

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 £64m 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 extent 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 incometax 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 accretions 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 microfilm 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 colonisation. 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 £4m 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 repeal 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 Gibraltarian woman. The law does not provide for the treatment of a marriage in the other direction where it is the man that is a Gibraltarian 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 Gibraltarian 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 Ramagge
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 moreover 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 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 Gibraltar 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 encyptic 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 film 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 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 bandied 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 clichés 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 now 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 immured 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 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.