to do more things, so at the end of the day however much duplication there is, there are less people doing it and there is more being produced by certainly that group of people. I think the hon Member is right in saying that the staff is at its lowest level as far as they can see for the service that they provide today but that is the major problem of the Corporation. There have been cuts in staff and it still costs more than what it used to be. The idea of giving Strait Vision the potential to earn part of their living outside what was provided for by public funds for the subvention needs to be applauded because that was the only proposal of that nature that came that way. Notwithstanding the fact that everything that has been said to the hon Member about the constraints, about moving commercially before, was corrected in the first year in office. I brought legislation to this House in 1988 to allow the Gibraltar Broadcasting Corporation to operate commercially. So the tools were given to the Corporation to go and look for commercial activity outside the realms of broadcasting and try and get revenue other than the one that they were getting from public funds. The only initiative during the whole of the five years came from Strait Vision which is the one that was supported because it was the only one. Whether such initiative was taken to the Board when under the law, because of the Governor's monopoly GBC could not operate commercially, I do not know, but certainly in 1988 I gave them the tools to do it and no suggestions of that nature were made to me or indeed to the Board as far as I am concerned. That is what my horses tell me. Mr Speaker, the arrangement entered into at the time of the AACR Government in 1984, which the Corporation accepted and which was accepted by the Opposition at the time was that the provision of the subvention and the licences would cover the labour cost of the Corporation. The pay increase of that year, so that the Corporation would have time to look for that finance elsewhere and restructure its advertising rates and everything else, would be paid for over and above the £570,000 of pension under the escalating costs. The inflationary cost of running the Corporation, the inflationary cost of the wage element for the following year and the immediate impact of a pay increase in the year was softened by an extra subsidy by the Government. They had time to organise, to review the advertising rate and go into certain commercial activity to be able to earn the extra amount of money outside the Corporation. The Corporation accepted that because they saw a huge market in the Costa del Sol for advertising and erroneously we were presented with a figure when we were in the Opposition of the successful £800,000 of advertising that has been acquired. I have already told the hon Member what my information about that is and I think I ought to stress, Mr Speaker, that however much the hon Member seems to think that he is stretching his imagination to believe that everything he has been told is correct and what I am telling the House is incorrect, I think that he ought to take note and a little bit more seriously what I say in this House because I do not attempt in any way when I bring the facts to this House to hide anything.

I am putting the information as I have it. I think he ought to take also account of what I am telling him because that is part of the saga, and I am afraid it is coming to a saga because the financial attempts to bring about a solution have already been made and the money has been spent already on that attempt. Therefore we find that the only solution that we have is to try and provide whatever service is possible within the money that exists today. I do not know whose banded about 24 staff or anything else but I have certainly not put forward any other view other than that the Government is prepared to consider proposals from any quarter for the provision of radio and television as long as it is contained within the present money and not one penny more. That is the road we have to face and the road we are going to take and if that costs a bit more money in a bit more restructuring ...

HON P R CARUANA:

Can the Minister just clarify? I am grateful to him for giving way. When he says he is willing to accept any proposal that involves GBC spending no more money than is spent annually today, what does that mean? The £560,000 plus the £100,000 odd or what is actually being spent with supplementaries and subventions? Because if the Minister says that the money that he is referring to is the £560,000 subvention plus £200,000 or whatever it is on licences, and if that is not even index linked he is really saying that the Corporation has got to continue to survive on the same figure as it was doing in 1984, notwithstanding that it has been subjected to eleven years worth of the ravages of inflation. That is a poisoned chalice to anyone that is silly enough to grab it. Is that what the Minister means when or does he mean the money that is being spent in this current year?

HON J C PEREZ:

The hon Member is correct. That is exactly what I mean. If the hon Member thinks that it is silly to grab it and that is the advice from the Opposition then if that advice is not taken then the other alternative is to shut GBC down completely. Those are the only alternatives that there are because let me say that the hon Member is wrong in thinking that the figure should be updated by the cost of living since 1984 because no other Government department has been subjected to that kind of restructuring or that kind of rigour. Some departments have been eliminated completely, others have been run down and we have not done it with anybody else and we are not going to do it with GBC. GBC has a tool that other people do not have. They have the tool of creating a commercial activity and an initiative to supplement the subsidy that the Government gives them to be able to raise enough revenue to carry the inflationary costs every year. They said in 1984, when the AACR was in Government, that they could do it. The advertising has collapsed and that is something which

unfortunately with the advent of satellite has happened. But in 1988 they asked for the restrictions of operating commercially in other fields to be lifted and they were lifted. They were lifted precisely for that purpose because they would be able to go out and fund the recurrent inflationary costs every year from sources other than from the subvention. In 1984 when they were given the subvention and the licences fees they were supposed to form the basis of the funding of the Corporation and the increasing costs on an annual basis was supposed to be funded from commercial activity. The position of the Government is that, notwithstanding that, it accepted that if we were to restructure the Corporation and to put money into the Corporation to the tune of nearly £2m - we did last year between the I & D Fund and the Recurrent Expenditure - there would be a viable proposition where the Corporation would not come running back to the Government asking for more money in years to come. It did not take them long to come running for more money. It took only months after the restructuring. The hon Member might be naive to think that if the Government had tabled the accounts promptly that would have solved the situation, which is what he indicated. But looking at the accounts and standing up in the House and giving advice on what should or should not be done with the Corporation is not taking decisions on the running of it on a daily basis. One does not blame anyone for the situation. The situation is there. It has been structured in a way and it exists in a way..... I prefer the hon Member not to because he can speak on the substantive motion again if he wishes to.

MR SPEAKER:

No, he cannot.

HON J C PEREZ:

Then I will allow the hon Member.

HON P R CARUANA:

Mr Speaker, it strikes me that the management of GBC in 1984 and 1988 accepted the proposition that they could increase their revenue other than from the licence fee and from the Government subvention, every year, one year after the other, by the amount of inflation or by the amount of their cost increases. Well I am sorry, they were very badly advised because businesses increase their annual revenue to meet the incidences of inflation by raising the price of their product to their consumers. If I am selling shoes and I have to pay my staff more and my landlord more and the Government more in rates, I put on more money on the the price of a pair of shoes. Here is a Corporation that is selling nothing more than

television licences and adverts; most of its revenue comes from subventions and licence fees, how could that Corporation or anybody now think that any business could generate enough new revenue every year without being able to increase the principal source of its revenue which is the subvention and licences fees. What the Minister is suggesting is that every year they would have pursued a new commercial activity or found new advertisers or raised the advertising rates or somehow manage to raise the money every year, year in, year out to pay for the inflationary effect on their cost overheads. I can tell the Minister that to meet the whole of the cost overheads inflation out of one of three sources of revenue especially when it is a minority source of revenue, is a Houdini impossibility. If there was a management in GBC in 1984 that thought that they could do that, well I am very sorry that we are now paying the price in this debate today for that error of judgement.

HON J C PEREZ:

Mr Speaker, I do not know the details of it, but that is in principle what was announced in the House at the time but I disagree with the hon Member that it is impossible to do. We were not only talking about increasing advertising rates every year to meet escalating costs. They were talking about increasing the potential of selling more advertisements. It was at the time when the frontier had opened, that advertising revenue was something like £150,000 or £200,000 and they reached up to a level of £800,000. They did it very inefficiently because of the cost involved in getting the £800,000 but the market was there. What I am saying, Mr Speaker, is that there is no other reason other than keeping the cost of GBC down to what is expected every year behind the philosophy which I am proposing. The hon Member has made a lot of song and dance about saying that I have suggested that they spent money without accountability. Mr Speaker, it was he, yesterday that gave us the example, I think it was the example of the Labour Party, that by their silence or omission they were actually making a point. The only points made by the hon Mr Vasquez in order to secure a solution to the problem was to propose that we put more money in it. But if they are subjected to the check that the present money is in and he seems to be satisfied with the present checks that are in place today because he is not complaining about that, then it means exactly that. Give them more money without being accountable for it. That is exactly what it means. Let me explain to the hon Member because he said that at this stage anyway, he feels that there might be some other reasons for taking the line that we are taking with GBC. There is no other reason. The reasons are entirely financial ones. The hon Member continues in his own paranoid way to see skeletons where there are none but he is going to continue to see them regardless of whether I assure him that that is not the case. Certainly it would be the easiest thing for me for political expediency to come and say "Yes, I support GBC and yes give them

more money", but I am responsible as a Government Minister and as a Member of the House for the way the money from the public is spent and that responsibility overrides any political expediency which I think is not the case of the hon Member. He might be able to afford to be more theatrical in his political expediency than I can. Thank you, Mr Speaker.

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

MR SPEAKER:

Before I ask the mover of the motion to speak, I would like to draw attention to the rules of procedure. If you wish we can vote on the original motion.

HON F VASQUEZ:

Mr Speaker, in fairness I think we discussed the subject ad nauseum.

MR SPEAKER:

Next time I find a situation like this I will not call it a motion but an alternative to the original motion. Therefore there will be no need for this awkward way of dealing with the situation.

HON P R CARUANA:

Mr Speaker, you may have misunderstood. We are quite happy to reply because we take the view that the matter has been thrashed out. People have given way but we would like our original motion to be put to the vote.

MR SPEAKER:

Yes. We will do that.

HON P R CARUANA:

Mr Speaker, I accept which I suspect is what the hon Members are going to say is, that if Mr Speaker has ruled, my motion has been amended by the other one then the voting goes on, but when you first spoke to us, you said you were taking the view that there were two motions on the table. If that is the view that you have taken, then I think we are entitled to a vote on the other one.

MR SPEAKER:

What I said was in a formal explanation but as you wished that to happen, I did, but in fact I used the wrong wording. I should have said 'an alternative to the motion', not 'a modification to the motion'.

HON P R CARUANA:

Much as we would like to vote, we recognise that we cannot.

Mr Speaker then put the question in the terms of the Hon the Minister for Government Services's amendment and on a vote being taken the following hon Members voted in favour:

The Hon J L Baldachino
The Hon J Bossano
The Hon M 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 J Blackburn Gittings
The Hon E Montado

The following hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The amended motion was accordingly carried.

HON P R CARUANA:

Mr Speaker, I beg to propose the motion standing in my name that -

"This House:

1. Notes with regret that during the whole of 1992 the House sat for a total of seven and a half working days and that the Opposition had only two opportunities to put questions to the Government;
2. Considers that such infrequency of meetings makes

a mockery of parliamentary democracy in Gibraltar and undermines Gibraltar's political image within Europe;

and calls upon the Chief Minister to call more frequent meetings of the House so as to allow the Opposition at least one opportunity a month to put questions to the Government and to put down motions for debate and thereby ensure:-

- (1) that the Government is publicly accountable to the people through parliament on a continuing basis, and
- (2) that our parliamentary democracy is comparable to that operating in the Europe in which Gibraltar legitimately aspires to "take its place".

Mr Speaker, I hope it will not surprise the Government who may be misreading my motion. The motion is actually designed to enjoy the support of the Government and the question that the motion raises is not whether this Government is more or less accountable than previous Governments. That is an issue that certainly separates us politically. We have had detailed motions in this House recently on that particular issue last year. This motion is not designed to address the question of this Government's record on accountability. The relevant word in paragraph 2(1) "that the Government is publicly accountable to the people through parliament" is "continuing". I hope that the House will bear with me just for a few moments whilst I become a little bit philosophical in order to put the subject matter into context. The question is this, "Do we as politicians really believe in democracy and in the democratic process or do we simply see it as a means of gaining power and then as a means of setting about by hook or by crook for retaining power?" Is this House, I sometimes ask myself, the forum in which at this moment in our political history, the GSLP as a political part and the GSD as a political party simply come to fight our partisan political battles? Is it simply the battleground for political parties or is it more than that? Is it really the depository of the people's input into their Government and their own process for self-administration? Is it the place not where the GSLP and GSD come to defend their political fortunes or is it the place where the Government, whoever it might be, from one period to the other, answers questions, comments publicly on matters of public concern, accounts to the people on a continuous basis, airs and debates matters of public concern and of course not forgetting the most important function of this legislature, in which proposed new laws are aired and debated? What we have got to ask ourselves is whether this House is presently organised in terms of its business in the way that best suits the aspirations of this community for this House, what this House looks to this community to do. Is there in the modern Gibraltar that we are trying to create, any real difference given the make-up of this House and given also, I concede, the extraordinary electoral system and electoral process which is capable

of giving me just one seat less than the hon Members of the Government notwithstanding that they enjoy 73% of popular support and I enjoy not even the whole of the remaining ballots? These are questions that I am prepared to ask myself and to answer in the overall context of creating a parliament for this community which is adequate for the status which we as a community want to hold up ourselves as having in a modern, democratic Europe. I think it is implicit in the fact that I am asking these questions in rhetorical fashion that my view is that this House does not serve the purposes that I am describing. I would like to take the House through the principal functions of a parliament in a modern, vibrant democracy and let us compare our parliament to those functions. The most important function of parliament is the legislative function. Let me just say for the purposes of getting it out of the way as quickly as possible that we do have a political difference across the floor of this House as to what is proper and what is not proper use of subsidiary legislation. I have a letter in my office from the Attorney-General of the day saying that it is stated Government policy to legislate by regulation. There is a political difference between us which I have consistently advocated detracts from the legislative prerogative of this House. I think a cursory glance at a list of the significant new areas of legislation that the Government Members have introduced into Gibraltar's law books through regulations serves to underscore the point that I am making. I will read through them very quickly -

- (a) The Register of Business, Trades and Professions Regulations
- (b) The Employment Workers (Contractual Terms and Information) Regulations
- (c) The Gibraltar Development Corporation (Employers Insolvency) Regulations
- (d) The Qualifying High Net Worth Individuals Rules
- (e) The Rates of Tax (Amendment) Rules
- (f) The Home Purchasers (Deductions) (Amendment) Rules
- (g) The Rates of Tax (Relocated Executives Possessing Specialist Skills) Rules
- (h) The Parent and Subsidiary Company Rules
- (i) The Gibraltar 1992 Company Rules.

The list is endless. That is samples. These are important new concepts of law and they have been introduced by regulation without discussion in this House. Without the sort of discussion which we had in this House yesterday about the Shipping Regulations which I thought demonstrated the value and what I think now a parliament should work in its legislative functions. Consider this. I know that

Government Members will be sympathetic to this because they suffered it, I am sure, when they were in the Opposition. Consider the extraordinary system whereby the Opposition who are supposed to take part intelligently and contribute intelligently to a discussion on what our laws should and should not be are given perhaps seven days notice of legislation. It does not matter if it is fifteen Ordinances or one Ordinance; never mind if the Ordinances are 150 pages thick or whether they are one paragraph thick. This shipping legislation that we have considered in some detail yesterday ought to have been considered and would have been considered when the House last sat in December had the printers been able to print them in time to give me seven days notice. If I had been given seven days notice to read these three thick Bills, I can tell the House that my own contributions would have been cursory and certainly would not have been based on a reasonable reading and on a fair analysis of what the legislation was trying to do. So this extraordinary practice whereby the House is only required to be given seven days notice of legislation - compare that with the position in England where white papers and green papers are in the public domain for months, perhaps even a year, before they come to be considered in the House - demeans the quality of this House as a legislature. That is something we should rectify. Take the Committee Stage and the way this House is regulated in terms of the way it does its Committee. I think it is unnecessary that every Member of this House should be sitting in this Chamber for hours and hours on end taking a Bill through its Committee Stage. That is not the way other parliaments organise their business. I realise that other parliaments have got more members to draw from but it is wasteful. We might be discussing an area of legislation on which one or two or more Ministers may have no interest. They may well have important work to do on the part of the executive and they are sitting there. I do not know whether it is fear that they might lose a vote or that they have to be there to keep the numbers up. It is unproductive. It defeats almost the purpose of the Committee Stage if the whole House is going to do the Committee work. We might as well do it all on the Second Reading. What is the point of dividing our legislative process into stages if we are all going to sit around doing it all together. The other important function of the House is its role in supervising the executive. I understand that we are particularly handicapped in Gibraltar in our parliament performing the role because of our numbers and because of the way that we are constituted, in effect the whole of the Members on that side are in the Government and the whole of the Members on this side are not. The result is that there are no Government backbenchers and things of that kind. But still this House has a duty in terms of the Westminster pattern of parliamentary democracy which is what we think we are implementing here; to supervise the executive collectively as a House. One of the things that perhaps divides us politically is also the question of accountability. I believe, as he been stated publicly by the outgoing Financial Secretary, that this particular Government has

sought to make the issue of financial accountability almost a matter of policy rather than say, "Look, we do not question that the House should have available 100%. There is no titbit of information that we have any desire to keep from the House" and then the policy works around that. I really do believe that the Government has made the question of accountability in itself a matter of policy. I think that the effect of it - without wishing to get bogged down in that which we have dealt with on other occasions - based on my premise which I know the Government Members will not accept, retracts from the House's ability to perform that supervisory function, Mr Speaker. On the question of Question Time, that other traditional democratic opportunity for the House to question the Government, as the motion says. Last year, which hopefully was a bit peculiar because we had a general election at the beginning of the year and that puts the legislature and the House's calendar back, it remains a fact that we did the equivalent of 7½ working days work in this House. I know that that sounds critical. I have the statistics for all the other years from 1988; it fluctuates. Seven and a half days is low but it has always been 13 days a year, 14 days a year. That is what is being taken into account, the number of those years that were not full days to come to a comparable figure. The fact of the matter is that it remains a fact that the Parliament of Gibraltar meets for the equivalent of seven and a half working days a year. It remains a fact that the Opposition has had last year two opportunities to question the Government. Now, it is also true that it is, I think, unprecedented in any other parliamentary democracy that the Opposition should have unrestricted right to question the Government even on those two limited occasions. This idea that the Opposition on those Question Times at the beginning of each meeting could theoretically put down 2000 questions and keep the House in Question Time for a week if we were minded to do it and had the stamina and could think of enough subjects upon which to question the Government. Theoretically we are at liberty to do so. Just as I am theoretically at liberty today not to have tabled three motions but to have tabled any number of motions.

MR SPEAKER:

Theoretically yes, but in practice no, because the Speaker would apply the rules rigorously and then the amount of time spent on questions would be reduced considerably.

HON P R CARUANA:

Mr Speaker, in the question times, that I am aware, although please correct me, you have the ability to restrict my timing on how long I spend on each question but you have got no right under the Standing Orders, as I understand them, to limit the number of questions that I can put. Mr Speaker, with the greatest of respect, to me you are not addressing the point that I am making.

MR SPEAKER:

Yes, I will because if there is any repetition on the questions or repetition in the number of questions.... I am trying to clear the point because obviously I am sure you are doing this in good faith and I am also doing it in good faith. I am just contributing to the debate on an issue, I think, that concerns the procedure of the House for which I am responsible and I am just pointing out what would happen if that were the case.

HON P R CARUANA:

Well, Mr Speaker, as it is entirely improper for me to debate with the Chair; I can debate with gentlemen in the Government, I am at the significant disadvantage of not being able to reply to you.

MR SPEAKER:

But if you have a point.

HON P R CARUANA:

But I think the obvious point is that whilst the Speaker can prevent repetitive questions and can certainly restrict and be much less generous than he presently is, in relation to the number of supplementaries, there is nothing in the Standing Orders that would prevent me from asking 1000 questions on 1000 different subject matters. Nothing in Standing Orders that would prevent me from doing so. I think, speaking for the present Opposition, that I would sooner exchange that right to ask endless numbers of relevant and non-repetitive questions for as many days I can keep my stamina going. I would exchange all that for the opportunity to question the Government more frequently, more regularly but for a restricted amount of time. Let us do what they do in Question Time in other parliaments. Let us limit it to an hour or two or three but more frequently; not whenever it suits the Chief Minister to start a new meeting of a new House which is the only time I get an opportunity to Question Time. I think this works both ways. There are aspects of the way we organise our business which I think works both ways. In respect of the opportunity for Question Times, consider the position in Gibraltar where the Opposition got two opportunities last year - and even in a good year we would not get more than four - with the position in the United Kingdom where Ministers answer questions every day and the Prime Minister twice a week. The fact of the matter remains that there is very little opportunity for an Opposition to pose questions to the Government in Gibraltar at a time that the subject matter is relevant and of public interest. What actually happens is that one accumulates questions and asks half of them at a time when the moment is past. Consider the absence in this House of any

meaningful select or standing committees; Public Accounts Committee, and things of that kind. I think we are restrained and restricted in our ability to be the financial watchdog of the Government's real economic disposition by what I consider to be not having the whole picture in front of one. It affects adversely one's ability to evaluate that part of the picture that one has in front. I have mentioned already the third question; the question of motions and debate - and without wishing to provoke the intervention from the Chair again - where I could have had a dozen motions today and tomorrow or to when this meeting is adjourned to. Oppositions do not normally have this limited to a few opportunities a year but in those cases unrestricted. What there ought to be is more frequent opportunities but restricted as to time. That would enable the House not to get bogged down in business but would enable the House to discuss things at a time when they are relevant. Not at a time when the procedure of the House gives the Opposition the opportunity to raise it. Another function of this House which I think has been debilitated by the Government's policies is this inputs of parliament with all sorts of cliches about parliament being the body that raises taxes. Well, we know and this is another point of policy that separates us, that this Government has systematically passed a series of statutes that has enabled them to really deal with every revenue raising source by way of regulations. Taxes, import duties, estate duties, fines for criminal offences, the granting of exemptions; this Parliament no longer raises taxation. What this Parliament did was pass the enabling law to enable the Government to raise taxation. I think that all the problems that I have described stem from the fact that ultimately the control of the agenda is entirely in the hands of the Chief Minister of the day because I only get a Question Time at the beginning of each meeting, and a Motion Time at the end of each meeting, and the Chief Minister can string along meetings of the House for as many weeks or as many months as he likes. He in effect determines when the Opposition can question him and when the Opposition can raise motions. Therefore, Mr Speaker, what we are suggesting is that we, if possible, get together and consider how the way this House works can be restructured to result in more regular albeit shorter meetings, for more notice of legislation being given to the House, for more frequent, albeit shorter, Question Time sessions, for more frequent, albeit shorter, Motion Time; perhaps devising a system whereby we take the Committee Stage of our legislation to a smaller committee rather than a committee of the whole House. Mr Speaker, finally in the catalogue of events there is a question even of the frequency. I do not profess to be an expert on the comparative study of parliaments around the world and I do not know whether we compare favourably or unfavourably with parliaments in other British Dependent Territories. Frankly, it would be little consolation from the point of view of the point that I am now making here today, if we did compare favourably. Seven and a half working days or the equivalent of seven and a half full working days is, I put it to this House, not a sufficient contribution of this Parliament to the working

of this community and does not meet the expectations of what the electorate has of this Parliament. We in Gibraltar are agreed about one thing and that is that we wish to develop constitutionally away from our colonial roots, away from the institutions that flow from our colonial past and to the greatest possible extent acquire institutions within the restrictions that are available to us of a "more normal" politically organised society. There are many aspects of our decolonisation which as we all know are out of our controls. Acquiring a parliament that works more like parliaments work in non-colonised countries is one aspect of constitutional development that is in our control. This House of Assembly composed entirely of Gibraltarians without the need to have the support of the British Government; without exposure to obstructiveness from the Spanish Government; without needing to ask anybody's permission; could organise its workings in a way that would make it look and behave and function like the parliament in any other country and not like the parliament in a colony. I think that whilst we are pressing others outside of our borders to allow us that degree of political development to which the Gibraltarians aspire, we ought to at the same time start making those changes which we can within our borders of our own motion. Mr Speaker, developing our democratic institutions so that people in Europe will recognise us as a modern, self-governing, democratic society, well suited and qualified to take our place in whatever new political order emerges in a unified Europe, is something that we can do for ourselves today; we should do for ourselves today and if we can put aside whatever momentary party political interests we may have in the debate, it ought to be relatively straightforward for us to do that. I commend the motion to the House.

MR SPEAKER:

Before the debate ensues, I think I have to point out that because of paragraph 2 of the motion, I consider this motion to be a motion of no confidence in the Government and therefore officials will not be able to vote on this motion.

HON P R CARUANA:

Mr Speaker, before we proceed; needless to say I have to bow to your ruling. I would ask you to reconsider your ruling; there is nothing in the pen that wrote this motion that converts that paragraph into a motion of censure or a motion of no confidence in the Government. The second paragraph says, "Considers that such infrequency of meetings makes a mockery of parliamentary democracy in Gibraltar". Whilst I have said that the frequency of meetings in terms of the equivalent of working days in which the House now meets.....

MR SPEAKER:

Order. Order.

HON P R CARUANA:

No. I am not backtracking Mr Speaker. is, give or take a few days less than it used to meet, I think, it is implicit and inherent in the explanation of the motion I have given that this, the underlying representations made in this motion, are not in respect of the number of days that the House met last year. If we go back to 1987, if it did not meet the equivalent of seven and a half days, it met the equivalent of ten and a half or twelve and a half days. The point remains the same. Now, Mr Speaker, if you wish to interpret the motion as amounting to a motion of censure, then we are stuck to it. All I can tell you as the mover of the motion, that was not the intention or otherwise I would not have been so silly as to open by saying that the motion was drafted in a way that the Government would support it.

MR SPEAKER:

Well, the position is that if you withdraw paragraph 2 then in my view it is not a censure motion. To what extent that is necessary there.... unless you are saying that the Government is undermining democracy in Gibraltar then.... If you take away that then I agree with you entirely that it is not a censure motion.

HON P R CARUANA:

Mr Speaker, what I have said is that a parliament in any part of the world; in a democratic country that meets seven and a half days or ten and a half days or twelve days of the year, is a mockery of parliamentary democracy as that term is understood. Now, Mr Speaker, I do not wish to withdraw that remark. If Mr Speaker interprets that to mean, notwithstanding what I have said in my address, a motion of no confidence in the Government, then regrettably that is what this motion will have to stand in. But let the record show that it is not the intention of the motion; it is not the intention of the mover and it is not an interpretation from the Chair, bowing to it as I do, with which I would agree.

MR SPEAKER:

I accept what the Leader of the Opposition is saying that it is not the intention. But whether it is not the intention the fact is that it is. If I may say so, in the previous motion, the one proposed by the Hon Mr Peter Cumming, there was no matter of censure in the motion that I read. On the other hand, what he said was, in fact, censuring the Government and this is why I did not in the same way that I do not minimise the effect of the

motion because you have said it. I could not possibly interpret the other motion being a motion of censure by what the Hon Mr Peter Cumming said.

HON P R CARUANA:

Then I bow to the Chair. If Mr Speaker takes the view that to express the view in this House that a House that meets the equivalent of seven and a half working days in the year is tantamount, by virtue of some interpretation of that motion from the Chair, to a motion of censure or a motion of no confidence in the Government, then I am stuck with that because that is what I think. I do not think it is a motion of censure but if it has to be a motion of censure, then that is the decision that has been taken, not by me but by the Chair.

MR SPEAKER:

If you read paragraph 2 you will see that it is a motion of censure. There is no doubt about it. It is not what you say in the House; what is going to be voted on is on the actual motion.

HON P R CARUANA:

I bow to the fact that the Chair considers that this is a motion of no confidence. I do not think it is but I bow to the fact that the Chair thinks so.

Mr Speaker proposed the question in the terms of the motion moved by the Hon P R Caruana.

HON CHIEF MINISTER:

Mr Speaker, I will be the only Member speaking on behalf of the Government. Certainly we interpreted this as a motion of censure when we saw it circulated and frankly, I do not see how anybody else could interpret it any other way although I accept that the delivery of the mover has nothing to do with the content of the motion in terms of censuring because he has not censured us. I accept that. Equally, I think I make the point that the opening speech by the Hon Mr Cumming in the previous motion which was clearly not a motion of censure, was in fact that he concentrated exclusively on censuring the Government. If the other hon Members had not taken a different line we would not have supported the motion. Now we cannot support the motion however nice the Leader of the Opposition wants to be about it for a very simple reason. He is saying that because the House has met for seven and a half working days, we have made a mockery of parliamentary democracy in Europe and damaged our image and he calls on me to put it right. He says, "and calls on the Chief Minister to call more frequent meetings"

so he is saying that it is in my power not to make a mockery of parliamentary democracy and not to damage Gibraltar's image in Europe. That is what he says in the motion. If that is not what he means to say then he should not. Given that he has got 360 days in which to write the motion, he should get it better written, Mr Speaker. Frankly, we have come prepared to deal with the condemnation that appears on the surface and must have appeared to anybody that heard it on the media or read in the press that we somehow were muscling parliament by restricting it to seven and a half days a year. That is the accusation against us and therefore my response is based on answering that which is what I assumed the hon Member was going to be delivering here. I did not expect that he would be delivering the speech that he has delivered in moving this motion. I have to say I agree with quite a number of points that the hon Member has made which has nothing to do with the motion as far as I am concerned. I do not agree with others because if he says we differ politically on the definition of the area of public accountability, he cannot say it is not a political issue. Well, if it is not a political issue we would not differ politically. I have to differ politically even about the definition of whether we differ politically. Obviously, in areas like that which are not the entire substance of this motion, we might have different views. In areas as to whether the House of Assembly is doing what it ought to be doing in the best interests of the people of Gibraltar, the answer has to be that I do not think it is. I think that the contribution of the House could be greater but of course all I can tell the hon Member is that this is not a view that I hold in Government, because I am sure that if the hon Members quoted, in the context of the GBC motion, what I said in the opening of the House in 1984, then assuming that they read the rest of what I said, they will know that I went on then to describe the kind of Opposition we intended to be. I said in that opening in 1984 that the Opposition that had been elected in 1984 intended to make the House of Assembly do a more useful job by removing trivia from the House. That is what I said in 1984 at the same time and immediately after I spoke about GBC. I suppose hon Members did not just stop reading when they got to GBC and they have read the whole of what I said. They will know that at the time that the GSLP, for the first time, took over on the Opposition benches, I said, "I can promise the Government, and I promise Gibraltar, we are an Opposition fully committed to improving the quality of debate in this House by eliminating trivia from it and there are things that are trivia in the context of a parliament and are important to the individual concerned. If someone has no water supply, that can be a catastrophe in his house but it does not require a debate or censure motion in the House of Assembly in our estimation". So in our estimation, in Opposition, not in Government, being a responsible and effective Opposition meant raising the seriousness of the content of debate in this House. Not the quantity but the quality. One can meet 365 days a year and talk total rubbish or meet half an hour and make a lot of sense.

So I do not accept that we are going to earn the respect of anybody in Europe or outside this House by the number of times we meet but by the degree with which we take our responsibilities in the House as opposed to running a four year election campaign which I said in answer to what was clearly a censure motion immediately after the election in 1992. The Opposition can take their pick, either we can run this place with some modicum of commonsense in everybody's interest or we run it as a regular show for the people who may be deprived of other entertainment on GBC, so that they can see us having a boxing match here periodically whether it is seven days a year or ten days a year or whatever. It is one way or the other. We are game whichever way they want to play it. I can say to hon Members the way we decided as a matter of policy to play it in 1984 because we felt that before we were the only Opposition party on the other side of the House, there was a situation where quite often matters where a constituent had a problem and went to a Member of the House for assistance or advice, that Member, instead of being concerned about helping the constituent and seeing what he could do to get somebody to look at his problem, actually was interested in using that person's problem to hit at the Government. We thought that that was not what the House should be here for. So if we go back over the years, we find that when we spent in this House, maybe ten days instead of seven and a half days, we spent two and a half days talking in a budget about how many cars had been dropped out of the Europe Lighthouse into the Straits of Gibraltar. I remember one particular debate which was a particularly prolonged one where there was a half an hour session trying to find out why the tights of the policewomen cost as much as they did. Now, we can go back to that and I can tell the hon Member that we will be here for a very, very long time. It is in the power of the Opposition to do that so what I am saying is that it seems to me that the focus, that there is necessarily a connection between the number of days and our image in Europe and making a mockery of parliamentary democracy, is misconceived. I will not put it more than that on the basis that the motion was not intended to be more than an expression which to any normal person must have looked as a censure motion but which the Opposition Member did not intend to be. I am afraid, Mr Speaker that my response - that is the response of the Government - to the motion, given that that is how we read it, is one that was already decided before the Leader of the Opposition stood up and spoke but strangely enough he may well find that my version of reality which I propose to move now by proposing the deletion of all the words after "This House" may well coincide better with the views that he has expressed than with his own motion. So I may have done a better job, even before I listened to him, of collecting his thoughts and putting them on paper than he did himself; in which case he will have no trouble in supporting my amendment to his motion because it is an improvement. I move that all the words after "This House" should be substituted by the following -

"(1) Notes that since the 1992 General Election the number

of meetings, holding of sessions, passing of Bills, tabling of motions, and answering of questions of and in the House of Assembly has been in line with the average since 1984;"

This should give no problem to the Leader of the Opposition because he is saying that he is not blaming us for being worse than our predecessors; he is just saying that it was unsatisfactory now and it used to be unsatisfactory before. We are just making the point that in case somebody misunderstands his motion and assumes that he is criticising us for being seven and a half days, in fact whether it is seven and a half days or not, it may be that, like GBC, we are being more efficient and being more productive and getting more work done for the same money. So we are going through as many questions, as many motions and as many bills in less days than before. One of the changes that we brought in in 1988; because we had complained about in since 1984 and because the point made about timing was one which we felt did not give us enough opportunity to do a serious job on the legislation; was the introduction of a gap between first and second readings of bills and the committee stage. This was an innovation of ours post-1988 on the basis that when the bill was brought to the House, even if one had already had a week to read it, the purpose of the bill was debated in second reading and unless there was an urgent need for it, the House then adjourned with a gap of one or two weeks before it continued in committee stage. The normal process, if the hon Member looks back before 1988, was that we went immediately from second reading to committee stage as we have done in some cases but that was the norm before. We were objecting that before we had a chance to listen to the argument the previous Speaker - who was nowhere near as lenient as you are Mr Speaker; you suffered his consequences sitting on the other side of the House - if you stopped to hold your breath, would call the next item. Before we knew where we were, the bill had been passed. So we have introduced this gap between first and second readings and committee stage. This is why the number of sessions is higher than the number of meetings in the average after 1988. This is addressing part of the problem that the hon Member talks about having only seven days because the bill is published and one sits here seven days later but, of course, when one sits here is when somebody is supposed to give an explanation of what it is that we are trying to do with a bill. When one gets that explanation then one has the time maybe to look in detail at the contents of the bill and come back at committee stage and say, "Look, I think what the bill does and what is claimed it wants to do is not the same thing and I think either it has been drafted wrongly or there is a mistake or I do not understand the explanation." By and large we try and create this gap.

"(2) Notes that the view of the present Opposition Members is that the important factor is the number of days the House sits and that in their judgement the number of days it sat in 1992 makes a mockery of

parliamentary democracy and that this view undermines Gibraltar's image in Europe;"

I hope Opposition Members will accept that I am not representing their view because that is copied from their own original motion but since we are democrats we believe that their view should be reflected in their motion as much as in ours. They are entitled to have their view so we have put it there.

"(3) Notes that since the 1992 General Election the composition of the House is the most unrepresentative since 1969 with seventy-three per cent of the electorate having eight representatives, twenty per cent of the electorate having seven representatives and seven per cent none;"

Except for the odd slip of the tongue when the hon Member thinks his party is called GNP instead of GSD and he mentions the wrong party, I know he will not disagree with that because he himself made a reference in his opening remark although he does not mention it in his motion. That is why I think I have done such a good job of reading what was in his mind before he stood up and actually getting it down on paper.

"(4) Notes that in the view of the Government the results of the 1992 General Election makes a mockery of parliamentary democracy and undermines Gibraltar's political image within Europe;"

This is where we have got a slight difference of views. We really think that it is not that we met seven and a half days which makes parliamentary democracy a mockery in Gibraltar and damages the way Europe sees us, it is the fact that they are there that makes parliamentary democracy out of the House of Assembly and damages our image. But in a democracy we can have different ways of looking at it. They blame me for meeting seven and a half days; I blame them for being here at all.

"(5) Welcomes the statement made in the New Year Message by the Chief Minister that the restructuring of the public finances of Gibraltar started in 1988, is now virtually completed thus fulfilling the election pledges made in 1988 and 1992 in accordance with the best traditions of parliamentary democracy and making the structure of these finances easier to follow by the ordinary citizen;"

Opposition Members may not agree with what we have done but what they cannot say is we are not democratic because we do what we say in an election campaign we will do if people vote for us. So if we stand for election and we say: "If we get in we are going to do black" and then we get in and we do white, we are entitled to be censured. What they do not seem to understand is that, of course, they are not in agreement with us. If they were in agreement with us then we would have had ninety-three

per cent and they would have joined us. We accept they are not in agreement with us. We accept they are entitled to try and persuade people that their view is right and ours is wrong. What they are not entitled to say is that it is a mockery of democracy to do what one puts in ones manifesto. They are not entitled to say that because that is false and misleading and that is something I do not believe the Opposition Member can honestly represent as his intelligent view. He can represent it as his intelligent view that in his judgement and in his political philosophy, if he had been elected into office he would run the finances of the Government and the structure of the Government differently. But what he cannot say is that a mockery of parliamentary democracy is made for putting something in a manifesto, getting elected and doing it and then coming back to people and saying, "Look, I promised in 1988 we would do this restructuring exercise; I have done it; I want a mandate to continue doing it; I have now completed it". He said it himself, Mr Speaker, in this House immediately after the election when we announced the changes we had done. He went on television and said, "They have just completed what they started in 1988". Well, what does he expect us to do? Do what we said in 1988? Of course we completed it. That is what we asked people to vote for. For completing the job we started in 1988. So as far as we are concerned, we think it is a travesty of democracy that one goes with a policy, fights an election, wins the election and one says, "Right, that is it now, I have to defend my record in four years time. In the meantime, I will answer questions. People can criticise me". What they cannot say is that there is something fundamentally in conflict with democracy because I am doing what I promised the people I would do if they voted for me. That is a nonsense. Finally, Mr Speaker, to show just how good democrats we are - my amendment reads -

"(6) Considers that all these views" - not just our views, the views of the twenty per cent - "should be taken into consideration in the current constitutional talks with HMG to establish what further measures may be taken to enhance parliamentary democracy in any new constitutional arrangement".

We are looking fundamentally at what we need to do in relation to replacing the colonial links by our new status the same as any other country. I am glad that now considering ourselves to be a country is not a pie in the sky or so hair-brained and so on anymore. We are now getting closer to each other. We now accept that we are a country..... Well, I will do what the hon Member suggests.....

HON P R CARUANA:

We are not the thirteenth member State. I will save the Chief Minister the trouble of looking at the dictionary. There is a clear difference.

HON CHIEF MINISTER:

Well then, since we are agreed that we are a country and we can aspire to be a country....

HON P R CARUANA:

..... country means something different.

HON CHIEF MINISTER:

Assuming that what the hon Member thinks is a country and what I think is a country is the same thing, then if we are agreed that we can aspire to be a country and take our place in the European Community; in the family of European countries, whether these European countries are member States or not member States and have parliaments like other countries have parliaments, then obviously in that context - which is what the aspiration of every Gibraltarian is - we will give serious thought to what needs to be done between now and 1996 so that by the next election when we are closer to decolonisation; if not there already, our people will be able to elect a parliament which closer reflects their choice. Not a colonial parliament like this which is here to ensure that there is always a very small minority on the assumption that one can get the Financial and Development Secretary to agree with the Opposition or somebody else. Unlikely to happen in future, let me say, as I will explain when the time comes. At the same time we will see whether in fact such a mechanism ought to have the kind of structures in it for closer scrutiny of legislation and involvement and regular meetings and all the other things that the Opposition Members attach so much importance. So as far as we are concerned the views that we hold which are reflected in this motion and the views the Opposition Member holds which are reflected in his motion. Of course, his motion is just what they believe, ours in fact is a composite motion, as they say in trade union circles, which collects much of what he has said and certainly most of what I have said. Therefore I commend the amendment to the House.

MR SPEAKER:

We have a similar situation to that which we had previously. This time I will not call it a different motion as I did previously. It is an alternative to the motion in the sense that it is an amendment which does not try to modify the motion but it is a totally different motion. Yet it is not a different motion because it is an amendment to the motion. I have got to be very careful with the way I word this. Consequently all hon Members can speak, including the mover of the motion, because

this is an amendment to the motion, but we shall take the amendment first for voting so we shall vote on the amendment and if the amendment is passed, that is the end of the discussion. So the debate can now ensue on the amendment to the motion.

HON P R CARUANA:

Mr Speaker, addressing the extraordinary amendment to my motion, all I can say really is that the views, the sentiments, the logic and the philosophy that runs through this motion confirms my worst fears and the inapplicability to the Chief Minister of the words that I used in introducing my own motion. The man does not believe in democracy at all. But let me take his motion and his amendments one at a time. "Notes that since the 1992 General Elections the number of meetings, holding of sessions, passing of bills, tabling of motions and answering of questions of an in the House of Assembly has been in line with the average since 1984", not true. Rubbish! Statistically untenable. Last year there were two Question Times, as he calls them "answering of questions", and there were two tabling of motions. For that to be the average would require them to have been less than that in any year and I can say that, thankfully, not even if this Government since 1988 have dared reduced the figure to less than two. If only for that reason, that the amendment is manifestly and on its face factually inaccurate, we would not be able to support it. It is not true that the opportunities for tabling of motions and answering of questions in 1992 have been in line with the average since 1984. Manifestly not true. "Notes that the view of the present Opposition Members is that the important factor is the number of days the House sits and that in their judgement the number of days it sat in 1992 makes a mockery of parliamentary democracy and that this view undermines Gibraltar's image in Europe", if this Government had not taken from this House many of the functions parliaments serve in other countries, then we would have more business than we have to discuss and to transact. What the amendment in that paragraph is actually saying is that there is nothing untoward in a parliamentary democracy for the parliament to meet only on seven days because such words of wisdom as the Chief Minister wishes to lecture this House with, are capable of being delivered in seven days and are capable of being delivered in seven days like other great things that have been done in historical past, then.....

INTERRUPTION

..... half a day for me to express my view on how it was done. Seven and a half days - and he thinks that that is enough. I maintain that there is no parliament in any place other than the most crude colony and even that I do not concede, I only concede because I have not got the facts in front of me but I suspect that not even in such places - not even in the Falkland Islands or St Helena

or in all these even further flung dependent territories than us - I submit meets for seven and a half days. And I note with regret that the Chief Minister considers that there is nothing inherently undemocratic about the parliament only meeting seven and a half days. "Notes that since the 1992 General Elections the composition of the House is the most unrepresentative". How? And he actually blames us for being here at all. Well, Mr Speaker, I did not write the rules that put us here. I play the game by the rules that exist and I do not complain about the rules when they serve me or they do not serve me and I do not suddenly find them very good when they do serve me. The fact of the matter is that this is what we have got and frankly the difference between a 73/20 majority and 60/40 becomes a matter of degree. I accept that the present figures look more impressive than any figure in the past but to say, as he does with characteristic lack of nationality when he gets upset, that we are to blame for our presence here is at least an irrational absurdity, if not a desire to deceive anyone that might be listening because all that I did was stand for election. I did not write the rules, I did not benefit from the more than I wanted to or suffer from them more than I wanted. I stood for election and as to the representative nature of the House, if it is not representative, it is not down to me. It is representative in the sense that everyone who voted is represented in this House except those who voted for a party that did not secure any seats but that is the case in every parliamentary democracy. For that reason we cannot support it. The suggestion that because a party that got some votes is not represented in the House and therefore we are not a representative parliament is a nonsense. Even in parliaments that operate on the system of proportional representation, most of them need a minimum of five per cent support. In the United Kingdom system, one could theoretically get thirty or forty per cent in every constituency and still not have an MP in the House. This House is no more and no less representative in structure than it has ever been because the popular, neither in this parliament nor in the United Kingdom mother of all parliaments, the distribution of seats - except in a parliament of proportional representation - has never reflected the popular support of the party in Government. That said I have no difficulty in conceding that it is anomalous that our system should be capable of producing this result. The amendment to the motion of the Chief Minister institutionalises and sets in store the lack of personal commitment that he has to the concept of parliamentary democracy. It is obvious from the way that he carries on the business of government used to be a matter of subjective opinion. It is now in print for all to see. This is what the Chief Minister believes that the quality of parliamentary democracy in Gibraltar should be. That Her Majesty's Government should take into account all the anomalies inherent in our Constitution including those anomalies that allow him to carry on the business of government behind companies including those anomalies that allow Government Members to sit as directors of companies and not account for their actions in this House

because they are there as directors and not as Ministers, including anomalies that the Chief Minister says allow him by the expedient of regulations made by him over his breakfast table, to divert revenue away from the appropriation mechanism of this House. All these anomalies ought to be taken into consideration and whereas the Chief Minister may wish to limit himself in his representation to the United Kingdom Government as to the ones it should take into account to redress the admitted injustice of the fact that he has only a minority of one when he has a majority of seventy-three per cent; I, mindful of the duties of the Members of the Opposition, will see to it that representations are made to the United Kingdom Government in respect of all the other anomalies that exist in the Constitution. Therefore, insofar as this is a statement of the anomalies that exist, it is a reference only to those anomalies which address the self interests of Government Members. It goes without saying that the Members of the Opposition will not support these ridiculous, irrational amendments to our motion because if we go, as I will now address, back to my motion and see what of my motion says is not true. "Notes with regret that during the whole of 1992 the House sat for a total of seven and a half working days and that the Opposition had only two opportunities to put questions to the Government". Fact! There is no element of comment there. That is a matter of statistical reality. If it is statistical reality that the Chief Minister does not like or finds so embarrassing that he has to defend in abusive terms; fine. Really all that he is saying is that there is something there that he has to defend because for my part, that is a simple statement of fact. Whether he likes it or not, it is fact. "Considers that such infrequency of meetings makes a mockery of parliamentary democracy in Gibraltar and undermines Gibraltar's political image within Europe", and the Chief Minister may think that it is perfectly normal for parliaments to function on seven and a half days of the year and note is now taken that that is his view. It is not my view. I think it pays little more than lip-service to the concept of parliamentary democracy. I think it is demeaning of our aspirations for a real parliament. This is not something that we have got to ask anybody's permission to introduce. We could introduce this tomorrow if the Chief Minister really wanted to. A parliament which satisfies the people's aspirations to parliamentary democracy must, even if we wish to disagree as to the number of days that it should meet. I think that the minimum level of aspiration is going to be at more than seven and a half days. I think it makes a mockery of parliamentary democracy. I happen to believe that when people look at us from outside and evaluate the extent to which we can participate in political bodies in Europe that they will find it odd that our parliament only meets on seven days of the year even if we were the equivalent of a regional parliament, which we are not, and even if we were nothing more than the equivalent of a municipality, which we are not; we aspire to be much more. Not even a municipality or a regional government meets only seven and a half days of

the year. I think it does undermine the political image. I do not think we are going to persuade anyone to look at us as a self-contained, autonomous country with all the political trappings and all the political institutions that go with that status whilst we have a parliament that meets on the basis that this one meets. That is why I seek to improve it. It is implicit in the Chief Minister's reaction to my motion that he thinks that I want to improve this House for my own political gain. I started off by conceding that some of the things at presently immune to the benefit of the Opposition might also have to change in some such restructure. "And calls upon the Chief Minister to call more frequent meetings of the House so as to allow the Opposition at least one opportunity a month to put questions to the Government and to put down motions for debate and thereby ensure" - if he did that - "that the Government is publicly accountable to the people through parliament on a continuing basis" which I say that on the present basis it is not. It is accountable at elections but it is not accountable through parliament on a continuous basis given the irregularity and infrequency of the parliament's meetings. And "that our parliamentary democracy is comparable to that operating in the Europe in which Gibraltar legitimately aspires to take its place". Does the Chief Minister really subscribe to the view that the frequency with which this House meets enables it to be comparable to the parliaments operating in other parts of Europe? It is implicit in the criticism that he has sought to make even of that observation which I would have thought was obviously true. But he believes that there is nothing that turns of the fact that we only meet seven and a half days of the year which makes us different to parliaments in the rest of Europe. I disagree with him. Therefore, Mr Speaker, it is with regret that I note the terms of this amendment; needless to say the Opposition will be treating the amended motion with the contempt that it now deserves which I think is a considerably greater degree of contempt than however harshly one wishes to interpret our original motion, that our original motion was worth of. This is a wholly contemptuous amendment to the motion. We will obviously vote against it and if we had had a mechanism available to us to express our contempt for the sentiments that underline it in stronger terms than simply voting against it, we would use it.

HON P CUMMING:

Mr Speaker, once again we have witnessed the highjacking of a motion to turn it into an absurd monster which reduces this House to a circus. When the Chief Minister returned from the Falkland Islands and was asked on television how he would react to the observation of the Leader of the Opposition that he had spent longer in the Falklands than he had in the House the previous year, he said, "Oh, what am I going to learn there, I learned much more in the Falklands?" as though learning had anything to do with it. He is supposed to come here to give a service

to the public by informing them and explaining his policies and actions and analysing the issues. The two party system which our Constitution is designed to support and maintain is also designed to help the analysis of issues in the service of the public and his view of the function of this House is obviously very self-centred when he said he was not going to learn anything. He is to service the public here.

HON CHIEF MINISTER:

If I can make a brief remark in reply to the last contribution, all I can say is that it is quite clear to me that the hon Member has not learned anything either in the seven and a half days he has spent here. So the best thing we could do with him would be to send him to the Falklands. Maybe he will come back talking more intelligently after spending some time with one million sheep than he is now doing spending some time with six sheep. It is obvious that the view of the Government as to the role of the House which has been expressed before the 1992....

HON P R CARUANA:

On a point of order. I do not know whether I misheard the Chief Minister. I think he referred to Opposition Members as sheep. If he did, which I am sure he will instantly wish to clarify, I think that even he will accept that that is improper and unparliamentary language.

HON CHIEF MINISTER:

I certainly do not accept that it is improper and unparliamentary language. The Opposition Member is saying that we should emulate what happens in other European parliaments and if he thinks the worst that happens in the House of Commons or in the Spanish Cortes or in the Italian Parliament is that when members get very offensive they call each other sheep, and if that is what he thinks is unparliamentary language then, frankly, he belongs in a convent not in the House of Assembly. I said, yes, it is six sheep instead of one million sheep. If they find it offensive to be compared to sheep, I withdraw. But it is certainly not an offensive terms. Much more harsh words have been used in this House than sheep, I can assure the hon Member. And it may get to be used in future so he needs to become a little bit immune. Let me say that the response, as I said in moving this amendment, was on the basis of what we read into it and obviously the reaction of the hon Member who seems to be totally disgusted by something which any person that bothers to compare his contribution with the contents of the motion will find that a great deal of the things he said are reflected in the motion that I have moved. He cannot stand up in support of a motion say, "This is not criticising the Government, we are not saying the

Government is responsible for the fact that it is only seven and a half working days in 1992. We are saying it is probably like that in colonial constitutions and it is probably like that if we go back in time". Whether it is seven and a half days or ten days is neither here nor there. Then when we put an amendment which effectively removes that fundamental censure of the Government, he effectively censures the Government precisely as he was doing in writing at the beginning. The speech he has just made is the one that he ought to have been making at the beginning with the text the House had in front of it. When my amendment of the motion talks about the work of the House, I am making the point that it is not a matter of how many days. The fact that we are here at 9.30 pm and that we could have stopped at 5.00 pm and come back tomorrow does not mean that the work of the House is now more democratic because we stopped early and came back the next day. That would have raised the average from seven and a half days to eight days. It shows the nonsense that it is. The hon Member started by saying that in fact whether we meet seven days or ten days, the number of questions and the number of motions that subject to the rules of repetition and so forth were not inhibited and were not limited. What I am saying to the hon Member is that we have done an exercise comparing what took place when we were the Opposition between 1984 and 1987 and what took place when we were the Government between 1988 and 1991 and in the first four years there was a total of twenty-seven sessions and in the second four years there was a total of twenty-six sessions of the House and up to December there were five sessions of the House. So what we are saying is that we do not see that there has been a dramatic decline in the number of occasions that the House has met, the number of bills that have been passed, the number of motions that have been tabled or in the number of questions. Therefore, logically, looking back over the past eight years there was not a great deal of difference in the output of the House when we were the Opposition and the AACR was the Government or when we were the Government and the AACR was the Opposition. The present indications are that the four year period of which we are in the first year of, looks as if it is going to produce the same average kind of output. So what we are saying is that whether one considers that output and that level of meetings, and that level of debate to be sufficient or insufficient, it is demonstrably factual that it is no less and no more than it was before the GSD was the Opposition and before the GSLP was the Government. We certainly did not complain about it as an Opposition, and we did not seek to change it as the Government. Opposition Members may want to change everything but they have to accept that before they can really start demanding all sorts of changes to something that has been there for a a very long time, they have to show that they represent more than twenty per cent. In any other elections since 1969, none of them would have got elected. We fought an election as a party in 1980 and we got thirty-three per cent of the votes and we did not get one seat. I got elected on a personal, non-party vote which was well above the average of my

party but the party as a whole had one-third of the population of Gibraltar voting for it and no seats. I could not argue I was representing the party because I actually came second. But the block vote for the party was thirty-three per cent but did not get a seat because that was the system of the first past the post. So they have got to understand that the level of participation that they complain so much about in this House; the level of information that they say they do not get, is something that everybody else with much more electoral support than they have, have lived with and complained occasionally but they did not have a phobia like the Opposition Members have. We are now inured to the fact that we are going to have this on the menu every time we meet. All I can tell the hon Member is that he will get as good as he gives. He is going to have it on his menu as much as I am going to have it on mine. I can promise him that. Our position is that we have brought forward an amendment in a spirit of reconciliation - a composite motion that reflects their views with which we disagree fundamentally and entirely but we are sufficiently democratic to include in our motion which they did not bother to include ours in theirs. I commend to the Opposition Members that they change their minds and vote in favour.

MR SPEAKER:

Before I put the question, I would like to draw attention to the House the authority of which I decided that this was a motion of no confidence in the Government. That authority is given to the Speaker under section 44 of the Constitution which reads, "All questions proposed for the session in the Assembly shall be determined by a majority of the votes of the Members present and voting provided that ex officio Members of the Assembly shall not vote on any motion that in the opinion of the Speaker or other person presiding the Assembly is a motion of confidence or no confidence". I hope that clears the matter and now I will put the amendment to the vote.

Mr Speaker then put the question in the terms of the amendment and on a division, at the request of the Chief Minister, 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 following hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana

The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge

The hon F Vasquez was absent from the Chamber.

The amended motion was accordingly carried.

ADJOURNMENT

HON CHIEF MINISTER:

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

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 J Blackburn Gittings
The Hon E G Montado

The following hon Members voted against:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon L H Francis
The Hon M Ramagge
The Hon F Vasquez

The House adjourned sine die.

The adjournment of the House sine die was taken at 8.45pm on Wednesday 3rd February, 1993.