GIBRALTAR

HOUSE OF ASSEMBLY

HANSARD

30TH APRIL 1992

VOL II

MONDAY THE 29TH JUNE, 1992

The House resumed at 2.30 pm.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

IN ATTENDANCE:

C M Coom Esq - Clerk of the House of Assembly

COMMUNICATIONS FROM THE CHAIR

MR SPEAKER:

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

HON CHIEF MINISTER:

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

HON P R CARUANA:

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

MR SPEAKER:

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

DOCUMENTS LAID

THE HON MINISTER FOR TOURISM:

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

(1) The Tourism Survey Report, 1991.

(2) The Hotel Occupancy Report, 1991.

(3) The Air Traffic Survey Report, 1991.

Ordered to lie.

MOTIONS

HON CHIEF MINISTER:

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

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

Mr Speaker, I commend the motion to the House.

HON P R CARUANA:

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

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

BILLS

FIRST AND SECOND READINGS

THE SAVINGS BANK (AMENDMENT) ORDINANCE, 1992

HON CHIEF MINISTER:

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

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

SECOND READING

HON CHIEF MINISTER:

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

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

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

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

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

MR SPEAKER:

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

HON P R CARUANA:

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

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

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

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

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

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

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

MR SPEAKER:

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

HON CHIEF MINISTER:

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

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

HON P R CARUANA:

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

HON CHIEF MINISTER:

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

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

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

HON P R CARUANA:

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

HON CHIEF MINISTER:

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

HON P R CARUANA:

That is an admission of the point at least.

HON CHIEF MINISTER:

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

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

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

The following Hon Members voted against:

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

The Bill was read a second time.

HON CHIEF MINISTER:

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

This was agreed to.

THE NATURE PROTECTION (AMENDMENT) ORDINANCE, 1992

HON J E PILCHER:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Nature Protection Ordinance, 1991 be read a first time.

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

SECOND READING

HON J E PILCHER:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, there is very little to say. I think the Bill is self-explanatory. It is just various minor amendments to the main Ordinance to bring in further offences, in particular using methods of falling and trapping which had escaped the drafting in the initial stages. Also to bring it further in line with EEC law.

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

MR SPEAKER:

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

HON L H FRANCIS:

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

MR SPEAKER:

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

HON J E PILCHER:

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

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

HON J E PILCHER:

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

This was agreed to.

<u>THE PORT (AMENDMENT) ORDINANCE, 1992</u>

HON M A FEETHAM:

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

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

SECOND READING

HON M A FEETHAM:

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

MR SPEAKER:

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

HON F VASQUEZ:

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

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

HON P R CARUANA:

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

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

HON CHIEF MINISTER:

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

HON P R CARUANA:

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

MR SPEAKER:

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

HON M A FEETHAM:

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

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

HON F VASQUEZ:

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

HON M A FEETHAM:

I have not actually.

HON F VASQUEZ:

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

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

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

The following Hon Members voted against:

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

The Bill was read a second time.

HON M A FEETHAM:

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

This was agreed to.

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

HON M A FEETHAM:

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

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

SECOND READING

HON M A FEETHAM:

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

MR SPEAKER:

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

HON P R CARUANA:

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

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

HON M A FEETHAM:

I am not a lawyer.

HON P R CARUANA:

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

INTERRUPTION

HON P R CARUANA:

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

HON CHIEF MINISTER:

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

HON P R CARUANA:

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

HON CHIEF MINISTER:

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

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

MR SPEAKER:

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

HON M A FEETHAM:

Mr Speaker, I have nothing further to add.

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

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

The following Hon Members voted against:

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

The Bill was read a second time.

HON M A FEETHAM:

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

This was agreed to.

THE COMPANIES (AMENDMENT) ORDINANCE, 1992

HON M A FEETHAM:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the Companies Ordinance, 1992, be read a first time.

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

SECOND READING

HON M A FEETHAM:

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

authorised to do everything from digging drains to operating collective investment schemes. Setting out all of that takes up a lot of space and it is really only intended to give the company the widest possible power. The provision of clause 4 of the Bill recognises that the same thing can be more efficiently achieved by saying that the company may do all such things as are lawful to be done subject only to a specified restriction contained in the memorandum. The simplifying of company paperwork and therefore the simplification of the amount that needs to be recorded in the register is to be found in a number of other clauses, for example, 5(a), 6 and 17. At the same time, to improve the protection of third parties trading with Gibraltar companies, the Bill seeks to ensure better compliance with filing obligations and to make more efficient provisions relating to the striking-off of companies which are no longer fulfilling the statutory obligations and can, after due notice, be presumed to be dead. The third area of tidying up, which the Bill is concerned with, is that within the company. The Bill deals with the consequences of trading when a company is not in compliance with statutory requirements, for example, in relation to membership. It also sets out more clearly the distinction between protecting shareholder and creditor, for example, clause 15 and specifies the responsibilities of directors. There are two areas in which the Bill is substantially different from that presented to the earlier House. The first of this is in the introduction of a new section 45(a) which will bring into Gibraltar's company law the power now in the United Kingdom company law for a company to purchase its own shares, subject, of course, to appropriate safeguards on the exercise of this power. The second innovation is the repeal and replacement of section 104 of the Companies Ordinance which is found in clause 32. This again is a reflection of the provision in the United Kingdom legislation which will allow a company to avoid the necessity for an annual general meeting where by special resolution its members have resolved to do so. This operates only for a private company. The new section also spells out the obligation in terms of timing of the holding of meetings and reflects representations which were made by company managers in Gibraltar about the confusion which existed in our legislation between the obligations of timing for filing and obligations of timing for annual general meetings. These two matters are now clearly separated and are no longer interdependent. The House may wish to know what has happened to the parts of the original Bill which do not appear in this Bill. These provisions were to give effect to European Community requirements and can be dealt with under the provisions of section 315 of the Companies Ordinance which allows for such matters to be incorporated into the Companies Ordinance by regulation. The intention is that they will be dealt with in this way along with

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

MR SPEAKER:

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

HON F VASQUEZ:

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

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

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

capital and that, if not done properly and in a responsible way, can be a mechanism which is exercised to the detriment of existing shareholders. If one looks at clause 45A, it stipulates that the company may exercise the power of purchase of its own shares in accordance with Schedule 11. So duly, Mr Speaker, I flicked to the back of the Ordinance to see what Schedule 11 says and of course there is no Schedule 11 to the Bill. We are here asked today, in this House, to approve the passage of a Bill which gives companies an important and new power which can be exercised in a way very prejudicial to existing shareholders which purports to set up the criteria under which those powers should be exercised. But we are not given the criteria. We are just told that there is a Schedule 11 which will protect the interests of shareholders but we are not told, at this stage, Mr Speaker, what the protections are. So how can Government bring this half-baked Bill which is incomplete and which still does not set out on what principles the companies are going to be allowed to exercise this new and, it has to be said, pernicious power to purchase its own shares. Without knowing the circumstances, Mr Speaker, and the principles which are to be applied in the protection of shareholders, we, on this side of the House cannot simply accept on the nod a piece of legislation which is incomplete. So, for that reason alone we feel unable to support the Bill. There are various other criticisms of the Bill, Mr Speaker. One comment I will make in passing is that the Bill as the Honourable Member opposite indicated, to a great extend, is a tidying up procedure and in fact it gives the Registrar of Companies a lot of new roles. Roles which previously have been exercised by the Court and roles which necessitate the exercise of the Registrar's discretion in various applications by members and directors to the Companies Registry. I have already indicated that in some ways that is something which is desirable because it takes out of the Court diary a lot of these straightforward applications which are not important matters of law. So at least we now have more time in the Court's diary. If this is enacted it will be slightly less busy and less clogged up than it is at present. But what does it do? It gives the power of determining these applications to the Registrar of the Supreme Court who already, Mr Speaker, is overburdened with a number of responsibilities, a whole series of responsibilities given to him under various other Ordinances. The fear, on this side of the House, Mr Speaker, is that the Registrar of Companies simply is not going to be able to deal with the significant volume of applications that are going to be made to him or her under this Ordinance. In my address at the time of the Appropriation Bill, I suggested to the Members on the other side to consider the appointment of a Master in the Supreme Court exactly to take this type of application. We could have a Master which would release a lot of the straightforward applications from the two judges that we have in the Courts. It will enable important cases to come to Court much quicker and much more effectively because the Court files would not be so clogged and would enable the Master to deal with the straightforward applications. This is further emphasis and further ammunition, as it were, for that argument because what this Bill purports to do is to give the Registrar, who already is burdened with a number of responsibilities under a number of Ordinances, with further responsibilities which he or she simply may not have enough hours in the day to perform. We would ask the Honourable Members on the other side to consider, again, the appointment of a Master of the Supreme Court to take on exactly these types of straightforward applications which in England a Master deals within chambers. Mr Speaker, there are further defects in the Bill and they are defects of drafting and defects of shabby drafting and inadequate research of the matters at hand. If I could draw the Speaker's attention to clause 15 of the Bill, this clause introduces three new sections which, again, are taken from the English Act and which, again, I hasten to add and hasten to stress, in themselves are desirable. What they seek to do is, as has already been done in England under the relevant English sections, to reformulate the doctrine of ultra vires; the transactions entered into by companies in order to protect innocent third parties entering into contracts with that company. So to that extent those amendments to the Companies Ordinance are desirable. However, Mr Speaker, in England the sections were enacted in the 1989 Companies Act which amended the 1985 Companies Act and which repealed the old section 35 of the 1985 Companies Act. We still have the equivalent of section 35 of the 1985 Companies Act. It is section 20A. That is a section which brought into place section 19 of the European Communities Ordinance and that was the first attempt by legislators to give effect to the doctrine of the European idea of the doctrine of ultra vires as it applies to companies. What have we done in Gibraltar? In Gibraltar this Bill purports to implement those three new sections which were implemented in England under the 1989 Act but which in England were enacted in the placement of the existing section ie section 35. In Gibraltar we disenact them and we keep the old section. So that effectively in the Companies Ordinance we have two parts of the Ordinance doing exactly the same thing. We have section 20A of the Ordinance, which I have before me, Mr Speaker, and which has not been repealed by the Bill. Section 20A of the Ordinance is the local enactment of section 19(1) of the 1972 European Communities Act and the note in the schedule is headed "Power to contract not restricted by memorandum and articles." It is exactly what these three new sections are doing. What the three new sections do is that they expand the idea, they re-legislate, they develop the idea and they expand it. All very admirable but you cannot develop these Ordinances in this piecemeal way, Mr Speaker, by keeping still in force the old section and introducing three new sections which purports to do exactly the same thing in a more extensive way. All we are doing, Mr Speaker, is creating confusion. It is going to be almost impossible in the

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

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

MR SPEAKER:

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

HON CHIEF MINISTER:

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

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

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

HON P R CARUANA:

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

MR SPEAKER:

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

HON CHIEF MINISTER:

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

HON P R CARUANA:

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

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

HON CHIEF MINISTER:

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

HON P R CARUANA:

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

HON CHIEF MINISTER:

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

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

HON P R CARUANA:

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

HON CHIEF MINISTER:

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

HON P R CARUANA:

That explains it then.

HON CHIEF MINISTER:

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

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

MR SPEAKER:

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

HON M A FEETHAM:

Mr Speaker, I have no further comments to make.

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

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

The following Hon Members abstained:-

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

The Bill was read a second time.

HON M A FEETHAM:

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

This was agreed to.

THE AUDITORS (APPROVAL AND REGULATION) ORDINANCE, 1992

HON M A FEETHAM:

I have the honour to move that a Bill for an Ordinance to provide for the approval and regulation in Gibraltar of auditors be read a first time.

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

SECOND READING

HON M A FEETHAM:

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

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

MR SPEAKER:

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

HON P R CARUANA:

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

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

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

MR SPEAKER:

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

HON M A FEETHAM:

I have nothing to add Mr Speaker.

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

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

The following Hon Members voted against:

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

The Bill was read a second time.

HON M A FEETHAM:

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

This was agreed to.

The House recessed at 5.00 pm.

The House resumed at 5.30 pm.

THE EMPLOYMENT (AMENDMENT) ORDINANCE, 1992

HON R MOR:

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

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

SECOND READING

HON R MOR:

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

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

MR SPEAKER:

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

HON LT-COL E M BRITTO:

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

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

HON P R CARUANA:

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

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

MR SPEAKER:

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

HON R MOR:

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

HON LT-COL E M BRITTO:

After the event and not subject to debate.

HON R MOR:

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

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

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

The following Hon Members abstained:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon 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.

This was agreed to.

THE BANKING ORDINANCE, 1992

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to licence and regulate banking and other categories of deposit-taking business in Gibraltar be read a first time.

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

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

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

the Directives and our own legislation, as proposed, reflect the need for supervisors to treat information gained with sensitivity and to confine its use to banks supervision. Secondly, it is important to draw distinction between supervision of branches and subsidiaries. Branches are to be considered an integral part of the bank in question and the access to supervisors from the home country is to be complete. In practice it has always been the case. In the subsidiaries, however, the primary supervisory function will continue to rest with the host country. Access by supervisors of the parent banks of subsidiaries is provided for but only in conjunction with our own supervisors. In essence the access is purely to verify disclosures previously made by the institution itself, perhaps the parent body. The access of the foreign supervisor is also subject to prior notification having been given to the Gibraltar authorities. Adequate safeguards exists to restrict disclosures to those required for prudential control to protect against the identification of individuals and for all disclosures to be in a summarised or collective form. We are satisfied the form of implementation contained in the Bill is not undermining the principles of banking confidentiality. It is important to banking services generally, not just in Gibraltar. Turning to the question of capital adequacy, clause 23 provides for a bank to have a minimum capital of ECU 5m which at current rates of exchange is equivalent to about £3.5m. This compares with requirements contained in the 1982 legislation of £1m. Most of our banks already meet this criteria. However clause 35 provides for transitional arrangements for those banks which do not do so. Apart from the minimum levels of capital, the overall capital requirement placed upon a bank may be hired depending on the nature of the business that it undertakes. Administrative notices to be issued under powers contained in the Bill will provide for the introduction of a test of capital adequacy based on these asset ratios which reflect European standards. If I can turn now to those aspects of the Bill which reflect the supervisory needs of the Financial Services Commission, the style of modern supervision is very much based on the issuing of administrative rules for the guidance of banks for which we had no statutory provision in the past. Now the issuing of such rules are given statutory effect in clause 16. A further development of supervisory practice in recent years has been the emphasis on a close cooperation with bank auditors and the way forward is paved for such cooperation in clauses 46 and 48. The Financial Services Commissioner is convinced that his ability to work in conjunction with auditors is an essential element of his supervisory armoury. A problem in the past has been a rather unsatisfactory formulation in the 1982 legislation to enable our supervisory body to move against deposit-taking that is being undertaken outside the provisions of law. A more satisfactory formulation to enable prompt and effective action where this occurs is contained in clauses 8 and 9 of the Bill. Finally, in comparison with other

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

MR SPEAKER:

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

HON P R CARUANA:

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

HON CHIEF MINISTER:

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

HON P R CARUANA:

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

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

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

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

HON CHIEF MINISTER:

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

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

HON P R CARUANA:

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

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

HON CHIEF MINISTER:

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

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

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

THE ESTATE DUTIES (AMENDMENT) ORDINANCE, 1992

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Estate Duties Ordinance, 1992, be read a first time.

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

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

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

MR SPEAKER:

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

HON P R CARUANA:

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

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

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

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

HON CHIEF MINISTER:

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

HON P R CARUANA:

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

HON CHIEF MINISTER:

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

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

HON P R CARUANA:

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

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

HON CHIEF MINISTER:

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

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I have nothing further to add.

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

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

The Hon P J Brooke
The Hon P Dean

The following Hon Members voted against:

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

The Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

This was agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

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

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

THE SAVINGS BANK (AMENDMENT) BILL, 1992

Clauses 1 to 3

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

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

The following Hon Members abstained:

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

Clauses 1 to 3 stood part of the Bill.

Clause 4

HON P R CARUANA:

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

HON CHIEF MINISTER:

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

HON P R CARUANA:

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

HON CHIEF MINISTER:

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

HON P R CARUANA:

In relation to this line.

HON CHIEF MINISTER:

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

HON P R CARUANA:

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

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

MR CHAIRMAN:

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

The Chairman then put the question and on a vote being taken on the amendment the following Hon Members voted in favour -

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

The following Hon Members voted against:

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

The amendment was defeated.

On a vote being taken on Clause 4 the following Hon Members voted in favour:

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

The following Hon Members voted against:

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

Clause 4 stood part of the Bill.

HON P R CARUANA:

Mr Chairman, on sections in which I tried to introduce an amendment in order to make a specific point, if my amendment is lost we will be voting against.

MR CHAIRMAN:

Is there any other clause that you would like to make comments on? If you tell me what the clause is I will come to that.

HON P R CARUANA:

Mr Chairman, there are several. If the Chief Minister will accept my point that his powers are considerably greater with this Bill passed that without them I will sit and I will not make a nuisance of myself.

HON CHIEF MINISTER:

I accept his point, he can sit down and stop making a nuisance of himself.

HON P R CARUANA:

Does he accept the price for doing that? Does he concede that his powers under the regulations that he now proposes to legislate exceed the powers that he had before this Bill. If he says yes to that, I am not going to waste time.

HON CHIEF MINISTER:

I say yes to that.

MR CHAIRMAN:

Let me make a comment. The power of this House does not lie in the Bill. It lies in the words. Therefore I think the Opposition, even if they feel that they are going to lose, they should express their views and there is no one here who is trying to stop that happening.

HON P R CARUANA:

Mr Chairman, I am very grateful. In fairness to the House my amendments were not a desire to bring about that substantive change. It was a device to prove to the Honourable the Chief Minister that the remarks that he had made in an attempt to belittle my own contribution to the House were not justified.

HON CHIEF MINISTER:

He is not keeping his side of the bargain. I withdraw.

HON P R CARUANA:

Well he has got to make up his mind as to whether he wants me to sit down or not. Does he accept that he has greater powers after this Bill than he had before? Yes or no?

HON CHIEF MINISTER:

Is he going to sit down or not?

HON P R CARUANA:

Yes.

On a vote being taken on clauses 5 to 14 the following Hon Members voted in favour:

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

The following Hon Members abstained:

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

Clauses 5 to 14 stood part of the Bill.

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

THE NATURE PROTECTION (AMENDMENT) BILL, 1992

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

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

THE PORT (AMENDMENT) BILL, 1992

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

Clause 2

HON F VASQUEZ:

Mr Chairman, Clause 2 and in fact the same applies in respect of Clause 3, so perhaps we can take them together. The Opposition would like to propose an amendment to that. The amendment being that the wording of the fourth word from last in both sections be amended from "one month" to "six months" in both cases. So the conception for clause 2 reads now in the last line "submit claim within six months of the sale"

MR CHAIRMAN:

We are now on Clause 2 and we have an amendment from the Opposition. Would you like to say anything in support?

HON F VASQUEZ:

Mr Chairman, the point is that the powers granted by the Bill would appear to be to facilitate the position of the Captain of the Port. In order to do that you do not need to limit the amount of time in which the owner of the vessel has to claim any residue arising under the sale. The fact is that once the Captain of the Port has exercised his power of arrest and sale, he had immediately under the Ordinance as it stands at present, in fact, helped himself to the money that is owed to the Captain of the Port. What then happens to the balance? As drafted, the Bill provides after one month if the owner does not claim that money then Government gets it. What we are suggesting is that at least the owner has a longer period in which to claim his money. There is no prejudice caused to the Government by this amendment.

MR CHAIRMAN:

The amendment standing in the name of the Honourable and Learned Mr Freddie Vasquez is that at the last line the "one month" is substituted by "six months".

HON M A FEETHAM:

Mr Chairman, having taken into account what has been said and taken the wisdom of the Honourable Member opposite who deals in the shipping world, we are prepared to accept the amendment.

MR CHAIRMAN:

So the amendment standing in the name of the Honourable Freddie Vasquez stands part of the Bill.

Clause 2 as amended stood part of the Bill.

Clause 3

HON F VASQUEZ:

I have exactly the same amendment to propose in respect of Clause 3, Mr Chairman.

Clause 3 as amended stood part of the Bill.

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

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

Clauses 1 and 2

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

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

The following Hon Members voted against:

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

Clauses 1 and 2 stood part of the Bill.

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

THE COMPANIES (AMENDMENT) BILL, 1992

Clause 1

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

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

The following Hon Members abstained:

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

Clause 1 stood part of the Bill.

Clause 2

HON F VASQUEZ:

Mr Chairman, in respect of Clause 2(b) which at present reads "inserting in the definition of company after the word registered, the words "or in case of a company formed outside Gibraltar, registered". Mr Chairman, I have had some difficulty with that wording because I have got the Ordinance, as amended, so many times before me. The definition of company at present reads "company means a company formed and registered under this Ordinance". It will read after the enactment of this clause, as presently drafted, "company, means a company formed and registered or in the case of a company formed outside Gibraltar, registered in Gibraltar." Mr Chairman, I think perhaps what the clause ought to say is, and should be amended, "or in the case of a company formed outside Gibraltar and registered under Part IX of the Ordinance", in order to distinguish companies incorporated in Gibraltar and companies incorporated outside Gibraltar and registered under Part IX. That can be the only type of company referred to there and I think by stating that it would make the position substantially clearer, Mr Chairman. I should specify, it does not change the legislative proposal at all, I think it makes it clearer.

MR CHAIRMAN:

If you would like just to write it down and let me have it?

HON F VASQUEZ:
I have not written it down in full, Mr Chairman, but I am now in a position to state exactly what, in my submission, the amendment ought to be.

MR CHAIRMAN:

You have to do it as you want it read into the Ordinance.

HON F VASQUEZ:

Yes, Mr Chairman, I will read it out and then I will pass it up to you. The proposal is that subsection (b) should read "Inserting in the definition of company, after the word 'Ordinance' "or in the case of a company formed outside Gibraltar, registered under Part IX of this Ordinance." "

MR CHAIRMAN:

You are going to delete completely what is there now?

HON F VASQUEZ:

Yes. All it is is to clarify between companies formed in Gibraltar and those companies that are not formed in Gibraltar, in which case if there are any registered in Gibraltar under Part IX of the Ordinance. That is the only two types of companies that we have in Gibraltar, Mr Chairman. The submission is that as presently drafted it is not particularly clear.

HON CHIEF MINISTER:

I think that for somebody who was worrying about shoddy drafting, Mr Chairman, I do not think we are going to go down the route of doing legislation this way. We do not think the Member opposite has made a case for saying that what he is proposing is more clear. I do not think it is more clear to the people who are here than what is already there. But, it would seem to me that it is not just a question of clarity, it is a question indeed that he is proposing to restrict companies who can be registered to those that are covered by Part IX of the Ordinance and at the moment since there is no qualification to what registered is, then if there is any other change in the Ordinance which allows it to happen other than under Part IX, it would be covered by the definition of company, whereas if we say that in the case of a company formed outside Gibraltar, it has to be registered under Part IX, which is the policy implication of what he is saying, I think the power that we have as it is presently done will be reduced. We would not want that to happen.

Mr Chairman then put the question on the amendment in the name of the Hon and Learned Freddie Vasquez and on a vote being taken the following Hon Members voted in favour:

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

The following Hon Members voted against:

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

The amendment was accordingly defeated.

On a vote being taken on Clause 2 the following Hon Members voted in favour:

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

The following Hon Members abstained:

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

Clause 2 stood part of the Bill.

HON P R CARUANA:

Mr Chairman, by way of indication we are abstaining on all of these, having abstained on the principles of the Bill, I do not see we can vote in favour of a particular Clause.

MR CHAIRMAN:

Is there any other Clause which you would like us to stop at?

HON F VASQUEZ:

Yes, Clause 7.

Clauses 3 to 6

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

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

The following Hon Members abstained:

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

Clauses 3 to 6 stood part of the Bill.

Clause 7

HON F VASQUEZ:

Yes, it is a very minor, I think it is a typographical error, but on page 120 of the Bill, (b) (2), 4th line says "Address the nationality of any person or person". I think that should be "person or persons" and the Bill should be amended to that extent.

HON CHIEF MINISTER:

I think, Mr Chairman, that we can take it as read because in fact from my experience in this House, when there has been typing errors in legislation we have not had to go through the motion of deleting the eighth word in the 4th line to replace it with the same word in the plural. There are bound to be typographical errors on a percentage of all the typing. What is supposed to happen is that if it is obviously grammatically incorrect to say any person or person, then it is reflected in the printed version which comes out. So I do not think we do need to have a vote to correct grammar.

Clause 7 to 14

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

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

The following Hon Members abstained:

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

Clauses 7 to 14 stood part of the Bill.

Clause 15

HON F VASQUEZ:

Mr Chairman, clauses 28(b), 28(c) and 28(d). What I have tried to indicate in the course of my submissions or my address when considering that the general principles of the Bill was the fact that when these sections were enacted in England under the 1989 Companies Act, what the Act in England also did was to repeal section 35 of the 1985 Companies Act in England which is the equivalent of our section 20(a) of the Companies Ordinance at present. Section 20(a) of our Companies Ordinance at present is the section which enacted section 19 of the European Communities Ordinance. It was the first attempt to work into the Companies Act, the European idea of the ultra-vires doctrine. What these new sections do is expand that, develop it and actually expand the concept, but in England these three sections were enacted at the same time as the old section 35 was repealed. As drafted, in this Bill we are getting the three new sections and keeping what is now basically a section which is of no further application. I am told, and quite rightly, that it is not only of no further application but it might be a conflicting application because when any Court or a person reading the Ordinance comes to try to interpret the Ordinance, he is going to be faced with two separate sections saying the same things in different ways. The new section goes further than the old section. If I can refer you, Mr Chairman, to section 20(a) of the Companies Ordinance, as presently constituted, that is the one that

reads in the marginal note "Power to contract not restricted by Memorandum and Articles" and the source sited is the 1973 European Community Ordinance, section 9(1). I have before me a copy of the Companies Act 1985 and section 35 is identical to this section. If it will help the Honourable Members opposite, I can pass this book across which shows section 35 of the English 1985 Act and it provides that very section, in favour of persons dealing with the company in good faith etc etc. It is identical wording but then if we go to section 108 of the 1989 Companies Act, which is the one, Mr Chairman, that introduced these sections in England, the sections in England started in Chapter 3 Part 1 of the Companies Act 1985, that section 35 substitutes the three sections. So the proposed amendment is that clause 15 should read "The Principal Ordinance, be amended, by the deletion of the existing section 20(a) and the insertion of the following three sections which should be numbered 20(a), 20(b) and 20(c)."

MR CHAIRMAN:

May I draw attention to the Honourable Member? If he intends to propose an amendment, could he start writing it because I will need it in writing.

HON F VASQUEZ:

I will propose the amendment. All I am seeking to do, Mr Chairman, is to satisfy the Honourable Members opposite that what I am saying makes sense and what I am seeking to do is to avoid any conflict within the Ordinance as it is going to be enacted.

HON P R CARUANA:

I think, Mr Chairman, that it ought to be made clear that the way we read the sections, if the amendment is not approved, you will end up with the new section and the section that it is intended to repeal and there is an irreconcilable conflict as to which of the two is the law of the land.

HON M A FEETHAM:

Mr Chairman, can we carry on with the other Bills at this stage and come back to that later on?

MR CHAIRMAN:

There is no objection really we can leave it until tomorrow and we can carry on now with the next Bill and perhaps the two sides wish to get together and find a suitable amendment.

HON P R CARUANA:

Mr Chairman, I think that there is relatively little to take in Committee Stage of the other Bills and I think we ought to make progress and eliminate those and we can come back to either the whole of this Bill or only this part of this Bill tomorrow as the Honourable Members prefer.

HON CHIEF MINISTER:

Mr Chairman, when we are in Committee, in fact, we have got the flexibility of being able to move backwards and forwards on the Agenda and therefore what we are suggesting is that we will look at the point that has been made and at the proposed amendment, but we do not take a vote on this section now to give us time to consider it. When we are near finishing the others we clearly have not yet been able to give a satisfactory answer to the Member or accept his proposal, then what we will do is we will continue in Committee tomorrow morning before we take the motions.

HON P R CARUANA:

We agree, Mr Chairman..

MR CHAIRMAN:

We shall stay in the Committee Stage until tomorrow and therefore for the moment we will postpone and continue with this Bill tomorrow. I am just going to make another observation, perhaps if the Honourable Member who is proposing this amendment has other amendments, he might have it ready and pass it on so that we do not get stuck again tomorrow.

HON F VASQUEZ:

Mr Chairman, I can say I have just a comment that I need to make in respect of clause 19. It is not going to be an amendment.

MR CHAIRMAN:

We will carry on with the next Bill now.

THE AUDITORS (APPROVAL AND REGULATION) BILL, 1992

Clauses 1 to 6

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

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

The following Hon Members voted against:

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

Clauses 1 to 6 stood part of the Bill.

Clause 7

HON M A FEETHAM:

Mr Chairman, I have already given prior notice of a slight change in clause 7(a). The figure '4' is to be omitted and the figure '3' is substituted therefor.

HON P R CARUANA:

Mr Chairman, of course we agree but given what the Chief Minister has said before we are going to have to define the difference between grammar and typographical error. That is clearly a typographical error. I agree with what the Chief Minister said before. The Honourable the Chief Minister will agree that in one of my first weeks in the House I made him bring an amending Ordinance because of a little 'g' or a little 'h' or something, I do not remember the details but it raises the question of what is a typo and what is not a typo and if this is a typo it begs the question of why the Honourable Member has brought this amendment?

HON M A FEETHAM:

It just happens that there is another amendment. The emphasis of that amendment actually changes the scope of the next clause and therefore both were submitted at the same time for that simple reason.

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

On a vote being taken on clause 7, as amended, the following Hon Members voted in favour:

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

The following Hon Members voted against:

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

Clause 7, as amended, stood part of the Bill.

Clause 8

On a vote being taken on clause 8, the following Hon Members voted in favour:

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

The following Hon Members voted against:

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

Clause 8 stood part of the Bill

Clause 9

HON M A FEETHAM:

I have also given prior warning. In clause 9, the word "deem" is omitted and the words "be deemed" are substituted therefor.

HON P R CARUANA:

Mr Chairman, the same point. The danger and the difficulty with accepting what appears to be the obvious point made by the Chief Minister although one should not be pedantic and I agree with him. The problem is it raises the question, what is pure pedantry and what is not? It is

clear on a reading of that section that it is a grammatical or typographical mistake. It cannot be appropriate for the Honourable the Minister to bring an amendment but for him to say that it is pedantic if we bring the amendment. It is clear that it cannot possibly in the English language read "shall deem to be approved", it must be "shall be deemed to be approved". Let us establish what is the parliamentary convention in this House in relation to typographical errors and grammatical errors and let us both apply the same criteria. But I warn the House that it is fraught with danger. It is almost impossible to define.

HON CHIEF MINISTER:

No. I can tell the Member what the parliamentary procedure is in this House from having been in it for twenty years. When it is obvious that the legislation which reflects a policy is not in fact altered by a typing error, then it is corrected on the basis that it is a typing error. If the typing error is capable of being interpreted as changing the meaning, then you have to correct it just in case it was the intention to have a different meaning. Fundamentally, it is just something that because the wrong sense has been used or the plural or the singular or a number and it is quite obvious that it is a printers error, then it has been corrected in the past without the need for people to make amended legislation. Otherwise we will never be finished. If people keep on making typing errors when it leaves the House, we will have to keep on bringing it back. There have been occasions when it may well happen that the clause appears to mean one thing because of a typing error which is not grammatically incorrect but which changes the meaning and when it changes the meaning then effectively what has been published is something that gives the impression that you may be prohibiting something when in fact it is your intention to permit it and because of a typing error you have done the opposite. In those cases, in my experience, somebody has moved an amendment and said look we are amending this because in fact a mistake was made and a 'nought' was put in where it should not be and the cross is saying the opposite of what the Government intended to say, but since that is what has been published, one needs to correct the meaning by removing the negative. That is my experience of how it has worked in the past.

HON P R CARUANA:

Mr Chairman, I have no difficulty with accepting that as the guideline and as the rule but applying that to these amendments requires the amendments not to be brought.

HON CHIEF MINISTER:

I agree with the Member entirely.

MR CHAIRMAN:

Apart from that, normally, and this is from my own personal experience in this House, if the Government spots an error of this nature and they have time, they usually bring the amendment already prepared so that when we go into the Committee Stage it is done and finished. If it is normally spotted by the Opposition, it usually does not go through the rigmarole. It is accepted by the House and it just goes through. It is really a practical way of getting over it.

HON P R CARUANA:

Yes. We accept that.

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

On a vote being taken on clause 9, as amended, the following Hon Members voted in favour:

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

The following Hon Members voted against:

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

Clause 9, as amended, and stood part of the Bill.

Clause 10

On a vote being taken on clause 10 the following Hon Members voted in favour:

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

The following Hon Members voted against:

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

Clause 10 stood part of the Bill.

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

THE EMPLOYMENT (AMENDMENT) BILL, 1992

Clauses 1 and 2

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

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

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

Clauses 1 and 2 stood part of the Bill.

Clause 3

HON R MOR:

Mr Chairman, I have already given notice and the amendment has been circulated. All the amendment does is purely to correct an error of drafting in the designation of the paragraph and it does not in any way alter the substance or the intention of the Bill. All it does is that it recognises that there already was a paragraph (g) in section 86 therefore consequentially correcting designation of the paragraph together with the corresponding punctuation.

HON LT-COL E M BRITTO:

Mr Chairman, the Opposition will be voting in favour of the amendment and against the clause as amended.

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

On a vote being taken on clause 3, as amended, the following Hon Members voted in favour:

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

The following Hon Members voted against:

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

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

Clause 4

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

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

The following Hon Members voted against:

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

Clause 4 stood part of the Bill.

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

HON P R CARUANA:

Mr Chairman, I think we can go over to clause 87 now that the draftsperson is in the House. I omitted to take an opportunity to raise this matter earlier than this session of the House, which is what I would normally do, with amendments of this kind because it is not the sort of point that needs to be debated across the House. It is not a controversial point. That amendment to clause 88 set out in paragraph No.6. It is in the letter of notice to the Members.

MR CHAIRMAN:

We have other amendments before that. We will be coming to that.

Clauses 1 to 9 were agreed to and stood part of the Bill.

Clause 10

HON CHIEF MINISTER:

I beg to move that clause 10 (1) (b) is amended by omitting the final semi-colon and substituting therefor a colon and the following words "provided that were, in the exercise of the powers conferred on him by section 79(n), the Governor has made regulations which apply to the provisions of this Ordinance to a building society, those sections shall apply to such society in the manner prescribed in the regulations;".

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

Clauses 11 to 37 were agreed to and stood part of the Bill.

Clause 38

HON CHIEF MINISTER:

I beg to move that clause 38(1) is amended by omitting the words "other than an institution incorporated under the law of a country or territory inside the Community" and substituting therefor the words "that is incorporated in Gibraltar".

Clause 38, as amended, was agreed to and stood part of the Bill.

Clauses 39 to 58 were agreed to and stood part of the Bill.

Clause 59

HON CHIEF MINISTER:

I beg to move that the marginal heading to subclause 59 is amended by omitting the figure (vi) and substituting therefor the figure (vii), which seems to be a typographical error.

Clause 59, as amended, stood part of the Bill.

Clauses 60 to 74 were agreed to and stood part of the Bill.

Clause 75

HON CHIEF MINISTER:

I beg to move that clause 75 is omitted and replaced by the following new clause 75 "The provisions of section 39 of the Financial Services Ordinance, 1989, shall not apply to -

(a) an unauthorised institution, or

(b) a person who uses any words to which that section refers with the prior written concern of the Commissioner and in accordance with such conditions, if any, as the Commissioner may impose in giving that consent".

Clause 75, as amended, stood part of the Bill.

Clauses 76 to 78 were agreed to and stood part of the Bill.

Clause 79

HON CHIEF MINISTER:

I beg to move that clause 79 is amended-

(a) by omitting the figure "1",

(b) by inserting after paragraph (m) the following new paragraph "(n) applying the provisions of this Ordinance and any law of the Community relevant to the regulation of such credit institutions to credit institutions of a particular kind which regulation may make provisions for-

(1) the repeal of any Ordinance which, but for the regulations would regulate such credit institution;

(2) transitional arrangements necessitated by the repeal of the kind provided for in subparagraph (i), including the transfer to such regulation of provisions contained in the Ordinance being so replaced;

(3) the variation or exclusion of provisions of this Ordinance not relevant to such credit institution and not required for compliance with any requirement of Community Law; and

(c) by re-designating paragraphs (n) and (o) as paragraphs (o) and (p) respectively.

HON P R CARUANA:

Mr Chairman, would the Honourable the Chief Minister indicate whether the purpose of that amendment is to apply those provisions to the Gibraltar Savings Bank? Or if not, what it has in mind as an objective?

HON CHIEF MINISTER:

The reality is, as I have said at the beginning, that the amendments that we have got before us have been drafted by our advisers in the UK, frankly, because the policy decision is to produce legislation which meets Community requirements and the agreement that we have got with them is that we would not delay but we will introduce anything at the last minute and we hope this is the last of it. Frankly, I am not very clear why these last minute amendments are needed.

HON P R CARUANA:

It serves no local purpose at all.

HON CHIEF MINISTER:

As far as I am aware.

Clause 79, as amended, was agreed to and stood part of the Bill.

Clauses 80 to 87 were agreed to and stood part of the Bill.

Clause 88

HON CHIEF MINISTER:

I think actually what is happening with clause 88 is that it has one typographical error five times and since I have not moved the amendment in this case I do not need to amend it and I will just leave it out.

HON P R CARUANA:

Mr Chairman, if the Honourable the Chief Minister wants to move the amendment, the errors have now taken time to clear.

HON CHIEF MINISTER:

No. I am moving the amendment. I am leaving out the superfluous 'ands' which is (a) and (b) and we are introducing it in the original line, so if I read the amendment out he will see that it makes grammatical sense. Mr Chairman, I beg to move that clause 88 be amended by omitting subclause 1 and substituting the new subclause -

"(1) Any institution which are becoming into force of the Ordinance held a licence under the Banking Ordinance and

(a) was the branch of a European authorised institution, will be considered as an authorised institution;

(b) was a subsidiary of a European authorised institution, shall be considered to be a licensee;

(c) was a branch of an authorised institution not being a European authorised institution, will be considered to be a licensee".

HON P R CARUANA:

Mr Chairman, the only improvement that I can offer is that there should be an 'or' after each semi-colon because otherwise it reads like a continuous list of requirements. The whole problem with this wording is that they are all separate provisions, each of which simply remits to a common first two lines for the purposes of not having to repeat it, so that the law would read - "Any institution at the coming into force held a licence under the Banking Ordinance and (a) or (b) or (c)". They are quite separate provisions but that is only an improvement, Mr Chairman. I think that the suggestions of the Chief Minister are sufficient to cure the principal problems and the rest would just be tidying up. We will support the amendment as it stands.

MR CHAIRMAN:

If the Chief Minister agrees and insert 'or' and 'or'.

HON CHIEF MINISTER:

No. I am told that it would make it worse if I put in 'or'. I think that we should stick with what we have got.

HON P R CARUANA:

As I have said, Mr Chairman, whilst the Chief Minister's attention was distracted, the amendments that he has proposed to his amendments, although he has not tabled it yet, are in our submission adequate to correct the principal defect of the drafting.

Clause 88, as amended, stood part of the Bill.

Clause 89

HON CHIEF MINISTER:

I beg to move, Mr Chairman, that Clause 89 is amended by omitting the figure "(1)".

Clause 89, as amended, stood part of the Bill.

Clause 90 was agreed to and stood part of the Bill.

Schedules 1 and 2 stood part of the Bill.

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

THE ESTATE DUTIES (AMENDMENT) BILL, 1992

Clauses 1 to 7

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

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

The following Hon Members voted against:

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

Clauses 1 to 7 stood part of the Bill.

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

The House recessed at 8.00 pm.

TUESDAY 30TH JUNE 1992

The House resumed at 10.45 am.

MR CHAIRMAN:

We are in Committee Stage as you know and on an Ordinance to amend the Companies Ordinance. We are at Clause 15 and the amendment now has been produced by the Minister so we can go on from there.

HON M A FEETHAM:

Mr Chairman, I beg to move that the Bill be amended by the insertion after clause 42 of a new clause 43 as follows: "Repeal of Section 20(a). Section 20(a) is hereby repealed". Mr Chairman, we have looked at the observation made by the Member opposite yesterday and whilst it does not appear that there is actually a conflict in the legislation, as presented, it is accepted that if old section 28 is not repealed, there will be a duplication in the Ordinance and that will not be correct.

MR CHAIRMAN:

We carry on now with clause 15 and we move on from there.

HON F VASQUEZ:

Mr Chairman, this side of the House is happy with the proposed amendment in that it puts right the fault in the draft that has been identified. At this stage I wonder if I can crave your indulgence and go back two clauses. We were speeding through the clauses yesterday evening and there is a small matter which appears in clause 13. I will be grateful for the opportunity of raising that at this stage before we carry on with the Bill. Clause 13 in its provision for the new section 28(1) in the Ordinance on page 121 of the Bill, states "If at any time the number of members of the company which is a private company is reduced below one..." It is a matter of drafting. I think it makes rather a nonsense. We are not dealing in mathematical concepts here, we are dealing with physical individuals and of course you cannot have below one physical individual. The recommendation from this side of the House, Mr Chairman, is that that be amended to "reduced to none" rather than to "below one".

MR CHAIRMAN:

Are you proposing an amendment?

HON F VASQUEZ:

I am proposing an amendment to remove the words "below one" and to substitute "reduced to none" which has the same meaning. I think it is rather a nonsense, Mr Chairman, to have a reference to less than one person. We cannot have a division of a person.

MR CHAIRMAN:

So the question is now that you propose that in clause 13 an amendment should be made on the second line where it says "below one" to read "to none". Any comments?

HON M A FEETHAM:

Accepted.

Mr Chairman put the question on the proposed amendment which was resolved in the affirmative.

On a vote being taken on the clause, as amended, the following Hon Members voted in favour:

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

The following Hon Members abstained:

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

Clause 13, as amended, stood part of the Bill.

Clauses 15 to 18

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

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

The following Hon Members abstained:

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

Clauses 15 to 18 stood part of the Bill.

Clause 19

HON M A FEETHAM:

Mr Chairman, I have already given prior notice of an amendment to insert between clauses 19 and 20 a new heading which will be new section 45(a).

HON F VASQUEZ:

Mr Chairman, this side of the House wants to make another recommendation that that new section 45(a) should not be included in the Bill at all for the reasons that I sited in my address yesterday when dealing with the principles of the Bill. That is that this new section 45(a) grants to companies a new power which at present they do not have. In fact, they are specifically prescribed under I think it is section 45 or section 54 of the present Bill, I cannot recall. Mr Chairman, companies at present are prescribed from purchasing their own shares. It is an essential element of company law that a company must not purchase its own shares because in doing so it is reducing its own share capital. It is rather like a snake eating its own tail. Now this new section 45(a) introduces a new concept in allowing a company to purchase its own shares which is something which the English 1989 Companies Act has allowed companies to do. The point that I made yesterday, Mr Chairman, is that the English legislation prescribes very carefully the circumstances in which a company may purchase its own shares and provides certain guarantees and protections to shareholders and especially minority shareholders in those companies. Section 45(a) as drafted, which this Bill proposes to insert in the Companies Ordinance refers to Schedule 11....

MR CHAIRMAN:

We have got to deal with one section at a time. Let us clear section 19.

HON F VASQUEZ:

I am sorry, I am referring to clause 20.

On a vote being taken on clause 19 the following Hon Members voted in favour:

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

The following Hon Members abstained:

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

Clause 19 stood part of the Bill.

Clause 20

HON F VASQUEZ:

The objections that I was raising, Mr Chairman, in fact relate to clause 20 and not clause 19. The objection is that the Ordinance has to be very careful in prescribing the circumstances in which a company may purchase its own shares in order to provide protection for shareholders and especially for minority shareholders. It is the view of the Honourable Members on this side of the House that to introduce a section for enactment in an ordinance that provides for the grant of power to a company to purchase its own shares and further to provide that that power will only be exercised in circumstances set out in schedule 11 and then not to provide the provisions of schedule 11 at the same time means that this House is simply not aware of the principles that will apply in the grant of companies of that important and potentially pernicious power to purchase its own shares. It is a nonsense and almost an abuse of this House. How can this House be expected to approve a measure when it simply is not aware of the circumstances that will be enacted and in which companies will be allowed to carry out this important new power? So it is the view of this side of the House that this section, as presently drafted, is unworkable. If this section, as presently drafted, finds its way through the Companies Ordinance somebody with shares in a company is going to say or a company is going to come along and say "We want to purchase our own shares, in what circumstances may we do it?" Well, we look at schedule 11 and there is no schedule 11 and without the insertion of the schedule 11 that clause becomes totally meaningless and unworkable. It is an abuse of this House to enact that new provision which is unworkable and meaningless. For that reason, Mr Chairman, the view of this side of the House is that that section should be stood down until schedule 11 is drafted and enacted so that this House is aware of the principles that will apply and the principles that are going to be enacted to enable to set up the circumstances in which a company may purchase its own shares. Until that is the case it is an abuse of this House even to legislate this section, as at presently drafted.

HON M A FEETHAM:

Mr Chairman, clearly the difference between the view being expressed there is consistent with the difference of views on both sides of the House as regards legislation and as far as we are concerned we intent to proceed with the Bill as it stands and as far as the schedule which will prescribe conditions is concerned, that will be done as soon as possible thereafter or at the same time. This is a matter really for the legal department because if you look at the commencement of the Bill it says that it can be done simultaneously, on different days and different sections coming in at different times. So really it is a matter for the Attorney-General's Department to deal with the matter in keeping with the policy of the Government. I take the point made but it is consistent with your line not consistent with what we are saying.

HON F VASQUEZ:

No. The point is, that this House is being asked to enact something to give companies the power to do something without knowing the circumstances in which that power will be exercised and so the point is, Mr Chairman, that this House simply does not have the information available to it in order to make the judgement which it has to make in deciding whether to pass this proposed amendment to the Companies Ordinance or not. It is simply that the information is not at hand.

HON M A FEETHAM:

It is not different to what we have been doing in respect of drawing up legislation and then providing the regulation to give effect to the legislation.

HON P R CARUANA:

Can the Honourable Minister give way?

HON M A FEETHAM:

Can I just finish? We are in Committee Stage anyway. It does not really matter. You can stand up as many times as you want. As far as we are concerned this is a new section to the legislation which concerns the power of a company to purchase its own shares and the conditions will be set in schedule 11. That will come into effect at the same time or subsequently or even before and it is very clearly stated at the beginning of the Bill that we are presenting in this House. So whilst the principle of the company to buy its own shares is what we are arguing, the conditions under which it will be done will be made known later.

HON P R CARUANA:

Mr Chairman, I understand what the Honourable Minister is saying. It is to give the Government power to do by

regulations things that we would have liked to have done in an ordinance. The difference, if I can attempt to establish one with respect to the Honourable Minister, is this. In the case of section 45 what is not before the House now and what the Honourable Member will want to do by regulation - I have noted that the powers that they have under regulations include the power to prescribe schedules - are things that are not here yet and which go to the very root of whether the principle of the substantive section is correct. In other words, I am certain that no-one across that side of the floor of this House considers that it is correct, in principle, to allow a company to buy shares without any restriction or condition. It is a licence to steal from shareholders, basically. The section, as it presently stands, is a licence for directors to steal from shareholders. Therefore, the contents of that schedule 11 goes to the very route of whether it is proper or improper for this House to legislate this section at all. It is not a question of providing for the administration of the section. It is a blank cheque. It is an improper piece of legislation. It is an offensive piece of legislation standing by itself whereas other things that we were legislating yesterday at least by themselves stood up and were capable of being supported by the House albeit subject to differences of opinion but there was nothing in the sections of yesterdays Ordinances which were in the same sense as this inherently objectionable as they stood. There is a distinction. The Honourable Minister may not consider that the distinction is sufficiently great. I note the distinction that he has sought to make by comparing this to regulations of the sort that we were discussing yesterday. What I have tried to do is to persuade him that there is a difference in the sense that what is not before the House goes to the very route of the principles in the section and, Mr Chairman, I would go further. In any case, presumably, as different sections can be given effect to on different days, this section will not be brought into effect until the schedule has been prescribed but still that does not address the point that I am making which is that the House is being invited to approve or disapprove it. I do not want to disapprove of this because I think it is actually a good idea. We cannot have our open-ended investment companies unless we have a section of this kind. Therefore, I do not want to be put in a position where I do not support a legislative provision which in principle I would support if it were complete before me. The point is that we cannot approve or disapprove it not knowing exactly what we are approving or disapproving. What I am disapproving right now is the unrestricted right for a company to purchase its own shares. That is a disapproval which I would recommend to the Members opposite as well.

HON CHIEF MINISTER:

Mr Chairman, I think the problem is that on this occasion, as on almost every other occasion, the Member opposite tends to exaggerate what it is that is taking place.

If in fact we pass section 45 today and section 45 says that a company may redeem its own shares in accordance with schedule 11 and schedule 11 is not yet there, then until schedule 11 is there, the company cannot redeem its own shares. So we are not risking creating a pandora's box of unrestricted redemption of shares. I think that needs to be put into context because the world is not going to collapse because we have passed this today. Secondly, the reason why the schedule is not there is because the final shape of that schedule is not ready. Therefore, we had to take a policy decision in the Government. This is important to us. It is important enough that it has been going round since 1987. I reminded the House that in 1987 before we were in Government we were presented in this House with conditions for the redemption of preference shares which were drafted at the time and which were announced as us being the first people in the whole of Europe to be providing the framework for UCITS. That was five years ago and we still do not know what we ought to be doing and even today I am not sure what it is exactly we are supposed to be doing. All that I can tell the House is that what I am not prepared to do is to say that we will not create the vehicle today and wait until the next meeting of the next House to legislate because this is important. The sooner we get it done the better and it cannot happen without the schedule. This is the way that the lawdraftsman thought we could reconcile my insistence that there was a deadline that we had to get this on the statute book once and for all and the fact that the precise restrictions which is a balance between the need to protect the interests of shareholders and the need to make Gibraltar competitive and attractive. I do not know why we just cannot follow basically by and large what they do in UK, which is presumably what we ought to be doing. The position of the Government is that we are proceeding with this but of course the section will not be operational until the schedule containing the basis upon which section 45 can work is there. If you say under section 45 "A company may exercise the power contained on subsection (1) only if it does so in accordance with the provisions of section 11", it must follow that even if we brought in section 45(a) and it did not have schedule 11, a company would not be able to do what it is told to do. It would say that in order to do so it would have to go to schedule 11 to find out about that provision and it finds that the last schedule is schedule 10 and there is no schedule 11. Clearly schedule 11 has to be there before the power to redeem shares can be exercised and schedule 11 is not at the moment ready and that is why it does not appear in the Bill and the sooner it is ready the sooner this will be brought in. The alternative would be that we would not proceed with creating the power to do it and that is not acceptable to the Government.

HON P R CARUANA:

Mr Chairman, yesterday the Honourable the Chief Minister accused me after one of my interventions of ignoring

everything that he had said and proceeding with my prepared text as if everything that he had just said I had not heard. With the greatest of respect, he is much more guilty of that today than I could possibly have been yesterday. I said myself before the last intervention of the Chief Minister that we were not concerned about the practical implementation of it because clearly it could not come into effect until the schedule. So all that he has said about the timing is completely a waste of this House's time because I recognised that myself ten minutes ago. He says he asked himself rhetorically that he does not understand why they cannot do what they did in England and I say that nor can I because if they had done what they did in England the contents of schedule 11 would have formed an integral part of section 45 and the House would have discussed the whole shooting match. The difference is that if section 45, in the present form had been introduced into the House of Commons without the contents of schedule 11, it would have been laughed straight out of the front door. The point that I was making and I repeat it again for the benefit of the Chief Minister who either has not understood it or has not wanted to hear it, is that schedule 11 will now be written by them. It will contain whatever they like. This House will not have an opportunity to debate its contents nor to contribute to its contents and therefore we are being asked to approve the principle without being told the basis upon which that principle is going to be available to users of it. That is to be asked to write a blank cheque and we do not need to debate. The Chief Minister understands that that is what I was saying but wishes to disagree or thinks that that is the position in which I should be. Fine, we will just leave it at that. But at least let him understand what I was trying to say. In that sense this side of the House will vote against this section because we were being asked to vote on half the baked potato and I want to have the whole baked potato in order to know whether the potato is baked or not.

HON CHIEF MINISTER:

The reason why I did not understand that that was his concern because that seems to be the same concern that he was expressing yesterday about everything else. He has only seen half the baked potato because we can then go by regulation to change even the principal ordinance. In fact, if his argument is that this is unacceptable to him on the same principle as everything else is about using subsidiary legislation, then he has wasted my time and everybody else's time because we know that already. I thought he was making a new point and I thought the new point that he was making was that without the schedule we were creating the power to repurchase shares unconditionally. That is what I understood he was saying. I was trying to point out that we were not doing that. It is not the same thing. It is one thing to say that we have created a power to create the possibility of buying

shares without any conditions. It is another thing to say that we have created a power which can only be exercised when the conditions are specified and the condition has got to be specified by regulation which I do not like because I think conditions should not be by regulation but in the main ordinance. But he accepts that in fact it is not possible and it will not be possible unless we have a schedule which says schedule 11. I have to do it in accordance with schedule 11 and you go to schedule 11 and there is nothing. Then you would have a problem because you have to say a failure to comply with the requirements of schedule 11 is an offence and how do you comply with nothing. So obviously schedule 11 is going to contain some conditions. I think we all agree that that is the case. The Member's objection is that he does not know what those conditions will be and that therefore that allows us to presumably allow companies to do what they like in the repurchase of the shares and he will have no control and influence over it. Obviously we are going to put in schedule 11 a machinery, as I have said, which complies with Community law for a start. Presumably if the Community requirements on company legislation prohibits companies to do what he says would be very dangerous because companies will be able to take all the money from their shareholders, then obviously our own legislation will do the same thing because we cannot have company legislation which conflicts with Community company requirements. He has got that safeguard already and secondly if that is what we wanted to do then we can do it now. All we need to do is amend section 45(a) by removing the schedule and then anybody can buy the shares on whatever conditions they like without any limitations. We have got the power to do this now in this House. We simply amend section 45(a) to remove all references to schedule 11. There is no need to bring schedule 11 and everybody can do whatever they like. So if that is what we wanted to do we can do it now. It is obviously not what we want to do. The reason why we are holding back on the implementation of this measure which we both agree is desirable and important is because the conditions that we are going to attach to it are not yet finalised. That is all, not a big matter of principle, except that he believes that when they are finalised we should come back to the House and have a debate on it. It is a problem certainly because we are grateful to the Members opposite when they come up with improvements on the legislation which will make the legislation work better and that is an important function of the House. Clearly it is very difficult for us if, as has been seen today, we are talking about changing particular words here or there where frankly as a Government we are making a policy decision. Maybe we should look at the machinery of where Members opposite feel that something in the drafting does not do what it ought to do and how we can do something about putting it right before we get to the final stage. It is not that we want to say no, it is that we cannot afford to say yes if we are not 100% sure what it is that we are saying yes to.

HON P R CARUANA:

Mr Chairman, we are very sorry if the Government considers that our participation of the legislative process is a nuisance or an obstacle to them but this is well established principles of democracy and I think oppositions, even bad oppositions in other democracies are also nuisances to Government when it comes to expressing their views on matters of legislation. I just want to say this, I think the Chief Minister is completely wrong and ought not to express opinions and matters of law until he has taken advice from those that he has around him to advise him on such matters because if the law says that you can do something provided that you comply with conditions on page 23 and on page 23 there are no conditions, then you can do it without conditions. The only thing that saves this section is not what the Honourable the Chief Minister has just said. The only thing that saves this section and this power from being used without condition - it is not what the Chief Minister has just said - is the fact that presumably they will have the wit not to make this section applicable until such time as they have published the schedule. That is what saves this power from coming into being and not the fact that you can only do it in accordance with the provisions of schedule 11, because if schedule 11 equals nought then you can do it subject to nought conditions and subject to nought conditions equals unconditionally. Hardly even a legal point, it is almost basic linguistic interpretation.

MR CHAIRMAN:

Will the Minister if he has not got any more comments move the amendment please?

HON M A FEETHAM:

Mr Chairman, I will move it again. I have already given notice that between clauses 19 and 20 the new heading "New Section 45 (a)" is inserted.

HON F VASQUEZ:

The question I had was that we have accepted the Hon Member's amendment, that is the inclusion of the new heading "New Section 45(a)". I thought we had dealt with that and we were dealing with my amendment for the exclusion of section 45(a) altogether.

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

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

The following Hon Members voted against:

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

The amendment was accordingly defeated

MR CHAIRMAN:

We have defeated the amendment to delete section 45(a) but we have not voted on the amendment proposed by the Minister for Trade and Industry. We are now going to vote on that. It is an amendment to Section 20 and it is a way of presentation, it is just a presentation of putting just above Section 20 "New Section 45(a)".

HON P R CARUANA:

Mr Chairman, this amendment relates not to including or deleting the whole section but simply a new heading to it, so it would be almost pedantic to vote against the inclusion of a little heading. That is why we supported the Minister's amendment, not to say that we are not going to vote against the whole thing.

Mr Chairman put the question on the proposed amendment which was resolved in the affirmative.

On a vote being taken on Clause 20 the following Hon Members voted in favour:

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

The following Hon Members abstained:

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

Clause 20, as amended, stood part of the Bill.

Clauses 21 to 27

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

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

The following Hon Members abstained:

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

Clauses 21 to 27 stood part of the Bill.

Clause 28

HON M A FEETHAM:

I have already given prior notice of a new subsection (4), of Section 100. The word "April" is to be omitted in the two places where it appears and it is to be substituted by the word "August".

Mr Chairman put the question on the proposed amendment which was resolved in the affirmative.

On a vote being taken on Clause 28, as amended, the following Hon Members voted in favour:

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

The following Hon Members abstained:

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

Clause 28, as amended, stood part of the Bill.

Clauses 29 to 42

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

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

The following Hon Members abstained:

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

Clauses 29 to 42 stood part of the Bill.

New Clause 43

HON M A FEETHAM:

I have already given prior notice of this amendment which was in relation to the observation made by the Member opposite and therefore I move that the Bill be amended by the insertion after clause 42 of a new clause 43 as follows, "Repeal of Clause 20(a). Section 20(a) is hereby repealed".

New Clause 43 was agreed to and stood part of the Bill.

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

THIRD READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to report that The Savings Bank (Amendment) Bill, 1992; The Nature Protection (Amendment) Bill, 1992; The Port (Amendment) Bill, 1992; the Business, Trades and Professions Registration (Amendment) Bill, 1992; The Companies (Amendment) Bill, 1992; The Auditors (Approval and Regulation) Bill, 1992; The Employment (Amendment) Bill, 1992; The Banking Bill 1992; and The Estate Duties (Amendment) Bill, 1992, have been considered in Committee and agreed to with amendments and I now move that they be read a third time and passed.

Mr Speaker then put the question and on a vote being taken on the Nature Protection (Amendment) Bill, 1992 and the Banking Bill, 1992, with amendments, the question was resolved in the affirmative.

On a vote being taken on the Savings Bank (Amendment) Bill, 1992, the Port (Amendment) Bill, 1992; the Business Trades and Professions (Registration) (Amendment) Bill, 1992; the Auditors (Approval and Regulation) Bill, 1992, with amendments; the Estate Duties (Amendment) Bill, 1992 the following Hon Members voted in favour:

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

The following Hon Members voted against:

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

The Bills were read a third time and passed.

On a vote being taken on the Companies (Amendment) Bill, 1992, with amendments; and the Employment (Amendment) Bill, 1992, with amendments, the following Hon Members voted in favour:

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

The following Hon Members abstained:

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

The Bills were read a third time and passed.

PRIVATE MEMBERS' MOTIONS

HON P R CARUANA:

Mr Speaker, I have the honour to propose the motion standing in my name which reads as follows:

"This House condemns the Government for:

(1) failing to lay before the House Estimates of Revenue for the current year in respect of such importance sources of revenue as amongst others import duty, electricity charges, company tax, exempt status tax, stamp duties, ground and sundry rents and premia

on assignments amounting last year to a sum of about £33m and notes that section 65(1) of the Constitution provides that "the Financial and Development Secretary shall cause to be prepared and laid before the Assembly before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of Gibraltar for that year";

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

(3) passing a decree allowing import duties to be paid into a Special Fund in breach of the law namely section 45 of the Import and Export Duties Ordinance, which requires import duty to be paid into the Consolidated Fund, and notes with regret and concern, that the financial information relating to estimated revenues and expenditure available to this House is incomplete and reduced to the point where the role of the House in general and the Opposition in particular to act as watchdog of public monies and expenditure is severely prejudiced".

MR SPEAKER:

Before the Honourable Member carries on, I would like to draw to the attention of the House, that this is a motion of censure against the Government and therefore the ex-officio Members in this House will not be allowed to vote.

HON P R CARUANA:

Mr Speaker, as a matter of parliamentary style, I try, where possible, not to fall into the trap of debating legal matters across the floor of this House. There are other forums in which that can be done and I will try to the greatest possible extent to uphold that principle in my contribution to this motion, but regrettably it will not be possible to do it altogether and especially in relation to the third point. It will be necessary to stray a little bit into quasi-legal arguments. In principle, what I try to do here without in anyway shirking from the consequences of statements that I have made in public which I will repeat during the course of this motion - is to formulate my complaints from this side of the House in political as much as in, or perhaps moreso, legal terms. Mr Speaker, in our view never before in the history of this House has a Government placed before this House Estimates of Revenue and Expenditure which gives so incomplete a picture of the finances and spending proposals of Government as the 1992/93 Estimates that were approved by the Government votes in this House last month. I think, Mr Speaker, it is pertinent to refer to some of the Chief Minister's utterances in this House in the past. "The Opposition" said the Honourable the Chief Minister in the 1989 Budget debate and I quote him from page 174 Hansard of Wednesday 3 May 1989, "is there as the guardians

of the public purse". "We accept", he said during the 1988 Budget debate page 94 "the right of the Opposition to monitor and question what we do". I would just comment as an aside, Mr Speaker, that the word 'monitor' implies that you have the means to do it as it is being done as opposed to the process of checking which takes place after the event. Monitoring implies that you keep an eye on it as it is going along, to see how it is going along. He carried on "They should look at us honestly and critically and not try to find fault for the sake of finding fault and stop us making mistakes if they think that we are about to make a mistake, because at the end of the day, Gibraltar will benefit and at the end of the day the people of Gibraltar will have a greater respect for us as politicians and a greater respect for this House of Assembly, if we operate in this fashion". Well, Mr Speaker, it is precisely because the Estimates no longer allow the Opposition to do precisely what the Honourable the Chief Minister thinks or in 1989 and 1988 thought, it existed to do, that I have brought this motion in the House today. Mr Speaker, the Estimates approved by the House last month exclude revenue or estimates of revenue of the Government from such sources, as the motion says, as company tax, import duty, exempt status tax, stamp duty, ground and sundry rent, workers hostels, electricity charges and premia on assignments, amongst others. Some of these, Mr Speaker, of course are absent from Estimates not for the first time. It should not be thought and I would try to make it clear during the course of my address that it is not any part of my case that what has happened in the 1992/93 Estimates is a principle that was discovered at the time of those Estimates. Perhaps previous Oppositions had not picked it up with the result that what we have now is a problem of scale and it is the scale which has raised the alarm or at least which has given me the opportunity now to raise the alarm, but in respect of items on a smaller scale it has happened, certainly since 1988. I will show in relation to specific matters but of a different and distinguishable kind, that it has happened even before 1988. Mr Speaker, according to the 1991/92 Approved Estimates, or where available 1991/92 Forecast Outturn and to answers to questions given in this House, the 1991/92 value of these excluded items of revenue are as follows. Import Duty £17m, Stamp Duty £1.5m, Exempt Company Tax £1.8m, Ground and Sundry Rents £850,000, Premia on Assignments £30,000, Electricity Charges £6.2m, Company Tax £7.2m and the Training Levy £1.4m, amounting in all to about £36.382m, although in the motion itself I use the lower figure of £33m because there are two items on that list which I did not reckon on when I drafted the motion. Mr Speaker, that figure constitutes about 35% of total Government revenues of which this House now has no estimates for the current year, and as I will go to explain later, nor estimates of the proposals for the expenditure of that money. It should therefore, as I said in the House at the time of the Budget debate, be clearly understood by this House and by the public at large that in discussing and voting upon the Appropriation Bill and in generally debating

- as has become the practice of the House, if not strictly the exercise of the debate in the Appropriation Bill-the state of the finances of the Government of Gibraltar and the state of the economy generally that this House had before it. I was considering no more than 65% of Government expenditure of recurrent revenue and no percent of Government's expenditure of money that it may have already borrowed or may borrow during the course of this year, unless that borrowed money finds its way into the Improvement and Development Fund and not some other special fund or the Gibraltar Investment Fund. Mr Speaker, I am aware that some of the money, perhaps all of the money, that is borrowed by the Government (the point is that I cannot know which) is used by the Government to subscribe the shares to the Gibraltar Investment Fund and that that money comes back into Government's coffers in the form of the purchase price of the purchase by those companies of Government housing stock. Then the Government finds itself therefore with the money again in its hands and - we know that much of it, perhaps all of it, the point is that we do not know - it goes through the Improvement and Development Fund into the various things that we approved when we approved the Appropriation Bill, ie the projects of the Honourable the Minister for Trade and Industry and the projects of the Honourable the Minister for Housing. Mr Speaker, therefore, what we are approving is the expenditure of funds of borrowed money that is expended through the Improvement and Development Fund or that is expended through the Consolidated Fund but if the Government wants to borrow money and not pass it through either of those two funds before they spend it, they can spend it without any formal information or appropriation to this House. For example, Mr Speaker, and moving on from the question of borrowing, we now get no estimates whatsoever of what the Government proposes to do spend on health. Well, I know that we did not get much information in the last couple of years because, since the Gibraltar Health Authority ceased being a Government department, we no longer got detailed proposals in a departmental basis of the Health budget but at least, under the Subventions and the reallocation section of the Estimates, we knew how much money the Government was injecting into the health service. We did not of course know how much was being collected by the Health Authority in its own respect through subscriptions charges and prescriptions charges and hospital fees but at least we knew how much the Government was injecting into the Health Authority. If the figure was seen to drop, we could question whether this represented a reduced expenditure on health in Gibraltar. Now, this year, we have had no information about how much money the Government proposes to inject into the health service. We do not know how much the Government intends to spend on the purchase of electricity. The Government has in effect privatised a part of the electricity generating industry. The fact of the matter is that we do not know whether they are spending £1m or £10m in the purchase of electricity. We do not know whether the electricity that they are

purchasing therefore is cheap or expensive or whether the taxpayer is getting good value for money or bad value for money. The fact of the matter is that we do not have the information before us when we are debating the question of Government's expenditure and Government's revenue. They are not the only examples, Mr Speaker, but I think they are probably the principal ones. All of this begs the question, Mr Speaker, how does this square with the Chief Minister's assertion in 1989 that the Opposition is there as the guardians of the public purse or that the Opposition has the right to monitor and question what the Government does and how it is doing it or that we should warn them in advance that they are going to make a mistake so that they do not make it and that Gibraltar thinks more of the House of Assembly and the politicians for doing it? Mr Speaker, none of us in this House and certainly not on this side of the House have powers of clairvoyance and if we do not have the total economic picture infront of us when we are discussing what the Government is proposing to spend, then I do not see how we can do any of those three things. Mr Speaker, I have to say, that the hypocrisy of the whole situation is clear at least to me. The Government cynically organises the affairs of public finances in such manner as to give the public and the House as little information as possible, thereby making a mockery of the Opposition's duty to guard the public purse or to monitor or question Government's administration of public matters. Therefore, Mr Speaker, the position reached is this. That in respect of these items of revenue that I have described, neither the House nor the public at large will have any idea how much the Government expects to collect or how much it has collected or worst still, how the Government spends those tens of millions of £s until the Government publishes its accounts for the current year. In accordance with present and past practices, that will not be until around the middle half of 1995; that is more than three years from now and about two years from the end of the current financial year. Well, Mr Speaker, by that time, the figures will be of long past historical interest only. They will have no value to the Opposition for the purpose of them acting as guardians of the public purse or for the purposes of monitoring what the Government is doing or stopping the Government from making mistakes so that Gibraltar will benefit and so that the people will have more respect for the politicians in this House. I said it so recently in this speech that I do not have to remind the House that those were the roles that the Honourable the Chief Minister himself commended to the Opposition not that many years ago. Mr Speaker, to quote from a leading article in the Financial Times on Monday the 20th May 1992, with Mr Speaker's indulgence, "Good Government", said the Financial Times, "can withstand public scrutiny. Indeed is more likely to thrive under it". We think that the contrary is also true. That bad Government cannot withstand public scrutiny and can only thrive by

withholding information from the public domain. By this criteria, Mr Speaker, the Members opposite categorise themselves with distinction into the second and not into the first category. For these reasons and others that I will now go on to explain, I believe that by the manner in which the Government has carefully calculated to organise its financial affairs, it has for practical purposes rendered this House in general and the Opposition in particular, an impotent bystander in the matter of guarding and watching over the public purse and Government's finances and expenditure in general. Mr Speaker, Gibraltar is awash with rumours, hopefully completely ill-founded, of a Government getting into greater and greater financial difficulties. If that is not true, then reducing the amount of financial information published by Government is hardly the way to dispel those rumours and to ensure public confidence which is what we all want, in pubic finance and the corollary of that is also true. If a Government were to be getting into an increasing and worsening financial muddle and wished to conceal that fact and save its neck for as long as it possibly could, I can think of no better way of doing it than by making it effectively impossible to gauge the actual financial position of Government at any given or the current moment in time. I believe, Mr Speaker, that the current estimates are meaningless and useless as a tool to gauge the Government's overall financial position. I think it will be helpful to explain the process followed by the Government which has led it to believe that it can lay before the House what, in my opinion, are, not only politically deficient, but - lest anyone think that I am retracting from statements that I have previously made in public - legally deficient estimates of revenue and therefore as a result present an incomplete picture of expenditure as well. As I intimated earlier, the process of reorganisation of public finances and the accountability therefor which culminated in these inadequate and deficient estimates did not begin in 1992. It began in terms of scale, almost as soon as the Members opposite formed Government in 1988 and one really has to go back, Mr Speaker, to the root cause of all of this. The first major coach and horses driven through the concept of Government's accountability to this House was really the Borrowing Powers (1988/1992) Ordinance of 1988 which is one of the very first pieces of legislation made by the Members opposite. Section 12 of that Ordinance gave the Government power to put money borrowed by Government into a Special Fund - the Gibraltar Investment Fund - by a process which I will explain in a moment but the legality which I do not accept either. Government was then able, or so it believes, to spend and pay out all borrowed money without the approval and therefore the knowledge of the House. That, in effect, Mr Speaker, fatally wounded the whole process of control of public expenditure by this House. As at the 31st March 1990, over £20m had been borrowed and placed in the Gibraltar Investment Fund. The point is not how much has been spent in this way, but rather that the mechanism that had been created could be used by the Government whenever and however it pleased to do it. The concept of control by

this House had really been blown out of the water. Mr Speaker, at the root of the whole mechanism is that, according to the Constitution, Government only needs the permission of the House to spend money if that money is coming from the Consolidated fund. There are provisions in the Public Finance (Control and Audit) Ordinance requiring them to come to the House for spending money out of the Improvement and Development Fund as well, but that is in an Ordinance and not in the Constitution. Hitherto, unconstitutionally, the Consolidated Fund had been intended and was envisaged to be the fund into which all general Government revenues would be paid. It must have all seem so obvious and simple to the Members opposite. If we do not pay revenues into the Consolidated Fund, we can spend them without telling the Opposition or anyone else how much of it we have spent and on what for a few years at least and that is that we have to publish the accounts of Gibraltar for the current financial year. The process is then taken one logical but perverse and, in my opinion, unconstitutional step further. Well, if we can spend it without telling the House or seeking the permission of the House through the mechanism of an Appropriation Bill, then we do not even have to tell the House how much we are collecting from Government revenues that we propose to spend through special funds and in a manner that we do not have to come to get the permission of the House. So, game, set and match, Mr Speaker, at that problem. Not only do we not know how much the Government expects to collect from company tax, stamp duty, exempt company tax, ground and sundry rent, premia on assignments, monies collected in electricity charges, monies collected in import duty, but when they have collected it, they spend it as they please, on what they please without any form of control or advance knowledge by this House. The Chief Minister may care to say how he expects that we can be an effective guardian of the public purse in those circumstances. So, Mr Speaker, revenues have been gradually and over the years diverted to special funds away from the Consolidated Fund and they have been diverted, by means of a process using the Public Finance (Control and Audit) (Amendment) Ordinance - I do not argue on my legal opinion and do not pretend that my political submission in this House have any more political credence simply because I am also a lawyer but I have also said publicly what I am attempting to achieve in this motion is to defend my arguments politically and not primarily legally - to create special funds and using an amendment which they themselves introduced into the Public Finance (Control and Audit) (Amendment) Ordinance in Section 20 thereof. By regulations under that Ordinance establish a special fund, for example, the Social Assistance Fund and by regulation they say that the revenues of the Social Assistance Fund shall include Government's takings from import duty. Hey presto! There is a law of the kind that they may or they think is referred to in Section 63 of the Constitution as entitling them to pay that revenue other than to the Consolidated Fund. Section 63 of the Constitution, Mr Speaker, says

"All revenues or other monies raised or received for the purposes of the Government of Gibraltar, (not being revenues or other moneys that are payable by or under any law into some other fund established for a specific purpose, or that may by or under any law be retained by the authority that received them for the purposes of defraying the expenses of that authority) shall be paid into and form one Consolidated Fund". Therefore the Constitution of Gibraltar says that unless revenue falls into the exception in brackets in section 63 of the Constitution, there is a constitutional obligation to pay it into the Consolidated Fund so that the whole constitutional mechanism of appropriation bills and having to seek the approval of this House to spend Government's revenue, then applies to that revenue. The question arises, as a matter of law, whether having written a little regulation made under the Public Finance (Control and Audit) Ordinance, saying that the revenue of the Social Assistance Fund, for example, shall be import duties, that that is capable in law of being a kind of law of the sort referred to in the Constitution, being a law which provides for revenue to be payable into a fund established for a specific purpose. Mr Speaker, I am going to go on very briefly just to outline, without wishing to make them stick, although if provoked in my reply I will not hesitate to give the full legal argument. There is no question of taking Government by surprise even if you should decide to take this matter to court. I would not then seek to take the Government by surprise by legal argument. Mr Speaker, the section in the Constitution says "payable by". "Payable by" in those circumstances must mean that the law requires "payable" meaning "mandatorily payable". For example, and that is why there is a section 3 to this motion, the Imports and Exports Duties Ordinance, says "That the takings of import duties shall be paid into the Consolidated Fund". That is a law which requires that particular kind of revenue to be payable into the Consolidated Fund and there is a second question as to whether any of the special funds of the Government meet the requirement, for that exception to come into force, that the fund be established for a specific purpose. The principal purpose of most of these funds is nebulous, generalised and could be applied almost to anything. As if that were not bad enough, the very amendment that the Government has passed to the Public Finance (Control and Audit) Ordinance, allowing them to pass monies from one special fund to another, is much more than capable of rendering none of these special funds to be funds set up for a specific purpose. Mr Speaker, let nobody on that side of the House think for one moment that I am not aware of every intricate statutory provision upon which they seek to rely legally for what they have done. Presumably they have legal opinions to the contrary, just as my legal opinion can be wrong, so can theirs. The fact that they have a legal opinion does not mean that that is what the law is. The fact is that even if the conduct of the Members opposite is capable of justification in law, it is still, in my political submission, a manipulation and abuse of a legal

procedure that was not intended for that purpose and it is an abuse, a political abuse of that legal procedure for the quite different purpose of organising Government's affairs in a way that requires them to give the least possible information. Mr Speaker, I want to summarise, again briefly, the gradual build-up that there has been over the years of these diversions of funds. Mr Speaker it is just for the record of this debate because of course Members will be aware of it, but by Legal Notice 140 of 1991 - which of course the purpose of which is to make provision for the future repayment of the public debt of Gibraltar - regulations were passed under the Public Finance (Control and Audit) Ordinance setting up the sinking fund so that the revenue of that fund should include stamp duty and exempt company tax. By Legal Notice 34 of 1992, ground and sundry rents and premia on lease assignments were stated to be properly the revenue of that fund. I am choosing my words carefully because one of my legal arguments would be that regulations made under the Public Finance (Control and Audit) Ordinance for the purposes of regulating a special fund cannot, as a matter of law, have any effect other than regulating the fund that it set to establish. Therefore, when a regulation made under that Ordinance says that import duty, for example, may be paid to the Social Assistance Fund that is permissive as far as the Social Assistance Fund is concerned. It cannot be mandatory as far as section 63 of the Constitution is concerned. By Legal Notice No.21 of 1991, company tax was stated to be the admissible revenue of the Gibraltar Investment Fund. The Gibraltar Investment Fund has as its main purpose to promote the economic and social development of Gibraltar by investment of public monies in such commercial or industrial undertakings as the Government considers beneficial to the promotion of such development. We may have to argue as to whether that is a specific purpose as well but that does not form part of what I want to say in this House today. That fund, Mr Speaker, the Gibraltar Investment Fund, which had been set up in 1988 by Legal Notice No.54 of 1988 is then for some mysterious and unexplained reason cancelled and a new Investment Fund set up by Legal Notice No.35 of 1992 in March of 1992. But the new fund, the new Gibraltar Investment Fund set up in March of 1992, is deemed to have existed since the 21st April 1988. Mr Speaker, such a ridiculous device is by itself enough to heap scornful suspicion and criticism on the clarity of Government accounting of public finance. To set up in 1992 a fund and say that it has existed since 1988 when public accounts for the intervening years have already been tabled is of dubious propriety and gives a good idea of this Government's attitude to the whole concept of financial reporting propriety. It would certainly not be admissible in the private sector. It amounts or is capable of amounting, without explanation, to fiddling about after the event, doctoring the records to fit the reality instead of the realities being correctly reflected in the record in the first place. By Legal Notice 31 of 1992, electricity fees were made properly admissible

revenue of the Gibraltar Electricity Fund and I have been to the import duty point which was diverted, as I call it, to the Social Assistance Fund by Legal Notice 42 of 1992. The purposes of the Social Assistance Fund is to give assistance to meet social needs of individuals according to criteria determined from time to time by the Government. Whether that is capable of amounting to a specific purpose within the meaning of section 63 of the Gibraltar Constitution is another thing about which we shall have to argue at another time and in another place. Mr Speaker, other special funds have been created to receive and spend income from workers' hostels, fines and the proceeds of sales of property under the Drugs Ordinance, revenue from telecommunication services and the proceeds of sales of coins. Mr Speaker, worthy causes all of them I am sure. One might even be tempted to say because the cause of the special fund is worthy, let us leave the matter at that and let us not get too technical about whether they come to th[illegible]se or not. Alas, Mr Speaker, the political deviousness of the plot is developed yet further because not content with collecting and paying revenues into special funds and spending them from those special funds without the knowledge of the House at the time until we get the accounts for this year which has to include a degree of accounting in relation to these special funds. The Government then amends, as I have said section 20 of the Public Finance (Control and Audit) Ordinance so that it can transfer monies from one special fund to another. The financial hotchpotch and the total absence of accountability to and control by this House is now completely complete. The Government could spend monies in the general sinking fund which is itself established for a perfectly innocuous purpose for the purpose of the Gibraltar Investment Fund ie almost anything at all. The fact that revenues are paid into a particular special fund is no guarantee any longer that those monies would be spend on the substantive purposes for which that special fund was established. That is why you cannot treat the worthy purpose of any fund to justify what we regard as these disgraceful, in political terms, goings on. Mr Speaker, perhaps I should just mention that it might surprise the Members opposite that having made a public allegation of breach of the Constitution that I have carefully worded the motion so that it does not in turn make an allegation of breach of the law. Not that I resile from that, as I have already repeated, but it was an attempt on my part, which I do not mind abandoning if others wish me to, not to convert the floor of this House into a court of law which it is not. My submissions on this motion in this place do not have sufficient merit, whatever the legal position might be on a political level, for the purposes that concerns me in this House today. They have no merit that I should properly try to defend in this House as opposed to in another place. I make that comment, Mr Speaker, because in his opening speech in the Budget Session, the Honourable the Financial and Development Secretary commented that I had now moved a

motion in slightly different terms to the comments that I had made in public and I thought I would offer him that as an explanation as to why that was so. Mr Speaker, as I say, and as the Constitution in section 65(1) says, "The Financial and Development Secretary shall cause to be prepared and laid before the Assembly before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of Gibraltar". I do not wish to sound pedantic but those words are crucial because "of Gibraltar" means "of Gibraltar" and not "of the Consolidated Fund", which is how the Members opposite and those that advise them on matters of law - be they wherever they may be physically situated - have presumably taken the view that those otherwise clear and unambiguous words in section 65(1) of the Constitution namely "of Gibraltar", in fact, do not mean of Gibraltar, they actually mean of the Consolidated Fund. Never mind what Parliament in England approve. We are going to interpret it as if that section 65 read "of the Consolidated Fund" because it follows the practice of laying before this House estimates of the revenues of Gibraltar which do not include those items of revenue which are paid into special funds and not into the Consolidated Fund, in order to properly exclude those items of revenue from the revenues required upon a clear interpretation of the words "of Gibraltar", you would have to read section 65(1) to read "not of Gibraltar" but of the Consolidated Fund. Presumably nobody, not even the Honourable Members opposite, would argue that simply because they are paid into a special fund, those excluded items of revenue are not the revenues of Gibraltar. The fact that the Honourable Member opposite passes a little regulation saying that import duties should be paid into the Social Assistance Fund does not mean, presumably in his opinion, that import duties are no longer revenues of Gibraltar. When he passes a regulation that says that company exempt company tax or that ordinary company tax should be paid into the Gibraltar Investment Fund, presumably he does not think that company tax is no longer revenue of Gibraltar. If he thinks that by paying it into a special fund, he no longer has to give estimates of that revenue, he has to interpret section 65(1) of the Constitution as if it read not as it reads "revenues of Gibraltar", which is what he is required by those words to give, but he is interpreting it to read as in section 65(1) required him to give only estimates of the revenue of the Consolidated Fund. Mr Speaker, I warned that notwithstanding what I am trying to achieve here and what I have said before that I might have to stray momentarily into legal terrain, there is, in our opinion, no correct legal basis for this interpretation of words that are otherwise unambiguous and crystal clear. Those that take a different view have to resort to circular arguments of statutory interpretation, such as, for example, there are others, the marginal note of section 65 of the Constitution, which is the one that requires them to give estimates in the first place. The marginal note of that says "Authorisation of Expenditure". Well it follows that in calling for the production of estimates

of revenue and expenditure, no fool that wrote the Constitution could possibly have required us to give estimates of revenue, the expenditure of which we do not need an Appropriation Bill for. Mr Speaker, with the greatest of respect to anybody that results in strained arguments of statutory interpretation such as those, they have to contend with the fact, firstly that the first and golden rule of statutory interpretation is that you do not have to have recourse to statutory interpretation rules when what the law says is clear. When the highest law of this land, the Constitution, says that the Financial and Development Secretary shall cause to be prepared and laid before the House of Assembly before and not later than thirty days after the commencement of each financial year estimates of the revenue and expenditure of Gibraltar, ie the whole of Gibraltar not of the Consolidated Fund for that year, who could possibly read those words and knows how to read the English language and say or think that they are ambiguous or unclear to the point where we have to resort to other meanings and techniques of statutory interpretation to work out what the illiterate draftsman meant when he wrote those words down on paper. They are crystal clear. Their meaning is crystal clear. If you have to resort to tricks and devices of statutory interpretation to try and find another meaning, to try and justify another meaning, what you are trying to do is to justify a practice which the law, clear as it was on the first place, did not sanction. Mr Speaker, those that seek to interpret the Constitution differently to the obvious and clear meaning of the words that it uses, also have to contend with the inescapable reality that the Constitution itself clearly envisages that certain Government revenue would not go into the Consolidated Fund. Yet the Constitution still calls for revenues of expenditure of Gibraltar which clearly means all of Gibraltar. So let nobody argue that the poor person that drafted this Constitution did not mean what she said because she was not taking account of the fact that some revenue might not have to be paid into the Consolidated Fund. No! The person, in line ten, wrote the requirement calling for the production of estimates of revenue and expenditure of the whole of Gibraltar had ten lines earlier herself (I understand it was a lady) had also written that certain types of revenue might not have to go to the Consolidated Fund. It was clearly in her mind and we should therefore assume that because her memory survives more than ten lines worth of writing, then when she wrote the words "of Gibraltar" in section 65(1) she had not completely forgotten what she had said in section 63(1). Therefore, Mr Speaker, just by way of summarising that point which is an important point in the two that I make. The logic, presumably, the legalistic logic upon which the Government relies to justify or to take its view that I am wrong when I say, even legally, that section 65(1) of the Constitution has been breached, is this, that notwithstanding the fact that section 65(1) of the Constitution calls for the production to the House of all estimates of revenue and expenditure of Gibraltar,

that could not possibly have been what they meant, they must have meant estimates of the revenues and expenditure of the Consolidated Fund. Mr Speaker, I suppose if you try hard enough and if you rely on the principle that no one is going to go to the trouble and expense of challenging you in court, you can think of almost any strained legal argument to justify any activity that you like. Speaking purely politically, though not legally, Mr Speaker, I have a certain but very limited degree of sympathy for this Government because this perverse logic is actually not of their invention. The truth be told. Dealing with the question of whether the estimates of revenue and expenditure are constitutional or not, they actually did not invent this particular dog because it has been used before. But again the scale has now been blown to such proportions that they realise, presumably, that this was an excellent device and let us see how they can use it more often and to greater effect, perhaps. But it has been used before. What is of their own invention, as I say, Mr Speaker, is the scale of the resulting abuse. To demonstrate the fact that it is not of their own invention, social insurance - I give this only as an example - and national insurance contributions have, as far as I am aware, always gone into a special fund and estimates of revenue from those sources have never been given in the general estimates of revenue. I do not know if the Chief Minister may be able to correct me on that. As far as my research has been able to go, there are instances such as that perhaps going back as far as 1969 on the very day on which the Constitution was written I do not know. Two points need to be made in this respect, Mr Speaker. Firstly, is that from a legal point of view the fact that it has been done before is completely irrelevant to the question as to whether it is lawful or not. The fact that previous Oppositions have either not noticed it or had not thought it serious or perhaps have taken a different view, is not authoritative for the purposes from what the law of the land actually is. It might be unfortunate for the Members opposite, if I am right, that of all the Governments since 1969, they are the first ones to fall foul of the sharp eye of the Opposition, but that would have to be so. Mr Speaker, the other point that I think arises and needs to be made is this. In the past it has been done in relation to income raised for a very specific purpose and spent on that and only that specific purpose. Now we have slightly changing ground rule. Now we apply that precedence to general sources of income - import duties, income tax, rents, stamp duties and we credit them to a special fund that has no specific connection with the nature of the revenue. So, although it is no answer in law, I think, at least, it is an answer politically that the precedent of monies raised by way of social insurance contributions and national insurance contributions, ie revenues raised for that specific purpose, to be paid into a fund to administer the funding of the Social Insurance Scheme and the National Insurance Scheme and only that, is not a precedent which is politically valid for the collection of revenues of a general nature, such as income tax which is not collected for a specific

Government expenditure as is social insurance contributions. It is then put into a special fund for purposes that has nothing to do with the purposes for which the money was collected and, worse, then transfer it from one special fund to another as the fancy takes you. To the extent that there is some sort of precedent - legally it would not save the position if I am right, if I am wrong of course I am wrong and that is the end of the matter - even politically that precedent would not help because it has been used in a very different form and in a very different way. Mr Speaker, in my opinion this practice in relation to the adequacy of the estimates presented is illegal but whatever the position might be in law - I cannot repeat this often enough-the proliferation of the practice to the present scale and that it should be done by regulation is pure political abuse of the system of public accountability contained in the Constitution. Whatever the law might be, it was perhaps naively drafted by persons who never contemplated the fact that it might fall into the hands of a Government obsessed with secrecy. I think it is important to emphasise that points one and points two of my motion make quite different points even though they both arise from and is part of one device. Firstly, and unfortunately it is the point covered in point two of the motion, but firstly so that the chronological order of the device should be followed, the Government creates funds under Public Finance (Control and Audit) Ordinance by means of regulation, obviously, under that Ordinance. In those regulations which it publishes on a Thursday, the Government itself decrees that an item of revenue, for example, import duty, be paid into the Social Assistance Fund. All revenue so diverted into such funds, all set up by regulations, therefore do not go to the Consolidated Fund and therefore Government does not need an Appropriation Bill to spend it. The legality of this first step itself depend on the questionable, as I have said, issue of such regulations of the sort of laws by which the Government can divert funds from the Consolidated Fund within the meaning of section 63(1) of the Constitution. That, however, is a separate and second legal point that rises out of all of this. That concludes the first step of the device and is the practice complained of in point no.2 of the motion. The second step of the device is to say "If we do not need the permission of the House by means of an Appropriation Bill to spent the money, then we do not need to give them estimates of revenue of what we collect and pay into special funds so that we can then go on to spend it without their permission". That is what I say is unconstitutional and that is the practice complained of in point No.1 of the motion. Mr Speaker, as I have said before, the Constitution requires that the estimates should include the revenues of Gibraltar. By what stretch of the imagination can anyone correctly think that these items of revenue are not revenues of Gibraltar. If income tax, company tax or import duties are not the revenues of Gibraltar, well whose revenue is it? Mr Speaker, the acid tests that show the extend of the political abuse that the Government practice represents are these. It

leaves this House with no meaningful picture of public funds or of the financial position of the Government until several years after the event. Who can possibly think that that is right or even what the Constitution intended? Secondly, the House has to vote on the Appropriation Bill, not knowing whether Government is balancing its total budget overall because we do not have a picture that shows all the income and all the expenditure. Government may bring an Appropriation Bill showing that it expects to collect, from the sources covered in the estimates, £50m and it may seek the appropriation of the House to spend £49,500,000. You might say then they are operating a budget surplus. That is OK. They can afford to spend all those things but that is actually not the case because how do we know that the expenditure not reflected in the Appropriation Bill because it has been spend out of special funds, is less than or at least no more than the revenues of which we are not getting estimates? The fact that in the estimates, declared revenue exceeds declared expenditure is not an indication that overall the Government is operating a budget surplus or a usual budgetary position because in order to know whether all Government's expenditure exceeds or does not exceed all Government's revenues, you need the full picture of all Government revenue and all Government expenditure whether it is being effected through a special fund or whether it is being effected through the Consolidated Fund. The political result is that in this House we vote authorising the Government through the Appropriation Bill to spend whatever it was, the odd £50m without knowing whether that will result in a budget surplus or a budget deficit. That is why the Opposition felt last month that it could not vote in favour of the Appropriation Bill. For all I know, that expenditure added to other expenditure that you propose to expend through a special fund may exceed your total revenue. You may be operating a budget deficit and you may be, God forbid after all that you said to the AACR, plugging that hole with borrowed money in relation to recurrent expenditure. Who knows? Whether you are doing it or not is not the issue. The issue is, from the point of view of public transparency and public accountability, that if you wanted to do it, you could and we would be none the wiser to criticise you for it. If, Mr Speaker, as a third acid test, Government's practice is legal and politically acceptable, then the same device could be used to eliminate the budget session of the House altogether. This time next year we may not meet for a budget. We no longer meet for a finance bill because they have transferred to themselves by Ordinance, the power to do by regulation all the fiddling about with revenue raising measures. They have had no compunction about cancelling the revenue raising function of this House. I do not think anyone should shirk at my suggestion that they might so organise their affairs and their powers to eliminate the expenditure authorising function of this House as well. If the device that they have used for these odd £35m-I accept that my figures are a reasonably intelligent guesstimate-is legally correct, if that is the result of a correct legal interpretation of the Gibraltar Constitution, there is nothing to stop them using the same device to divert all the revenues of Gibraltar; all the revenues of the Government. Why stop

at import duty and company tax? All of it, every last dime could be diverted to a special fund and then because they correctly take the view that they do not need an Appropriation Bill unless the money that they want to spend is in the Consolidated Fund, they will not have a need to have an Appropriation Bill again. They collect all Government revenue. They park it into one or any number of special funds and we do not meet in May or June anymore and nobody authorises anything. Nobody knows how much is going to be collected. Nobody knows how much is going to be spent. Nobody knows on what. I was going to say that they could cancel the Consolidated Fund altogether but they might have a little bit more difficulty with that, of course, because certain things are constitutional and legal charges on the Consolidated Fund. I ask myself who could possibly think, whether legally or politically, a legal device that is capable in resulting in the entire regime of sections 63, 64 and 65 being cancelled and worse cancelled at the political whim of the Government of the day, through the process of regulations, not even legislation? If what they are doing is legally and politically right, scribble in the Gazette on Thursdays and the effect of that is capable of being that the entire machinery of appropriation bills set up by the Constitution is, according to their logic, circumvented. Mr Speaker, I think that they would have to find extremely persuasive arguments to persuade any court of law that that could possibly have been what the Constitution intended. I have never yet come across a voluntary constitution. I have come across countries that do not have a constitution but that there should be voluntary constitutional provisions? In other words, constitutional provisions that only apply if the Government of the day want it to apply is something which, in my humble submission, they are going to be hard pressed to justify legally and certainly cannot justify politically even if they can justify legally. The practice results in the House now having no idea whatsoever of what Government's total expected revenue for the year is. The House is, therefore, as I said before and I say in my motion, completely in the dark and can only criticise the Government - hence I echoe the words of the leader in the Financial Times that I have quoted before - either on a speculative basis or years after the event. For example, if I wanted to challenge the Government in order that they should not make a mistake and that the people of Gibraltar should therefore think more highly of the politicians in the House, as the Chief Minister commended in 1988; if I should want to criticise the Government for proposing to spend more than they are going to collect, how can I now possibly do that if I do not know how much they are going to collect or how much they expect or they think they are going to collect and how much they propose to spend? I can therefore only criticise them on the basis of clairvoyant or speculative powers that I might have about how much the Government must need to spend

on health from what I know about what they needed to spend in the past. How much the Government must need to spend on the Social Assistance Fund or if that is an impossible task, because presumably they would use this device in that the permanent solution to the whole question of the pensions problem, how much money the Government is now pumping into these funds? Well who knows? As I said, the question is not how much or how little. The question is that I do not know and therefore what I said in the motion is that we now have an incomplete picture to the point where the role of this House in general and of the Opposition in particular to act as a watchdog of public monies and expenditure, is severely prejudiced. I suppose that I could, as and when Question Time arrives and out of context and if one happens to coincide, I could ask, "How much does the Government intend to spend on health in the forthcoming year?" In other words, I could so construct my questions in Question Time to try and get all the information that I no longer get in the Estimates of Revenue. We know Government's track record on answering questions. In fact, their stated policy is to give us as little information as possible, like I got in one of my questions at the beginning of this year. That information is not available. It is not a practical way. I think that I am entitled to that information as a matter of constitutional right. Even if I could through some extraordinary skill at Question Time glean the same information, it is not good enough. Why should I put myself in the hands of the Government's political will to answer questions properly in respect of information to which I think I am constitutional entitled? And what political objection could the Government possibly have to giving us estimates of all the revenues regardless of whether they need an Appropriation Bill to expend it? The fact that they do not presumably suggests that they want to muddle the picture. It is another avenue of possible investigation of Government finances that they erect and, I must take my hat off to them, extremely effectively done because I can tell the Honourable the Chief Minister, that from this side of the House, he has succeeded completely in obscuring whatever transparencies previously existed of Government's finances for the Opposition to do their job. Mr Speaker, I have to say this. Sympathetic as I am to those proposed constitutional changes that the Chief Minister wants to see in Gibraltar that he has made public - I give or withhold my agreement as he announces what he wants to do with the Constitution - I have to tell him that to the extend that he seeks to amend the Constitution with the British Government in a way that gives to the Gibraltar Government, the elected representative of the people, which I support, more powers that they should have in this day and age and takes some of them away from the Honourable the Financial and Development Secretary and others, that I, as the Opposition of the same people with the same aspirations as him, must make sure that in constitutional changes that give him more power commensurate amendments

are also made to the same constitution to restrict his powers or at least to provide constitutional checks and balances. What the Chief Minister should not assume is that he is going to have unanimity of support for constitutional changes to increase his powers and that those of us whose public duty it is to provide the political and constitutional checks and balances to his powers are not going to tell the same people that he tells that then we must have constitutional provisions written in to provide ordinary, prudent standard, political checks and balances to the exercises of his power. If the use that he has made and the scale that he has made of that use, of the Public Finance (Control and Audit) (Amendment) Ordinance and all that I have been talking about all morning, is an indication of the manner in which he uses whatever powers are available to him, let him rest in no doubt that what I have just described would be uppermost in my agenda for any meetings that I might have on the subject matter of constitutional reform in Gibraltar. Mr Speaker, Point 3 of the motion deals with the passing of a decree allowing import duties to be paid into a special fund in breach of the law, namely section 45 of the Import and Export Duties Ordinance which requires import duty to be paid into the Consolidated Fund. Mr Speaker, section 45 of the Import and Export Duties Ordinance reads "Subject to the provisions of this Ordinance, import duty at the rate set out in Schedule 1 shall be charged, levied and collected upon and in respect of the several goods specified in that schedule and shall be paid into the Consolidated Fund". Remember that now import duties are not paid into the Consolidated Fund. They are paid into a special fund, namely, the Social Assistance Fund. Mr Speaker, in criticising that practice and in saying that it is in breach of the law, let the Chief Minister not think that I am unaware of the provisions of section 20 of the Public Finance (Control and Audit) (Amendment) Ordinance, as amended in 1991 by Ordinance No.5 of 1991, which reads, "Notwithstanding the provisions of any other Ordinance the revenue of a special fund established under any written law or under the provisions of section 18(3)(b) shall in addition to any monies which may accumulate thereto pursuant to such law consist of (a), (b), (c), (d) - any monies declared by the Governor to form part of such funds". The Governor has through regulations made for the purpose of the Social Assistance Fund, declared that there shall be credited to the fund, namely the Social Assistance Fund. Originally there was an (a), (b), (c), (d) and then by subsequent amendment in 1992 (Legal Notice No.42 of 1992) an (e) was added to that list-"Net receipts of monies collected by virtue of section 45". Everyone will say that it is clear but because the first line of section 20 says that notwithstanding the provisions of any other Ordinance, for example, section 45 of the Imports and Exports Ordinance, all that follows gives us the legal right by regulation to pass regulations, the legal affect of which we think, is to, in effect, amend section 45 of the Imports and Exports Ordinance and render it not contrary to section 45 to pay import duties into the Social Assistance Fund

as opposed to into the Consolidated Fund as it were. I have to say, Mr Speaker, that in relation to this point I can only become legal and I toyed with the idea for that reason of not including it in the motion at all but I thought that consistency required me to do so. It is our political submission that in law, that is a completely improper (the legal term is ultra-vires) use of regulations made under the Public Finance (Control and Audit) Ordinance and that regulations made for the purposes of regulating the Social Assistance Fund cannot in law affect the Import and Export Duties Ordinance. Of course, I accept that the Chief Minister may have his own different legal opinion or that he may have taken other legal opinions, presumably from the Attorney-General or elsewhere and that whoever has given him that legal opinion has advised him that he can. Mr Speaker, that is why I do not think that the floor of this House should be converted into a court of law and points of law argued. I fully accept that in replying to me the Chief Minister will have to expound the contrary view mainly, but it is not and if I say it is, I am wrong. It is obvious. I do not believe that he thinks that he is breaking the law. I accept that he has presumably taken advice and the advice that he has been given tells them that it is legal. The parties have adopted their positions in preparation for the proper forum in which to resolve that matter at law. Mr Speaker, those collectively are the reasons why the motion first of all recites the three practices which we believe detract from the political function, mainly, the legal function of this House and that is why in the conclusion of the motion, we note with regret and concern that the financial information relating to estimates of revenues and expenditure available to this House is incomplete and reduced to the point where the role of the House in general and the Opposition in particular to act as a watchdog of public monies and expenditure is severely prejudiced. Mr Speaker, I commend the motion to the House.

Mr Speaker then proposed the question in the terms of the motion moved by the Hon P R Caruana.

The House recessed at 12.55 pm.

The House resumed at 2.40 pm.

HON CHIEF MINISTER:

Mr Speaker, I have already indicated that I will be answering on behalf of the Government in response to the points that the Honourable Member has made in support of the motion and therefore there will be no other Government speaker. It seems to me that the Member opposite in any case has a right of reply at the end. If anybody else wants to say anything additional or new I would imagine it would be more useful to them if they say it before I speak. Alternately, I am prepared to go ahead and speak but of course any new point will be ignored because there will be no other speaker, whoever else speaks on that side.

HON P R CARUANA:

Mr Speaker, the Honourable Members can speak in however many numbers they choose. There is one Member on my side that wants to make a brief intervention. I would like to make it after the Chief Minister. For my part I have no difficulty in offering him by way of giving way or however else the opportunity to reply to anything that my speaker may say by whatever procedural means I can.

HON CHIEF MINISTER:

Mr Speaker, it is his prerogative. If he does not want to be followed by me, then that is fine, but if I do not follow him then I cannot answer him and I do not see why I should have to interrupt him to answer him when I am given the opportunity now for saying whatever he wants to say.

HON P R CARUANA:

Mr Speaker, I was offering to give him the opportunity to speak a second time in reply to whatever Mr Cumming might say if he wants the opportunity.

HON CHIEF MINISTER:

Mr Speaker, the Government is being faced with a call for its resignation. As far as I am concerned we can only resign once. We can be asked to resign seven times but it is still one call for a resignation and I will answer once because that is what this motion is. If anybody else wants to put one more reason why we should resign apart from the reasons the Leader of the Opposition has given us, he might persuade us to resign, so it is worth listening.

HON P R CARUANA:

He can always resign afterwards.

HON CHIEF MINISTER:

Because that is the only thing we are here to answer. We are here to answer for the mandate that we got in January this year from the people of Gibraltar. Therefore, the motion before the House is of course a censure motion. It is a censure motion based on a series of arguments some of which are technical arguments. I would say most of which are technical arguments and a few of which are political arguments. I will deal primarily with the political arguments because that is why officials do not get involved in censure motions because it is not a matter of technicalities. It is a matter of the will of the people and we represent the will of the people and we reflect that will in the exercise of the responsibilities that we have as a Government using our judgement. That judgement can be questioned. I think the Opposition is entitled to say they would not do the things that we do

or they would do things we would not do and that is a perfectly legitimate thing in a parliamentary democracy because otherwise if we all agree on everything we shall all be in the same party, obviously. What I think is unprecedented, Mr Speaker, is to condemn a Government for doing what it promises to do. I am a politician of twenty years standing and as far as I am concerned when I sat on those benches what I would do was monitor the performance of the Government and monitor their policies to see whether if there was a change to what they said they would do during the election campaign and what they were doing once they got elected. The Member opposite has never once in his interventions suggested that anything that we have done in this year's estimates is anything other than what we have been doing since we got elected in 1988, except that the process has continued but it has not just started and that we are doing anything other than what was, as far as they were concerned, the main issue during the election campaign in January this year. That is to say, we went to an election in January this year. We asked our people to renew our mandate. We make no secret of the fact that as far as we were concerned we were asking for substantial support for the continuation of the policies we had introduced in 1988, which they do not agree with and they are entitled not to agree with. If they agreed with this they should not be sitting there, they should be voting for us, so they are entitled to say they do not think we should have carried out the changes we carried out since 1988. The people are entitled to say to us we should not carry out those changes and they have one way of saying it and that is by voting. During the election campaign the Member opposite, in the final debate with me, finished up saying that it was a question of the perception that people had of the changes that we are introducing and so on. Well, that perception is created by the kind of statements that he has made in the House and by the kind of language that he has used in the House because when we come to the technicalities of his argument - forgetting the political, ideological or philosophical elements - frankly, I think he does not know what he is talking about. I honestly think so. I am advised he does not know what he is talking about but independent of the advice I had come to that conclusion myself. I am advised that he does not know what he is talking about by people in his profession because when he is talking about the Constitution of Gibraltar although he has said that his arguments here are the arguments of a politician and not the arguments of a lawyer, he has argued as a lawyer not as a politician. Let us go first of all to the root of his argument. He has done a lot of work on this, if not before he made the public statements in May, certainly since then. I assumed in May when the Member opposite came out with a press release and was then interviewed on GBC, that he had jumped the gun once again. Today it is obvious that he has actually gone into some of the details of some of the things that perhaps seem to me he has missed out. But he has not done everything that he should have done because he has

missed out some and I will tell him which they are. Section 65(1) of the Constitution, which is quoted in the motion, Mr Speaker, does say that the Financial and Development Secretary shall cause to be prepared and laid before the Assembly a statement showing the revenues and expenditure of Gibraltar. The argument of the Member opposite is that the revenues and expenditure of Gibraltar do not just mean the revenue and expenditure of the Consolidated Fund. It is the revenue and expenditure of every fund the Government has got. That is the argument as I understand it. I think if one reads that particular clause in isolation, that is what it seems to say. Of course, the second paragraph of that same clause in the Constitution says "The head of expenditure contained in the estimates for the financial year." That is the estimates clearly in paragraph one. The same estimates "shall be included in a bill to be known as an appropriation bill". Therefore if we had to have estimates of revenue and expenditure for every fund, it will follow logically that we will have to have an appropriation bill for every fund. That interpretation is complete nonsense, because, as I mentioned earlier in the context of the Savings Bank Ordinance, the Savings Bank Ordinance has been classified - and we intend to change it this year because we think it really is a nonsense - as a special fund. Well would we then need to have an appropriation bill every time somebody wants to withdraw money from the Savings Bank because it is Government revenue and Government expenditure? Every time money goes in or comes out? If the Member looks at the estimates of expenditure for 1992/1993 and I sometimes wonder why he wants us to put more stuff in it when he seems to read so little of what is there already. If he looks at page 3 he will find that the Savings Bank Fund has £62.8m and it is shown there as the balance sheet of the Government. It has been done like that always and every time we do changes it is not that we are hatching some machiavellian plot in order to hide some disaster. I do not hide disasters in an economy and certainly not in an economy the size of ours which is only £300m which is peanuts. You can take it out of the front page of the balance sheet but you cannot take it out of the unemployment list, out of expenditure patterns or out of anything else. The real economy is out there and either it is doing well or is not doing well or it is doing medium which is what it is doing at the moment. In looking at this and in looking at the role of the House the fact that we do changes does not necessarily mean that the House is less well equipped to take rational decisions. It can, in fact, be better equipped to take rational decisions and it will certainly be better equipped if it did not think that there is now £62.8m in the kitty because there is not. In the way that it has always been done, the Gibraltar Savings Bank Fund has been simply treated as any other Government fund and therefore although the money in the fund belongs to the depositors and not to the Government, it actually appears as an asset of the Government of Gibraltar which

it is not. The point that I am making, because the Members seem confused, is that next year when he finds that it has disappeared, he does not have to go round like a scalded cat looking for some machiavellian plot to see what I have done with the £62.8m. On this occasion I am telling him before it happens rather than letting him discover it after it happens. If we were to accept his interpretation, then what I am telling him is that - if he looks at page 3 of the Estimates of Expenditure-it would mean that the Estimates of Revenue and Expenditure which start showing income in page 8, which is the income of the Consolidated Fund, would in theory have to be amended to show the income of all these funds. It would so have had to show since the Constitution came in in 1969, if his interpretation is right. The one thing that we need to make clear, for the people of Gibraltar who are listening in to us, is that we have not introduced in the budget in 1992, a presentation of the accounts which is in conflict with section 65(1) of the Constitution because we have introduced a presentation of the accounts in 1992 which is the same presentation of the accounts in 1991, in 1990, in 1989 and in 1988 since we came in. Going back to 1972, since Sir Joshua Hassan came in and going back to 1969, Mr Speaker, when you came in, you did it too. In 1969, in 1970 and in 1971. You came to this House and you presented in this House an appropriation bill with revenues of estimates and revenues of expenditure of the Consolidated Fund and of no other special fund. So we have twenty five years of negligent interpretation of the Constitution. Countless Auditors, countless Chief Ministers, countless Financial Secretaries, all of whom are wrong and Mr Peter Caruana is right. That is not impossible, let me say. It could well be that he is right and everybody else is wrong. I have always been a minority of one so it is not something that I think is such a bad thing to be in and I have very often been proved right. I am not saying that it necessarily follows. He may have stumbled on something that everybody else has got wrong until now and of course we welcome that he should go to the Supreme Court and test it and in fact I will be amending the motion and reflecting that view. The position would be, of course, that if the Member's view was correct and if the Supreme Court ruled that in fact the Estimates of Expenditure of Gibraltar mean more than just the Estimates of Revenue and Expenditure of the Consolidated Fund for the purposes of section 65(1) of the Constitution, we would then have to bring here an amendment to this year's Appropriation Bill. We would have to bring in a new set of estimates showing the estimates of revenue and expenditure of every special fund if he was right. But we would also have to do it for the other twenty four years when we were not in Government because they would all be wrong and it will all be unconstitutional and we would have to correct it all going back to 1969. But of course if the courts told us that that was the case then that is what we would have to do. So as far as section 65(1) that is basically our position. We find

it strange that certainly on that count the Member opposite will want us to resign given that we are demonstrably in good company if we are mistaken and presumably, unless he knew this already, in the election campaign in January, he would have followed the same procedure had he been elected because that is the procedure that is standard. People prepare estimates of revenue and expenditure for the revenue that is the revenue of the Consolidated Fund. Let us look at section 65. Why is that there? It is there because section 63 and 64 lay down a procedure for the expenditure of funds from the Consolidated Fund and do not lay down any procedure for any other fund. Since there is no procedure for any other fund, it is only there that the House of Assembly is required to be given estimates thirty days before. Let me tell the Member that when I arrived here in 1972 and in my first budget in 1973, I started questioning the Estimates of Revenue. I was told that that is not something that one has got the right to question because it is not something on which you are going to vote. You are appropriating expenditure. The revenue is there simply to give the House an indication how it is intended to finance that expenditure and that is what we are showing. How we intend to finance the expenditure out of the Consolidated Fund in the next twelve months. Revenue that is not there is not available for the financing of the Consolidated Fund, it is being used for another purpose. Let me say that the draftsman or draftslady according to the Leader of the Opposition. He says he believes it was a lady that did it. I do not know whether she took a lot of trouble over our Constitution because in fact our Constitution is virtually the same as everybody else's. That is to say, the Constitution of almost every other colony says the same as ours. If I read from section 68 of the Falkland Islands Constitution of 1985, which is much more recent than ours, it says "All the revenues or other monies raised or received for the purposes of the Government, not being revenues or other monies that are payable by or under any other law into some other fund established for a specific purpose or that made by or under any other law be retained by the authority that received them for the purpose of defraying the expenses of that authority, shall be paid into and form one Consolidated Fund". It is down to the last comma and full stop a repetition of section 63 of our Constitution and every Constitution in every colony says the same thing and everybody in every colony thinks that that means the Consolidated Fund. It means the Honourable Member may be shaking the foundations, not just of the Government of Gibraltar, but of the entire empire with his legal action and then every colony might have to go back to their respective House of Assembly and change all these things back to the year dot. Clearly a colonial system of accounting invented in the Foreign Office and exported to the periphery of the old empire and this is why we must change it. We make no secret of course of our intentions to change it. We said so

in 1988. We included in the manifesto in 1988 the creation of the Gibraltar Investment Fund as one of the centre pieces of our economic programme. What we did of course was to, as he himself has recognised, Mr Speaker, look at the mechanisms that were already in existence and had been used prior to 1988 and made greater use of them. I think that is the right for Government. We are elected. We want to do certain things. We look at what is available to us, the tools, and we say to people "Look we want to do it this way". Is it possible to do it this way? Do we have to legislate or is it constitutional or is there another way of doing it or can we do it in a way that is easier?" Based on that advice we do it. But let us be clear, this is nothing to do with policy or politics. If we are told that it is possible to allocate revenue to the fund-as the Member has pointed out by having an amendment to the Public Finance (Control and Audit) Ordinance that says "Notwithstanding the provision of any other Ordinance" - that we want to allocate it and the Member opposite says we cannot. He is not saying politically that we cannot. Of course, politically we can, we have got a majority. He is saying technically we cannot. He is saying technically we cannot amend the control because in fact the amendment that we make means that it is the revenue of the Social Assistance Fund but it is not revenue that is allocated for a specific purpose and therefore that does not allow us not to put it into the Consolidated Fund. Well if he were right, and it would be a technical argument, that is to say, if he were my Attorney-General instead of being my Leader of the Opposition, then I would assume that he had no political axe to grind and I would say to him "OK if I cannot do it this way, tell me how I can do it". But I would not tell him I would not do it. Therefore, we would come to the House and if instead of passing that amendment, we need to pass a different amendment, we will pass the different amendment and we will still do it because it is the policy of the Government to do it. If he disagrees with the policy then it is irrelevant whether technically it is right or not as far as agreeing with the policy is concerned. The technicality of it I am grateful to him for because it demonstrates to me that technically there is an imperfection in the mechanism. I am very grateful that he should point out that imperfection because I want to have it water-tight. I do not want anything to go wrong. So if he tells me that it might be faulted then I will perfect it so that it cannot be faulted. I am grateful to him for that and any further help he can give me on that score I will take to make sure that what we want to do cannot be undone, but it seems to me that that is not in the nature of saying "We do not agree with using the money in the fund as opposed to using it in the Consolidated Fund". In terms of the expenditure of public money, it is quite obvious that the position of the expenditure from the Consolidated Fund has given rise to problems ever since the 1969 Constitution came in. Initially related to how to handle the utilities which were previously the work of the City Council. A

number of different attempts were made and none of them have been very successful. Originally, something called notional accounts were produced. Then in 1976/77 the Government came with the concept of the special funds and created a special fund for electricity, a special fund for water and so on. In fact made it retrospective to 1969. As I remember in 1976 - something which will no doubt have upset the Member opposite enormously if he had been here - the Government brought a law that said "The revenue and the expenditure on electricity in Gibraltar backdated to 1969 is deemed to have gone into this special fund, which is deemed to have been in existence in 1969". I did not actually make a big song and dance about it because they had a problem and they had to find the solution to that problem and we came in and scrapped what they did in 1988 because it was not working. We have now made a new attempt to deal with the problem from January this year. We will see during this year whether it works any better but it is really a great deal to do with double counting. The complex system that was introduced before which we scrapped because it was really a nightmare in terms of keeping track of exactly what was going on. The money was treated as coming into the Government when the bills were sent and then it appeared as revenue. In practice that meant that the Consolidated Fund was meaningless because we had at a stage in 1980 a situation where the Consolidated Fund showed something like £2m and the unpaid bills in the Consolidated Fund was £3m, so in fact the Consolidated Fund was minus £1m. Once that was shown it was then treated as being paid into the special fund and then all the costs of the Government in the utility were shown in the Appropriation Bill and then those costs were shown as re-investments in the revenue side of the picture. So at the end of the day, you had the same money moving across three or four times and inflating the figure of the total expenditure budget. From the point of view of that system, what we did in 1988 was simply to repeal all the special funds and go back to what it used to be like in 1975. We have been operating between 1988 and 1975 simply treating utilities as straightforward Government departments which means really that from a trading department point of view, it is not a very satisfactory thing because as the Constitution says all the revenue goes into the Consolidated Fund and all the expenditure comes out of the Consolidated Fund but there is no attempt to match it or relate it. The fact is that charging people for consuming a service is not the same thing as having a tax. It is a different thing but it is treated identically. That explains what we have done with the electricity charges as from January this year. We have not had to do it with water and we have not had to do it with telephones because they have left us. The three special funds that existed were the Telephone Fund, the Water Fund and the Electricity Fund. We have converted the water and the telephones into private companies and therefore the expenditure is no longer Government expenditure and the revenue is no longer Government revenue

and they no longer have anything to do with these accounts. We were left with the electricity which is a half-way house, as the Member opposite mentioned. Therefore we have gone back to using what was in place until 1988 to deal with that situation of the half-way house with certain technical changes which we feel will avoid the double counting. So until we have really tested the new fund for one year in 1992 we will not really know whether it is an improvement on the situation or not and if it is not an improvement we might scrap it and start again. This is now the third attempt, not by us but there have been two previous attempts to deal with it in different ways from how we are doing it now. This arises because, fundamentally, the purpose of the Consolidated Fund is the provision of central Government services. The accounting systems are designed to do that and the Appropriation Ordinance is designed to do that. It is being used since 1969 to deal with the situation where the Government of Gibraltar was doing everything from running a health service, to running an education authority, to producing water and electricity, to running the police. Well central Government accounts do not normally cater for such a wide variety of different activities and in our judgement it is not an efficient way to run the show and therefore we set out in 1988 to implement a system which will restructure the finances of the Government in a way that we would use the existing resources better and we said we would do that. We were asked in Opposition to explain how it would work and we said "No." We have had many occasions when we told you from the Opposition how to carry out changes and they were rejected. So at the end of the day we said we would do it if and when we got elected. When the people want us to do it then they will vote for us and having got elected we set about doing it immediately. We did not wait. We got elected in March and we started doing it in April. The two centre pieces of what we created which is new. Everything else was there already. The two centre pieces of what is new in the system is the Social Assistance Fund and the Gibraltar Investment Fund. They were really the two things we set up in 1988. We have been building up those two funds over the last five years and we intend to carry them forward as the vehicles for the policy of the Government. The Investment Fund really has its money deployed in three ways. It was used to give financial support to provide funding, to provide cash to the trading companies that were created out of the break-up of GSL in a situation in 1988 where GSL was losing money heavily. We were not prepared as a Government to close it down because we had given our workforce a commitment that we would keep it open for four years. We were not permitted, we were advised, on taking office to give it support from the Consolidated Fund because that was contrary to Community law. If we had come here in 1988 and produced an appropriation bill we were told that would have been contrary to Community law. Like it always happens in the administration of the GSLP when we are faced with a problem we find an answer tackling

the problem from a different angle. So we set up a series of companies. That series of companies took over activities which were not shiprepairing activities ie Gunwharf, the security company and so on. The result of that was that we were able to sustain employment and contract the companies and that was one of the major functions of the Investment Fund in that period. Other than that, in the last four years, the resources that we put into the Investment Fund have come into the Improvement and Development Fund or are in deposit in the Savings Bank. I explained this in the election campaign to the Member opposite when he was saying "What has happened to the borrowed money?" and I said "The borrowed money either has been spent through the Improvement and Development Fund or is in deposit in the Savings Bank." So when does the money get spent? Is it spending money to move money from one fund to another fund? No, expenditure is when it leaves the control of the Government and it ceases to be public money and you pay for a commodity. Mr Speaker, if tomorrow we get £10m from Barclays Bank where we have a loan agreement, which we have not yet used, and I put the £10m into the Gibraltar Investment Fund, I have not spent that money. I have deposited it in the fund.. The fund then puts that money into the property company. That money has not been spent. That money is invested in the property company. It is still under the roof of the Government. The property company buys this building and the money appears as revenue in the Improvement and Development Fund - on page 5 of the Estimates. It is still not being spent. It gets spent when we put into effect the decision of this House in the Appropriation Ordinance. That is expenditure. So how can the Member say that because the loan came into the Investment Fund and from the Investment Fund from the Commercial Property Company and from the Company Property Company into the Improvement and Development Fund, we are spending the money without the approval of the House? He knows nothing about it. He has no control. By that reason everytime I borrow ten I can spend thirty because everytime I move it from one fund to another, according to him I am spending it. I am afraid he does not understand and however much information I give him he is still not going to understand. It is obvious that he does not even understand that there is a particular reason why in section 64 of the Constitution it tries to make people like him understand that the investment and expenditure are not the same thing. If he looks at section 64, he will find in 64(4) that it says "The deposit of any money forming part of the Consolidated Fund or the investment of any such money shall not be regarded as a withdrawal of the money of the Fund for the purposes of this section." I do not need an appropriation bill even to take the money out of the Consolidated Fund, never mind the Investment Fund, which is a special fund. The point I am making, Mr Speaker, is that he is bringing a motion asking me to resign because I have castrated the House of Assembly and he cannot exercise his role of monitoring expenditure anymore and I am telling him buying shares is not expenditure. It is investment because

you can sell the shares and you have got the money back and in your balance sheet and in your book, whether you have £1m of shares or £1m of cash, you have got an asset. Expenditure is when you actually use the money to pay for consumables or in the Improvement and Development Fund to pay for the purchase of fixed assets. I think that might persuade him that in fact he has got the wrong end of the stick as regards to special funds. This is why, Mr Speaker, the Public Finance (Control and Audit) Ordinance actually makes special provision for the Improvement and Development Fund to be attached to the estimates of income and expenditure of the Consolidated Fund. If the Member were right and if section 65(1) meant not just the Consolidated Fund but every special fund, which he has confirmed to me is what he is arguing, then since the Improvement and Development Fund is a special fund, why do you need a special law to make that fund appear in the estimates if all of them have to appear in the estimates. The law is totally redundant. If the Constitution says "Every special fund must be included in the estimates", why do you need a law that says "The Improvement and Development Fund exceptionally is the only special fund included in the estimates. Why? There is no need to pass a law to do it. It is already required under section 65(1) of the Constitution according to the Member opposite. I think that is again evidence that it is not required although it is not prohibited. You can actually pass a law making it necessary to do it but the only law that exists makes it necessary to do it in the case of the Improvement and Development Fund. We could repeal that law, let me tell the Member opposite. We could amend that law and we could decide tomorrow to take out the Improvement and Development Fund from these estimates and as far as I am concerned on the basis of the advice available to me and on my own reading of the Constitution and on the reading of all my predecessors, we would still be complying with section 65(1) of the Constitution. So in fact we could actually reduce the amount of information that there is here if we wanted to. We are carrying surplus information. The reason of course why particular treatment was given to the Improvement and Development Fund is not difficult to work out. The Improvement and Development Fund was the recipient of UK aid and, therefore, the UK, in giving aid to Gibraltar, said the fund into which the aid that I give you goes must be included in the budget. If the Improvement and Development Fund that never had a penny from UK, I can assure the House, that that would never have been seen as being an important issue, but of course the UK, naturally, wanted to see that the money it was providing was seen openly and visibly because it was money being provided for the whole of Gibraltar. The decision had to be brought to this House for that reason. So I think, Mr Speaker, it is clear that it is not just a question that we do not agree with the Member opposite in terms of the motion that he is moving simply because we have different philosophical positions. It is that we do not actually agree that even on technical grounds

he is right. The Member recognises that the interpretation of section 65(1) - being the narrower interpretation of saying "This is the Consolidated Fund, its revenue and expenditure" - is in fact, he thought, limited to the failure to include social insurance funds but I can assure him that it is not the only special fund. I accept that what he says is that with the passage of time, the element that is covered in the special funds is much bigger than it was in the past and therefore, to the extent that the volume makes a difference, we have got less control now than before. He can argue as he was doing before. The fact that something has not happened does not mean that something might not happen if there was at some time in the future a different kind of Government. I can certainly demonstrate it has not happened, of that there is no question. This is my baby, nobody elses. The structure was put in and I carried it in my head for sixteen years over there and I honestly believe it is a good structure. It makes sense.....

INTERRUPTION

No! Not for me! For the job that I have to do. This is a tool. The policy; the objective is the efficient management of our resources to secure the future of our people and in looking, as a technician and as an economist and as a Member of the House of sixteen years in the Opposition, at the way things were done and at the available mechanisms, it seemed to me that there were some mechanisms there which could be put to better use than they were being put. When we went in, we went in with the intentions of doing it. We spelt it out. We spent four years doing it. We go to an election in January. The Member opposite criticises what we had been doing, which he is entitled to do but what I cannot understand is how we can be condemned; not for reneging on the policies on which we got elected three months ago but for trying to fulfil them. It is an incredible situation. I think there must be no similar parliament in the western world. Every Government that I have ever known that has been asked to go has been asked to go because it is not doing what it promised to do two months before. Well, we promised two months ago that we would continue with the same policy that we had been carrying out since 1988 and the Member accepts that this policy has been there since 1988 and he is saying that it is now almost complete. He is right. It is almost complete now. There are a few more things that I would like to do, but we are nearly there....

INTERRUPTION

HON CHIEF MINISTER:

No! It has nothing to do with £50m. He does not understand or he does not care. I am not sure which it is. If there was political honesty and political integrity in what he was saying when he talks about abuse. The language that he uses suggests that he really does not understand or he does not really care because as far as he is concerned he just wants to make a political attack and therefore this gives him a good platform to do it. If so, good luck to him but I will then save myself a

lot of time and a lot of energy and my breath and not try and explain it. If Members opposite genuinely want to know what is the mechanism and how it works and so forth so that they can understand it better, that is fine, but if when they get one explanation they will simply say the explanation is not satisfactory or find another reason for faulting it, then I will not bother with the original explanation. It really does not make any difference. I do not think they really care because I cannot believe that the Member opposite does not understand that the money that he mentioned that goes into the general sinking fund in any way reduces the power of the Opposition to approve or not approve expenditure. Why? Because the servicing of the public debt is automatic. I do not need an appropriation bill. I can simply get the money from ground rents, put it into the Consolidated Fund, take it out of the Consolidated Fund, not tell the House until the accounts are audited years later. I do not need approval. I do not need a law. I can do that already. It has been going on already in the servicing of the debt since 1969 and he will find it detailed in 'Consolidated Fund Charges' on page 19 of the Estimates of Expenditure, Mr Speaker. So it is there.

INTERRUPTION

Well if he says so himself what is he complaining about? How can he come along and say "But the Member opposite is now able to spend that money without the House having to approve it, but I said myself that he could already spend it without the House having to approve it". So if I could already do it why should I go to all this trouble to do what I can already do? What is it that we have done? Why is it that we have done it? If we can already do it, why have we set up a special fund and we are putting money away there for the repayment of the national debt if I can already take out of the Consolidated Fund without any law, without any appropriation, without the vote of the House, whatever money I want to repay the public debt? Why? Because we said in the election campaign we would do it. In the election campaign the Member opposite accused us of leaving a burden of debts for future generations of Gibraltar with this optical illusion that we had created out of borrowed money. Remember that it was only January that we had been told that for the last three years we had had a huge increase in massive debt, which is not true - the debt went up in May 1991 - that we had spent all this money and artificially created an optical illusion and that future generations of Gibraltar would be debt-ridden and unable to pay for it. In the election campaign we said,"No, we will make provision to pay the debt. The debt has got fourteen years and we will make provision to pay the debt." And we have! It is not that we are doing it to avoid having to vote money. We do not need to vote money. What we have done is that we have selected things which are related to the developments because we are trying to think of a way of matching the management of our finances with commonsense and logic. If you are going

to have money that you borrow and that money goes into property development and the property development produces ground rents, let us put the ground rents into a fund to pay back the money we borrowed, that is good housekeeping. We do not need to do it. We can do it already but it makes more sense. They did not get that explanation during the estimates because they chose not to have it. They chose to bring a censure motion before hearing the explanation. Why? Because they are not interested in the explanation. If they had been interested in the explanation, they would have waited to hear what was the reason for the changes this year like they have had a reason - not they, because they were not here - the Members that were here before were given a reason everytime we introduced a new thing. I would stand up at estimates time and I would say "If Members look at this year's estimates, they will see that there are differences between this year and last year and so that people understand what the differences are I will now explain them." It does not deprive somebody of the right of saying "I do not agree with the changes." They can still criticise it and say "I think it is not a good thing" or "I think you have made a mistake" or "I think it is going to be worse" but if you have already made up your mind that it is bad before I have stood up and explained it, that makes me think that really you are more interested in saying that it is bad than in finding out what it is. That is the conclusion that I have to come to and therefore I can tell the Member opposite, certainly if he goes down the route of saying "All this money has disappeared. We have now one third of the revenue and we do not know where it is going." We have got money that is going into the the Investment Fund and I have already explained that the Investment Fund will continue operating as it has been doing since 1988 except that fortunately for us the area of restructuring of GSL is now behind us. So now either we will be investing the money, as we said in the manifesto and as I mentioned in the budget, through the Gibraltar European Investment Trust or it will go into the Improvement and Development Fund. It will only get spent as a result of an appropriation bill when it comes out of the Improvement and Development Fund. If we look at the money that is going into the General Sinking Fund, that money in that General Sinking Fund will be used to repay the £50m of debt. We could have done it already out of the Consolidated Fund. We do not need a bill to do it now and we did not need a bill to do it before. We did not need to bring estimates here on that particular aspect because it can be shown in the final audited accounts but it was consistent with what they were accusing us of not doing and which we said we would do. They put in their manifesto that the loans were there and how were they going to be paid? They are going to be paid out of the General Sinking Fund. How are they going to be funded? They are going to be funded out of the things which we have identified that are going to the General Sinking Fund and the General Sinking Fund has been created. It is deposited in the Savings Bank and the money that

we get from a number of things that we consider to be related to the success of our policy of investment in infrastructure and investment in buildings will hopefully, in fourteen years, mean that whoever is in Government in fourteen years time has not got a problem of saying "Tomorrow I have got to go back to the London Stock Exchange and repay £50m, where am I going to get it from?" Well the £50m will be there for him to repay back. So we are not leaving future generations of Gibraltarians with debts that they cannot meet. But that money is not being spent now. It is not spending money to put money in a Savings Account. And you do not need an appropriation bill to do that. The third element, Mr Speaker, is the Social Assistance Fund. The Social Assistance Fund has taken over the money that was provided to the Health Authority as well and therefore the basic numbers are that the Social Assistance Fund is really giving support to three fundamental activities ie healthcare, home-ownership and social assistance. We are talking about a budget of the order of £18m a per year. That budget is the kind of level of yield we expect from the receipts of customs. That is what we expect in terms of a normal yield of customs and really it is divided into three equal parts. That is that about £6m will go to support the health service, £6m will go to support home-ownership and £6m will go to support community care. The only difference is, of course, that last year the money came in and the money went out in one lump sum and when that happened the Member opposite stood up here and told the House that "24% of the money that is being voted for will, in effect, as far as this side is concerned, be given on a blank cheque basis. As far as the duties of this House is concerned, I should know exactly how the money is being used for and how it is being administered and therefore where are these funds? To what extent do we know anything? I do not know if Members opposite accept my mathematics but I say 24% is what the Government is saying to us to vote on a blank cheque basis." So what he was saying a year ago, before we took this step, is that we were already, he says, spending the money without the House knowing anything about it. The only difference is that instead of the money coming in and going out, it is now going straight into the fund that spends the money. That is the only difference and if at the estimates time, as I explained at the time, we were not going to give him the explanation then and have the motion on the Order Paper, we waited until the motion because he preferred it that way. The Member opposite, when we got to that Head, said "Right, there was £10m going to the SAF and £6m going to the Health Authority, where is the £16m now?" The answer would have been that it is going into the same area but now it goes straight from import duty into the SAF. As well as being consistent with the restructuring exercises that we have been doing since we came in in 1988, from our point of view, it has other advantages. We would not have done it just for that reason alone. Not least of which is who is entitled to claim? I think we can now demonstrate that these benefits that are being provided are being provided exclusively from the yield of import duty and

not from any other source. To my knowledge there is nothing in the European Community that tells anybody how they use their import duty and we choose to use our import duty in this way and therefore there are no contributions, conditions, residence requirements, nationality conditions or anything else that anybody else can put their finger to anywhere else. That just happens to be a side bonus, if you like - the icing on the cake. Mr Speaker, we consider that in carrying out these changes we can demonstrate to the satisfaction of the people - indeed we demonstrated that, as far as we are concerned, to their satisfaction a few months ago - that everything that we are doing, we are doing in order to meet the objective at the end of the day of a well run efficient system which will use the resources of Gibraltar which are very, very limited in the way that maximises the benefit for our own people and minimises the exposure that we have to pressures from others. I am not saying that we will never make a mistake. I did not pretend that we did not in the election, but I can tell the House and I can tell the Members opposite that it is very, very tough going and certainly, as far as I am concerned, the idea of abstaining on this motion and letting them run the show is quite tempting. It is not blackmail in case Mr Cumming thinks that I am trying to blackmail anybody because presumably he cannot accuse me two weeks ago of blackmailing the people of Gibraltar because I said in a television interview that I was not prepared to continue in office unless we had the clear support of working people for whose benefit we are here. At least in his position if he is coming here asking me to resign today, he should not have considered it blackmail three weeks ago that I was saying I was going. He should be coming here and saying "Go ahead and do it" like the Leader of the Opposition is saying. It looks as if Mr Caruana is keener to see me go than Mr Cumming, Mr Speaker. That does not mean that the Members of the Opposition are not perfectly entitled, constitutionally, to bring a censure motion now and one in every House if they want to, that is their prerogative. All I am saying is that if at any point in time they can persuade us that in the best interests of the people of Gibraltar, they are better placed than we are to carry out this major enterprise which is creating an independent Gibraltar in the not too distant future, economically initially of course because in the world in which we live, the ultimate basis for the right of self-determination has to be the fact that we are able to pay our own way and unless we get that we are in the hands of others. Honestly, if at some stage the Members opposite were demonstrably better equipped to carry on with the task than we were doing because we were making a lot of mistakes and getting a lot of things wrong, we would no longer be acting in the best interests of Gibraltar in resisting their take-over. So I think they must bear in mind whenever they bring censure motions asking the Government to resign just how reasonable I am and how easily persuaded I can be. We did it once in January this year. I do not think it is very normal to call general elections several times in one year. It is normal to do it once every four years. We have

no magic wand. The things that we are doing, honestly, are not essential but they are things that have got practical benefits that we have quantified. But, of course, they are not make or break. If we did not put money aside in the General Reserve Fund to pay off the £50m of debt in fourteen years that is not going to break the bank but we said that we would do it. We promised to do it in January and we started doing it immediately. We put in £1½m directly from the Consolidated Fund which we do not need to vote, we just take it out and put it in. We can do that anytime we want. The Loans Empowering Ordinance allows us to use the money from the Consolidated Fund for the servicing of the public debt. The Constitution does, it is a direct charge on the Consolidated Fund. You do not need to vote money to repay debts. If the Member opposite looks at the Estimates of Expenditure he will see, Mr Speaker, that in the year that has just finished, at the beginning of the year we put in an estimate of £5m for paying back some of the revolving bad debt from NatWest. At the end of the year, the revised figure showed £15m. That means that during the year we took another £10m out. We did not tell anybody. We did not need to tell anybody, not because we have done it, not because we have introduced any new law, not because we have changed anything, because it has always been like that. So in putting money into the Reserve Fund, we were not doing anything in order to avoid the House having to vote the money because the House has never voted the money. Whenever I make the point, the Member says "Well who says anything different." Well you say something different, you are condemning the Government, Mr Speaker, for failing to bring estimates to the House not because he does not like the fact that the estimates are not there - because I do not see why that should not be a consideration - but because his ability to act as a watchdog of public expenditure is prejudiced and I am telling him that it is a lot of nonsense. His ability to act as a watchdog of public expenditure is not prejudiced by what we have done. It is prejudiced by his incompetence and his ignorance! That is what it is prejudiced by. He would not be able to monitor public expenditure if I put every conceivable nook and cranny of the Government infront of him and try to take him through it because he has not got a clue of what he is talking about. That is what I am saying. So why does he sit down there and say "why? why? why?" Because that is what you are saying that I have done and I am saying I do not need to do that to you. You cannot be the watchdog of public expenditure even if you join the Kennel Club. That is what I am saying, I am sorry I get carried away, Mr Speaker. So the reason for calling on the Government to resign is because we have interfered and that seems to be the reason. The Member opposite started quoting what I said in 1988. What I said in 1988 - not that it happened, but I suppose it never happens, I suppose all Governments say it and all Oppositions ignore it - was that the responsible way to behave as an Opposition was to be helpful to the Government. He is saying how can I be saying that and then make it impossible for them to be helpful because I am depriving them of

information. I have tried to demonstrate, Mr Speaker, that the things that he has mentioned that we have done are basically putting money into the Investment Fund. I said to him that I can demonstrate that that is not money that I am spending which requires an appropriation ordinance and that, therefore, you are not being deprived of monitoring that as expenditure. I said to him that the other money is going into the General Reserve Fund and that there you are not being deprived of being the watchdog because that money never required an appropriation bill. That money can simply be removed from the Consolidated Fund because it is a direct charge. The third money which legitimately you could say "Well, yes, that is something that I should have been the watchdog", you said last year, before I did it, that you had already stopped being the watchdog. I just quoted you in Hansard. You said last year that the money that went into the SAF and the money that went into the GIH was 25% of the expenditure and all that you could tell was that the money was going there but you could not tell how it was being spent, so you could not exercise your role as a watchdog. So if what this censure motion is about is a system that was there twelve months ago and we have been to an election four months ago and we have defended the system four months ago and the Member opposite has attacked it as he is entitled to do and we have been able to persuade 73% of the people that if they put us back we are going to carry on with the system and that it is a good system and that the accusations of the Member opposite are not justified and he has been able to persuade 20%, then I do not see how he can condemn us for doing what we asked people to vote for. That is what they are supposed to be doing. What is wrong, in political terms, is if we had said, as we did in our election manifesto, "We promise people that when we get elected we will be putting in a mechanism that will be putting money aside to pay off the debt." So nobody needs to have sleepless nights about what is going to happen to us if the economy does not perform as well as we would all like to see it and therefore in a number of years we are having to pay £50m and we have not got a penny. What are we going to do? The Members opposite said that we had no answer. We said that we had an answer. The reason why you say you do not have an answer is because you have not thought what to do. We had it ready and planned and the moment we got in we did it. If we had not done it, I think the Member opposite would have been entitled to come with a censure motion today. Not from what I have done. If I had not done it, he could have come along and said "Where is the mechanism you said in the election you were going to put into paying off the debt? I do not see it. It is not in the estimates. Have you done something else? Where is it?" In fact, in doing it we do it by publishing it and we published it in May and therefore by the time we came to the House, what we were doing and how we were doing it was already in the public domain. The element other than the one dealing with the Constitution and the appropriation of funds in the Member's motion is the one to which he made a reference as to whether the amendment

to the Public Finance (Control and Audit) Ordinance, which allows the allocation of funds to a special fund, is sufficient to, if you like, compensate for section 45 of the Imports and Exports Duties Ordinance, which he claims in his motion it is not. He chooses to call it a decree. I suppose that he thinks that that makes it more forcible. They are not decrees as far as I am aware. If he can point to somewhere where there are powers to make decrees I will investigate the possibility.

HON P R CARUANA:

..... as opposed to the measure of the legislature and as that is exactly what regulations are, regulations are decrees.

HON CHIEF MINISTER:

I am glad he has explained it because I am sure most of Gibraltar must have been as mystified as I was as to what the decree was. The answer to the point that he is making there, which I have not dealt with, is quite simple. I think I referred to it earlier on. As far as the policy of the Government is concerned, this is the policy. The instrument that we have used to carry out that policy on the advise available to us is technically capable of doing what we want it to do but in fact I will make sure. He has already raised it once in question time and I have already asked for the advise once and I have already been told once that it is alright but I will go back and ask again. Maybe I should not ask the same person. Maybe I will ask somebody else. But if there is any doubt at all then we will come here and amend the principal ordinance. We will certainly not change what we are doing. Let that be absolutely clear because what we are doing is a political decision and it is a matter of Government policy and the Government will stand by that policy and defend it or go because that is what we think is the right thing to do morally and politically. We believe that that is the way we should conduct the affairs. We believe that that is the most efficient way to do it. We believe it will produce the best results and if that is what we believe that is what we have to do. We then have to go to technicians and say to them "Make it possible for me to do it". If at the end of the day somebody said "It is the Constitution that does not make it possible", the basis of that argument can only be that the Constitution has been misinterpreted by every Government in Gibraltar since it was written all of whom have done it wrong. It will also mean that we would need to come back and present twenty-four new budgets and approve everything that has not been approved which would all have been unconstitutional. It will mean that every audited accounts of the Government of Gibraltar since 1969 would have to be scrapped because all the expenditure would have been ultra-vires because it would not have been properly appropriated and of course it might well mean that we

have to go back to the UK and say "Look change the Constitution because this is a nightmare". I certainly think the sooner the Member opposite gets it tested the better for all of us. As I have said, I do not know to what extent other colonial territories have been using funds independent of the Consolidated Fund but I know that the Constitutional position and the wording of the section is virtually word for word exactly the same in every one of the eight remaining colonies. It has been like that for a very long time because I have just read from the Falkland Islands Constitution which is 1985 so they are still using in 1985 the same wording as they were using in Gibraltar in 1968.

HON J C PEREZ:

They probably used it in India.

HON CHIEF MINISTER:

They probably used it in India in the nineteenth century. So, Mr Speaker, I am moving the amendment of the motion of the Leader of the Opposition by the deletion of all the words after "This House"....

HON J E PILCHER:

Which again has been used on many, many occasions.

HON CHIEF MINISTER:

..... and the substitution of the following -

"(1) Notes that section 65 of the Gibraltar Constitution Order, 1969, requires that estimates of revenue and expenditure be presented to the House for the purpose of appropriating the use of monies from the Consolidated Fund;

(2) Notes that in accordance with the Constitution and the laws of Gibraltar, the 1992 Appropriation Ordinance was approved by this House on the 28th May and was accompanied by such estimates of revenue and expenditure;

(3) Notes that every Appropriation Ordinance approved by this House since its creation in 1969 has been accompanied by such estimates of revenue and expenditure in respect of the Consolidated Fund and the Improvement and Development Fund which have been similarly approved;

(4) Notes that the Government commenced, in the Appropriation Ordinance 1988, a policy of restructuring the allocation of finances in its programme of providing a more efficient utilisation of public funds in accordance with the manifesto on which it was elected on the 25th March 1988;

(5) Notes that the Government sought a vote of confidence to continue with its fiscal and economic policies to complete its economic programme and obtained the support of 73% of the electorate that exercised its right to vote on the 16th January 1992;

(6) Commends the Government for keeping faithfully to its declared policy which it has obtained a mandate to pursue in order to secure the economic and political future of the people of Gibraltar and therefore for proceeding with such restructuring of public finances as will in its judgement make best possible use of the available resources;

(7) Challenges the Opposition to pursue in the Courts of Gibraltar their allegations that the Estimates of Revenue and Expenditure presented to and approved by this House failed to comply with section 65 of the Constitution".

I commend the amendment to the House.

MR SPEAKER:

I must explain to the House that there are two basic types of amendments. One is an amendment which modifies the original motion and another one which completely changes the motion and is in fact another motion. We are presented here, as it is obvious, with the second type. Now that means therefore that whilst they would have just put the amendment and debated the amendment itself exclusively and then put the amendment to the vote and then if it is carried then we carry on with the motion as amended. In this case the procedure is different. What we do now is we debate the two amendments side by side and any Member can speak on either the amendment or the original motion. When the mover of the amendment winds-up, the mover of the motion winds-up. We put the amendment to the vote and if the amendment is carried then obviously the motion is defeated. So that is the procedure that we are going to follow and of course any Honourable Member can speak on either but he can only speak once except of course the mover of the motion and the mover of the amendment who can wind-up.

HON P CUMMING:

Mr Speaker, the Honourable the Chief Minister is brilliant at this business of the optical illusion. He is bitterly painting black and white so that one flickers between seeing things from one perspective and another, so that one is sort of swept up into unreality in spite of one's clear view of certain matters. The Chief Minister has asked, in an angry kind of way, "Do they genuinely want to know when we ask for certain information?" and he expounds like a university professor. I must say that I have greatly enjoyed our sessions here which have been

like a university seminar because, frankly, many parts of them have been very informative, very instructional and I am certainly not proud to accept instructions from him in so many matters in which he knows so much about. But economics like law is not an exact science and you cannot prove like a theorem it est demonstrandum sort of thing that one is entirely in the right or entirely in the wrong. These issues can be explained if one turns ones mind to it in simple phrases, simple words, like Mrs Thatcher did. Mrs Thatcher was able to consult very high flying economists and then state her policies in very simple phrases, such as the housewife who organises her housekeeping money and the pros and cons of the different policies as it attaches to that. When the Chief Minister is in his university don mood and wants to give a teaching session, he does it brilliantly and it is fine. I am ever grateful for that. I enjoy it. But where the element of malice comes in, is where hidden away here and there - not the lie heaven forbid, but the half truth, the three quarter truth - are the masterly strokes of obscurantism which uses technical phrases so that then he can say "Am I to explain all this for the seventh time round and give a long explanation?" Parts are brilliant and understandable and other parts are completely obscured so that then one could say "Well, it is just me that I am not intelligent, I do not understand". That is obscurantism and that is a mechanism which cannot be used for various different purposes. One can be to hide something of which one is ashamed and to protect something which you do not like the public to hear about. But there are other reasons, and I would thank the Chief Minister for mentioning the subject of blackmail which I had forgotten. The reasons for obscurantism are various, as I have said, and sometimes they are simply psychological ego-defence mechanisms whereby you say, "All this information is reserved to me and as you do not understand it, I am therefore of a higher status level than you." This mechanism has been used to confuse the electorate and to deceive the electorate and of course it will last for a certain time but after that people will see through it. Do we genuinely want to know? Yes we genuinely want to know the real truth. I even want to know the university lectures but whenever there is a mass of obscurantism, that is to say, I have found - I have studied educational psychology - that when I do not understand something that pertains to the sort of things that would be expected of me to know and I have tried to find out genuinely, I am given a genuine answer. With a few questions and answers I am able to clarify it but sometimes you find that there is a wall and somehow you just cannot break through. At first I used to think, not just here, but in any situation in which I am student that it was just me but very often it is not. It is the one who is trying to teach you and defending his ego, (1) that he does not know and therefore he is defending himself with big phrases, (2) that there is something that he wants to hide from you and (3) it is just blackmail. That is to say, as only I understand these issues, heaven help Gibraltar if they do not put me in charge of them and

this brings me to the question of the Kennel Club and the question of whether or not the Opposition can be the watchdog. You see the Government is charged with the efficient administration of our economy and therefore they are very, very busy and therefore they cannot come often to the House of Assembly. They have to be very busy looking after the economy. But as you all know Italy has just been three months without a Government. It has even been some weeks without a President and yet its economy is thriving and flourishing. So, there is the question of the man who keeps a dog or many dogs and yet insists on doing all the barking himself. This is how I see the Chief Minister acting in this matter of the watchdog. He has plenty of advice and he could have more if he needed it. He has many experts who can be safely left with the running of the economy and of the Government and of the Executive, not just for one day but for many days and in Italy's case for three months whilst he attends to the business of democracy. You see, the Chief Minister could work and be brilliant in so many fields. We have already discussed the one of being a teacher and of being a conjurer, being a magician, changing black white and so on as he chooses. The other profession where he could be an expert and that is as an actor. As an actor he could be absolutely brilliant because when he stands up so solemn and his voice goes deep and husky with emotion and he says "This is the question of the will of the people." That is great, I enjoy it for its drama and after all he could also be a comedian when he wants to and we have a jolly good laugh. How can this be a question of the will of the people, where in his manifesto does he promise to take anti-democratic initiatives that are going to deprive this House of information? It does not say it anywhere. I read it several times over and I have not found this promise to the people and consequently to say that because he had a huge majority, therefore the will of the people was that he could do what he likes with democracy in Gibraltar it just does not follow. What is it then that the people want in this matter? Most people do not actually care all that much about economics and about law in the widest sense. They do not want to follow all the details. The seats here are not shocker block or anything, you do not have to buy tickets to get in here. People are inclined to leave it to those people whose business it is to attend to them. Not at any moment do the people not think that the House of Assembly is important. I think the vast majority of people do think the House of Assembly is very important. The only thing is that as most of the outcome is predictable because we expect at the end of the day that the Government will vote for the Government and the Opposition will vote for the Opposition and so things continue to be predictable and apart from the occasional little bit of interesting or funny bit of drama, the rest is boring and people obviously do not turn up for it. The vast majority of Gibraltarians who are old enough and I think that all of us here are old enough, have been very well schooled in how dictatorships work because those of us who are interested in current affairs and can think back to the days of Franco, which all of us can, I think, saw how things used to be in a dictatorship and how people behaved

and what was done and how things were done. So most of us have quite an insight into the workings of dictatorships as well of the workings of democracy. I remember as a boy discovering through a television programme that Spain had a Parliament. I was saying to my father, what is this Spain has got a Parliament? Of course Spain had its Parliament and some laws presumably came through that Parliament and they were put infront of Franco, explained to him and some he accepted and signed and became law, others he did not like and they were sent away with a flea in the ear. So the fact that we have a Parliament does not mean to say necessarily that we have democracy. Franco would accept law coming from his Parliament or alternatively he would rule by decree. He signed a decree and that became law. The GSLP is increasing and increasing its output or its ability to rule by decree and this is a diminution of democracy however you look at it. This is how with all these technical arguments black can be turned into white and white into black. I do not have any legal skills for reading all these laws and some of them are intensively boring but I did spend some time going over, for example, the Estate Duty question. How it was before and how it is now and that is a law obviously gutted of everything important about it and moved into the sphere of regulations. So at the drop of a hat regulations can be issued and everybody knows this, they must know it and all the laws seem to be passing one by one through this so that law by decree can be carried out as it used to be done in Franco's day. Little by little democracy is eroded because, Mr Speaker, the view of the GSLP of democracy seems to be that it functions once every four years on election day and this is not the view of democracy as you would expect in a European State of this age. Democracy has to function continually and because you are so busy doing the barking even though you keep all the dogs and you do not let the dogs bark, you are too busy to come here for the number of days a year that is necessary to come and attend to these democratic matters. Everybody must know that democracy is being eroded. The fact that they have voted for the GSLP you cannot reduce to saying that they back your policy of diminishing democracy in Gibraltar. It is not that at all. There are many other factors. Very important factors that impinge upon the outcome of an election and obviously the demise of one party and the birth of another just at the junction when there is a new election obviously has to have an immense bearing in the outcome. At the time of general insecurity and fears of our people, a policy which plays on those fears and is triumphalistic and unrealistic in its expectations is something that very easily deludes people into a desperate hope that all that may be so. Even the Opposition has to say "We jolly well hope that all the economic policies of the GSLP come off and are successful", as has been repeated here in the past. "We are carrying surplus information" says the Honourable the Chief Minister. "We are carrying surplus information" and this qualifies him of course to be a comedian as well as an actor, a magician and a teacher. I have to say that I wanted to speak on this

motion because I feel that it is a very important issue to all. This is not just political points scoring or the business just of the Leader of the Opposition. This is the business of all of us and it is something that we have to repeatedly call to the attention of the electorate that the GSLP is taking totally unnecessary initiatives to diminish democracy on a day to day basis. We want to hear about things before they happen, not just because for our own building up of our egos, but so that we can carry out the role of the Opposition. It is not that you have to tell us as individuals what is going on. It is that you have to tell the people and we serve the people by studying that, by meeting, by discussing it, by analysing what it is and if we do not do this, democracy is diminished and if this Opposition does not do it, then another or better Opposition has to come and do it. But this is a very important task and some people do not seem to understand this at all. We had in the last House from Mr Moss some comments about the functions of the Opposition which showed that, as he has never been in the Opposition or needed to study what an Opposition should be, then he had no clue of how it should be. To round up I would just like to say that it is very painful at a time that we are struggling for our survival as a community that we have seen from the days of Franco when his famous offer was made to us of free press and legislative council and all this in those days, that we laughed when this offer was made, we laughed, because we knew that there was no democracy there and our own democratic institutions were flourishing. Now we are in the position that whilst we are fighting and resisting those elements because we want to retain our freedom, that our freedom should be undermined from within by these ill-thought out and unnecessary policies. Finally to say that it is painful that we should see in Spain democracy beginning to grow and to flourish and to become sought of real whilst here in Gibraltar our democracy is shrinking and becoming less. Thank you, Mr Speaker.

HON P R CARUANA:

Mr Speaker, I wish to say nothing on the amendment but it is not clear to me from Mr Speaker's very helpful guide as to who speaks next because presumably I still speak last in relation to my reply.

MR SPEAKER:

What I said before was this. The Chief Minister has introduced an amendment to the original motion but since in fact it is a different motion altogether what we do is we debate the two together. Anyone who wants to speak and speak on either. When it comes now to the winding-up obviously it is the amendment that we have to clear first so it is the Chief Minister who speaks on the amendment and then finally the original motion. We take the vote on the amendment first and the vote on the motion.

HON CHIEF MINISTER:

It seems that the Honourable Mr Cumming is going to have the pleasure of having me answering him after all, notwithstanding the fact that I did not want to take up the invitation earlier. Perhaps of course because he already knew earlier that he was going to compare me to General Franco and he wanted to be able to say it without me being able to follow him.

MR SPEAKER:

May I say that no new matter can be introduced at the end. The winding-up must be carried out on what has been spoken.

HON CHIEF MINISTER:

Mr Speaker, having moved my amendment, I am replying to the contribution made by the Honourable Mr Cumming. Presumably he has been telling the people of Gibraltar that he is going to vote against my amendment because he thinks I am a clown who looks like an academic but he is really General Franco and occasionally can make him lose his memory. I think the Member has done a great disservice today to suggest in this House that because we have continued with the policy that we tested in a general election, we are today behind Spain in democracy. Is this an indication of some kind of shift from the other side? I hope not. But we are being told today that the Member opposite thinks that notwithstanding that I have given I think a fairly lay explanation, not a very highly technical one to demonstrate that the items mentioned in the motion as being left out of the revenue estimates are items which do not deprive him or anybody else of controlling public expenditure which is what they claim is a reason for bringing a motion here. He has now exposed that it has nothing to do with revenue, it has nothing to do with expenditure, it has to do with this fundamental, philosophical and political approach which says that the way we are doing things, the fact that we are introducing things by regulations, the fact that we are restructuring public finances is nothing to do with producing what we consider to be a more efficient way of managing Gibraltar. It has to do with an attack of basic democracy. An attack of basic democracy. I do not think in the twenty years that I was here we had people belonging to the House who felt that in fact the Government of Gibraltar was deliberately setting out to remove parliamentary systems and democratic process and really if they believe that, they ought to really go. I do not know why they stood for election because if they stood for election on the basis that what we had done between 1988 and 1992 was that basic attack on parliamentary democracy and we got the support of the people, then they are wasting their time here for another four years. They will be wasting their time for many more years to come because they will

not make that accusation stick. That is total and absolute nonsense and the Member opposite knows it. Of course, he knows it. He knows it from the years that he has known me, he knows it. He knows it from the fact that he has been with me in the Union when other people have tried to use that tactic against us. The statements that he makes which I recognise because I can always track origins of statements from twenty years of life in a community as as small as this one. You know what time people get out of bed and what they have for breakfast. So just by reading something you know who has written it. He knows, as I know, from when he was a Branch Officer of the Union many, many years ago in ACTSS, when I was in the public sector, that people used to say that there was no democracy. The members were not allowed to do anything. Other people say it now. The reality of it is that in Gibraltar the real test of democracy and of support that the Government has is downstairs. If the people are with their Government it is obvious and as far as the people are concerned he is right. He has been honest enough to say that for most of Gibraltar the least of our problems is what is the subject matter of this debate. If, in fact, the accusations that are underlying this were true, even by making them they do damage. I do not want to say that. I have not made that point at all and I do not want to elaborate it because I know that that immediately will be latched on and they will say "You are now even trying to silence us." I am not trying to do that. Alright I have said it in passing and I immediately qualified it before he could jump up and accuse me because I knew he was going to do it. He has done it. He has actually accused me of something even though before I finished the sentence I was already saying "I do not want to do anything that they can say I am trying to muzzle them." I do not need to muzzle them because they are no threat to me or to anybody else because the reality of it is that they do not have any standing. They got in here by default. They got here not because they were too young, as Mr Cumming says, and they came in at a point of transition, but because the system in Gibraltar is a very generous system to the Opposition in terms of votes. If we had a normal first past the post there would be fifteen GSLP seats here. That is how it would work, so that is the reality of it. They have got seven seats. They are entitled to exercise the right in this House. They are entitled to bring censure motions but what they are not entitled to do and at the same time have the audacity and the cheek of the Member opposite to accuse us of fascism is to pretend to come here four months after an election and say "We are bringing a censure motion which is asking the Government to resign, not because they are reneging on their policies, but because they are continuing with their policies." Well look what kind of democracy does the Member believe in? He believes in saying whatever he likes in January and doing something else in April. He says he cannot find anything in the manifesto that we would do anything by decree. No, but he can find in the whole election campaign his accusations that if we got in we would do it and our

defence that if we got in we would continue with the same policy as we had done between 1988 and 1992. That is what we argued in the election and I told them in the last budget, if the Members opposite want a four year election campaign, I will give it to them! It does not scare me. I do not think it is the best way to use parliamentary democracy and certainly he is not going to enhance the prestige of this House in the eyes of the people. I do not think people are going to say "What a wonderful House of Assembly we have got. They are all there like hands squabbling like neighbours in a housing estate." But if that is what they want, OK! We need a break now and again from work, so we might as well take our holidays here and have it out with them every four months. That is the way they want to play it we will play it like that but I do not think that it will be a very useful thing for them to do but it is their prerogative to do it and I do not feel they are going to enhance their standing at all in the community by doing that. So at the end of the day if a Member wants to stand up and say "I am not voting in support of a motion moved by the Chief Minister", it seems to me that the parliamentary thing to do is to go through the items that I have listed and say "I am not voting in favour of any of these things because I do not agree that this is true, I think he is wrong here, I think he is wrong there." But what he is saying is that he is not going to vote in support of what I have moved because he thinks I am like Franco. Well then by that definition it does not matter what I move because if I thought he was like Franco, I would not give him the time of the day and I would not have looked at him in the face.

INTERRUPTION

Mr Speaker, the Member opposite was not talking on the amendment? So then the original motion has been brought by the Opposition because they think I am like Franco, it is a big improvement. Well then perhaps the Leader of the Opposition should have had the courage to say that in moving the original motion and then I might have dealt with the motion in a different way. But as far as I am concerned we have treated the motion from the Leader of the Opposition, not on the basis that the Government was being condemned for an attack on parliamentary democracy but that the Government was being condemned for pursuing a policy which the Opposition consider to be in conflict with section 65(1) of the Constitution. We have sought to demonstrate that it is not in conflict with section 65(1) of the Constitution and that if it were, it is only so in conflict because so has every other budget, every other year, since the Constitution came in in 1969. If the subject matter before the House is that it is in conflict with section 65(1) of the Constitution and that makes me in the eyes of the Member opposite like Franco because I have brought this budget to this House, then

presumably it makes Sir Joshua Hassan like Franco because he brought a similar budget on a similar basis and you are like Franco, Mr Speaker, because you did it in 1969, 1970 and 1971. So, if it has anything to do with the motion - he is shaking his head - well if it has nothing to do with the motion, if it is that he thinks I am like Franco, period, per se, then it is irrelevant whether we are talking about the finances, the budget, the special funds, the regulations. It is irrelevant. It has to do with the problem that he has inside his head and amongst the many qualifications he has attributed to me, psychiatry was not one of them so I am afraid in that particular field I cannot offer any help. I commend the amendment to the House.

HON P R CARUANA:

Mr Speaker, the Chief Minister is, as we all know, the master of the red herring. He listens to an argument. Whether the argument be right or wrong, of course it is a matter of opinion. But he listens to an argument for one and a quarter hours or one and a half hours. I do not know how long I was on my feet this morning. Then he picks on two or three irrelevant red herrings which is his now traditional smokescreen which starts with sinking funds and finishes with saving Gibraltar from the dread of the pensions problem and all manner of dreadful things that European Community law would do to us, baffle his brilliance, or perhaps, in their own right, good arguments, in their own rights, but with the greatest of respect to him, absolute red herrings and irrelevant as replies to the allegations that I put to him this morning. Mr Speaker, when counsel for the defendant in a court of law does not address the issues raised by the plaintiff, the usual way to deliver the deserved insult is for counsel for the plaintiff to say "I do not wish to exercise my right of reply because my learned friend has said nothing, which in my opinion deserves or needs a reply". Were we in a court of law where the outcome of this debate were to be decided in accordance with law that is exactly what I would have done to him because that is exactly what he deserves. But as we are in the political fray and these things do not necessarily get decided on the basis of fine points of law, I feel obliged to reply to him. I regret to say that he has become, in my opinion, so unnecessarily abusive that I am not going to resist the temptation to reciprocate, but unlike him, I do not have to lose control to become personally abusive on the rare occasions in which I might choose to do so. The fact that he did and chose to apologise for it afterwards is to a limited extend to his credit. Mr Speaker, if the rules of this House allowed me to say that the Chief Minister is a liar.

MR SPEAKER:

No, it does not.

HON P R CARUANA:

I know that it does not and therefore.....

MR SPEAKER:

You should not even insinuate it and if you carry on like that I shall have to call you to order.

HON P R CARUANA:

Well, Mr Speaker, if you call me to order, I will of course come to order. Therefore, what I will say is that I think that the Chief Minister has set out to deceive in his reply to avoid the arguments that I put to him and to mislead anybody who might be listening. To go on and on and on about the sinking fund and how some further fact that he can draw monies out of the Sinking Fund for the national debt servicing, because that is a Consolidated Fund charge, when I myself said that in my address and therefore to say "and therefore, that is an answer to what Mr Caruana was saying" is, in my opinion, nothing less than deceitful debating techniques. If he did think that the Sinking Fund in itself provided the answer to the allegations that I have made, honesty in debate - and he has accused me of lack of honesty and lack of integrity in debate, he is the one with the lack of honesty and lack of integrity in debate. He did not say, did he? But now he has given in when he said that nothing had changed in relation to the Sinking Fund. He did not say that he had moved an amendment to section 20 of the Public Finance (Control and Audit) Ordinance giving himself the power to move money from one fund to another so that whereas before money in the Sinking Fund could only be used for servicing the national debt, now money in the Sinking Fund can be transferred from the Sinking Fund to any other fund that he pleases. We have therefore no guarantee at all that money in the Sinking Fund is going to be used to service the national debt because tomorrow he can move it to another fund. If he wants me to give way, I am happy to do so.

HON CHIEF MINISTER:

Only so that, on the record, the information is correct, Mr Speaker. The Public Finance (Control and Audit) Ordinance contains a schedule of special funds and every special fund has always been able to transfer money as an advance to any other special fund anyway which means you can have a hundred year interest free loan from the General Sinking Fund to the Investment Fund without the amendment to which the Honourable Member refers. That has always been possible. So that amendment has not been put in order to do anything with the General Sinking Fund because in fact it is neither here nor there and when the amendment to which the Member refers was voted in the House, it was explained in the House that this was to give the flexibility to make use where one fund was in surplus and another one was in deficit temporarily. I can tell the Member that it has never been used. He will say well the fact that it has never been used does not mean that it will never be used by a future Government. You do not bring censure motions to the House of Assembly because of something some future Government might do, but because of something that an existing Government has done.

HON P R CARUANA:

My censure motion is not based on the Sinking Fund. What I am doing is replying to his smokescreen and I am glad that he thinks it is smokescreen because that is what I am saying that it is. All his arguments in relation to the Sinking Fund were nothing more than a smokescreen, in no way addressed the issues that I had raised this morning. Mr Speaker, whilst I remember the note that I have made here, if his concern about whether I am right or wrong falls to be determined by whether the consequence of my being right being that he has got to change the accounts for the last twenty-five years, which I think is a ridiculous notion, well, having admitted here yesterday that he thinks that the Savings Bank has been operating illegally since 1973 or whenever it was, I have not seen him rush to bring anything back to correct that for the last twenty odd years. Therefore the suggestion that because something has been done wrongly for a period of time past, you now have to correct it in respect for the whole past period is, in my opinion, a red herring.

HON CHIEF MINISTER:

Would he like me to explain to him, Mr Speaker?

HON P R CARUANA:

No, but if he would like me to give way I will.

HON CHIEF MINISTER:

Having discovered this in the Savings Bank we are taking action, I have already told the Member opposite and this action is going to be taken from the 1st September this year and we have brought an amending Bill to this House which he voted against. I also explained that the implications of that is that the Savings Bank has been acting illegally since 1973 in that it has been taking deposits without a licence. There is nothing that I can do other than backdate the licence to 1973 which presumably we will not be able to do because the Licensing Authority today is the Financial Services Commission and in 1973 it was the Financial and Development Secretary as Banking Commissioner. The only thing that we can do to correct the Savings Bank situation is to say "This licence is dated the 1st January 1973", which is when we joined the European Community. That is it. With the accounts I do not think that I have a choice. If the Supreme Court rules that the whole accounts of Gibraltar have been wrong for the last twenty-four years, they have to be put right.

HON P R CARUANA:

The accounts of the Savings Bank would presumably, if the Auditor had realised that it was illegally, would have had a qualification saying, these are the accounts of the Savings Bank but in my opinion all the trade that it has done has been unlawful. So perhaps you would like to bring twenty years sets of accounts from auditors with a report qualifying the accounts.

HON CHIEF MINISTER:

I may well do that.

HON P R CARUANA:

Fine! That will be the equivalent of doing what he thinks he has got to do now in relation to the funds. Mr Speaker, it seems to me that at a political level the answer to all that I have said this morning is this. I have got 73% and you have got 20% or whatever. The Chief Minister appears to believe that the size of his mandate and the size of his votes on the multitude of issues that he put before the electorate, on the multitude of issues that we raised successfully or otherwise before the electorate, gives him the right to do as he pleases, simply because he was doing it before. He interprets his mandate as being a positive mandate in respect of everything which is a continuation of what he was doing before. That, in my opinion, is not only political dishonesty, it is intellectual dishonesty. The Chief Minister cannot, I know, if I know anything about him personally, believe that that is the case. Therefore, Mr Speaker, when he says that it is unprecedented to condemn a Government for doing what it promises to do and that I have not suggested that he is doing anything new now that he was doing before, he implies that this censure motion is unprecedented and therefore unusual and therefore, presumably, out of time and out of place. Mr Speaker, by that rather perverse logic as he has been given a mandate and as all Governments have been given a mandate for four years, the concept of motions of censure would not apply except in any parliament, except in relation to breaches of electoral promise. So that, for example, if the Labour Party in Britain wants to bring a censure motion against the Conservatives for introducing the poll tax, that is not allowed, because after all, the Conservatives did not promise that they would not bring the poll tax. The logic is just perverse. Therefore, Mr Speaker, unless I can bring a censure motion in the next four years based on something which the Government had not done before January 1992 on, then I cannot bring any censure motions at all. The logic is perverse. He accused me of being the source of people's perception about the lack of and the reduction in financial information. Mr Speaker, the fact that the House of Assembly has before it, in relation to the proposals of expenditure and revenue of the Government of Gibraltar less information, both in qualitative and quantitative terms than it had this time last year and that this time last year it had less than the year before and so on and so on until 1988 is a self evident reality. If the Chief Minister thinks that this also is a figment of my imagination then what I think the Chief Minister should do is to go out into the streets, stop listening only to the yes men with whom he surrounds himself and listen to what people are saying. If what he is saying is true, I have an extraordinary power to form opinion in Gibraltar. I have an enormous influence over the opinions of the

people of Gibraltar and if that is true, which I do not think that it is, I would have done better in the election campaign in January this year and I would do so much better in 1996 that his position is in trouble. So I do not think that that is the answer. I think the Chief Minister should look for a different one. The different answer that I commend to the Chief Minister is that it is a reality. It is a self evident reality. Every year we get less and less of a full picture of the Government's financial position. One is supposed to be flattered that the teacher in the class has told one that one has done one's homework when no-one has told me that since I was last schooled but I suppose in the environment that reigns politically in Gibraltar today, it is not surprising that I should be told in this House. But still, to the extent that it was a compliment, I accept it in a generous spirit and I am grateful to the Chief Minister for it. That he has been told by lawyers that my legal opinion on this matter is wrong is also self evident. He did not need to have said it because I said it myself in my speech on the motion, but this must have been the case because I was not attributing to the Chief Minister a desire to operate unlawfully in the face of contrary advice. Therefore, for him to announce, as if he was pulling the trump or the ace of spades out of his pockets, that point, frankly, is one that I do not understand. Clearly he has had different advice and now that he has told me that all colonial constitutions have the same defect, then I can tell him that I am not surprised that he has had the legal advice that he has had. Because if I had done three hundred years worth of legal mistakes I would do almost anything to cover up my mistakes now. Therefore, Mr Speaker, I simply do not accept that the argument as to whether I am right or wrong legally can be decided on the basis of whose legal opinion is worth more, mine or the Honourable the Attorney-General's or whoever has given it to him. I accept it all and I said also in my motion that the proper place to test that issue was a court of law. So that the last paragraph at least of the amendment would appear to be a little bit superfluous. Politically, which is what I tried to formulate my objections in, his only defence is "I have got 73%, I have got the mandate of the people and I will do as I please". Mr Speaker, the Honourable the Chief Minister referred to section 65(2) of the Constitution and said that therefore my interpretation must be wrong. All he was doing was the exercise that I had done for him in my own motion, that anyone that says that black in section 65(1) does not mean black but it means pink, has to have recourse to the rest of section 65 and conjure some argument of statutory interpretation to prove that black does not mean black, it must mean white. There is nothing inconsistent between section 65(1) and section 65(2). The fact that you have got to give me estimates of revenues and expenditure does not mean that you need the appropriation of this House to spend all the money through estimates of which you have given me. One is giving information and the other is asking permission and the fact that you have to give me the information does not mean that you must also ask my permission and

my complaint is not that you have not asked my permission. My complaint is that you have not given me the information. Mr Speaker, another broad brush attempt at a political defence is that you cannot hide disasters in an economy.

HON CHIEF MINISTER:

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HON P R CARUANA:

Mr Speaker, I am really very reluctant not to give way but what I cannot do is to convert my right of reply into sixteen different mini-debates with the Chief Minister. I will give way to him on this occasion.

HON CHIEF MINISTER:

He has just said that his complaint is that he is not getting the information, not that he needs to give his permission. Is he saying then that appropriation from a special fund is not an argument that he has put in this House?

HON P R CARUANA:

Mr Speaker, at the moment I am addressing the question of the estimates. In the question of the estimates my complaint is that I have not got the information that the estimates would have given me. The question of whether any sum of money ought not to have been paid into a special fund but ought to have been paid into the Consolidated Fund so that you would then have had to ask my permission to spend it or at least the permission of the House to spend it, is the other point in the motion and he has interpreted everything that I have just said as a withdrawal from that position, I do nothing of the kind. I think part of the smokescreen about the Sinking Fund, Mr Speaker, was that when I started shrugging my shoulders saying "How is all this relevant to the debate?" He said "Yes, let him not come and complain next year that the balances have gone simply because the depositors have withdrawn money." How is that, Mr Speaker, with the greatest of respect to him, a reply to what I have said? How does that impact as an argument that next year I must not complain if that has gone because I must not be silly. It is not that it is gone because he misappropriated it, it is gone because the depositors have withdrawn their money. With the greatest of respect to him, Mr Speaker, how is that an argument in reply to what I am saying which is that I now have (a) less information than I had and (b) less information than I am entitled to in law? It is just a smokescreen. It allows him to stand there and speak for half an hour in the hope that everyone in this room and presumably over GBC radio that is listening to him will say "What a tremendously and super-intelligent Chief Minister we have got, you see how he put that upstart Caruana in his place, of course our Chief Minister knows

what he is talking about, there he goes he was on about all sorts of complicated things about the balances and the Savings Bank, all sorts of things that we poor mortals do not understand." Well, Mr Speaker, I think that the Chief Minister and some of his other colleagues have very effectively used that trick, that device (perhaps 'trick' is an excessively harsh description of it) that technique very successfully for many years. I sense that the people of Gibraltar are now getting wise to the fact that it is a technique and what they will now be looking at is not so much the dressing and the presentation of style but the substance of what he said and whether or not it is delivered in tangible terms. Mr Speaker, the Honourable the Chief Minister says that he has not introduced a new presentation of the accounts. I accept that his use of the words 'accounts' was a slip of the tongue, he meant estimates because we are not discussing accounts and nor has there been any great change in the presentation of accounts because what we are discussing is the estimates. I think, Mr Speaker, that the great change comes in the question of the scale. I accept, because I conceded it myself, that he had not invented the device except to the extent that he allowed himself the power to pay borrowed money into a special fund and that he allowed himself the power whatever he may just have said, to just transfer monies from one special fund to the other. The fact that he may only have done it in the past in the case of surplus or may only intend to do that, that is all very nice until he changes his mind. How do I know if he changes his mind for a good or for a bad reason? The fact of the matter is that I do not know. I do not complain about what he has done with the money of Gibraltar. I am not suggesting and nothing in my motion and nothing in what I have said in support of my motion has either been intended or could reasonably be interpreted to have meant an accusation of misappropriation or embezzlement or funds being used for an improper purpose. What I have said is that I do not have the information that I want that I need and that I think that I am entitled to and that I had before. Therefore, all these constant references to what he has done in fact or what the intention is or what the intention is not and "I have told him last year that what I intend to do is only to do this and not to do that." All that is irrelevant. I do not care what he has done in the past or what he intends to do in the future. I am only concerned with what those systems entitles him to do if he wishes and how I, as a parliamentarian, think that I am worse off than I am before, ie less well equipped to do the job of Leader of the Opposition as I see it today and as the Honourable the Chief Minister saw it in 1988 and 1989 by some of the remarks that he has made and that I have quoted him from Hansard in the past. Mr Speaker, he says that how can I be right. He conceded that that is possible but how could I be right because if I was right it has been twenty-five years of negligent interpretation of the Constitution. Well, that should not really surprise him given that only twenty-four hours ago he was standing in the same place lamenting the fact that previous administrations and the Foreign Office with all their might and right and technical expertise have missed since

1973, the fact that drafting of EEC Directives, omitted Gibraltar. He has come like a knight in shining armour on his white horse to discover this and that some were even so concealed that it has taken even him four years to discover it. Mr Speaker, if people can be so negligent with our national interest that they should be so unobservant with little details of domestic accounting should not come to him as such an outlandish surprise. But you see, Mr Speaker, at a political level I hear what the Honourable the Chief Minister has said and really all that he has said to me is "This is our political judgement, I will dismiss the legal points by the fact that I have got technicians and they have advised me and insofar as Mr Caruana's arguments are political, it is a matter of policy, we have been elected, it is our judgement, we exercise our judgement and the electorate will speak four years from now." Mr Speaker, I ask why is it Government policy? If he wants to answer, I will give way to him again. Why? Does the Chief Minister believe that in order to do good housekeeping, that in order to efficiently utilise the resources of this community; that in order to satisfy his electoral promises; that in order to be the most efficient, economically competent Chief Minister that Gibraltar has ever had, why does he feel that he can only do that by use of special funds and not by use of the Consolidated Fund? What is his hang-up with giving me the estimate? What is his hang-up with coming to the House asking for permission to spend the same sums of money knowing that he has got the parliamentary majority to achieve approval at the flick of a hat and I ask him as the acid test to the merits of his political defence, why should it be necessary for the GSLP to pursue that policy? I accept that it is policy; political policy. Why do they perceive it necessary or even desirable that that should be their political policy? I thought, as I was listening to the Chief Minister reply to me, that he was going to give me an answer to that question when he started talking as he always does when he wishes to divert attention from some domestic problem. He throws in the pensions problem, the national interest, European Community. Do not ask any more questions because I am doing this in the national interests and we do not want others to get hold of our money. Fine, he knows very well that we all have a common interest in that respect but what he cannot do is just fill the argument in an attempt to discourage me from pursuing a particular line because he is not going to. At least I will go as far as I think I can safely go without doing what I consider to be damage to the national interest. Because, Mr Speaker, I thought that he was going to give me the answer when he said, "Well, the Social Assistance Fund. Import Duties goes to Social Assistance Fund, then the European Community law says it is alright." And I said does he have a point? Could this justify it? Of course, it does not justify it in relation to the subvention to the Gibraltar Health Authority. So that is the first argument. European Community law does not care whether the Gibraltar Health Authority gets its subvention or it does not. So that argument certainly would not explain why the subvention to the Gibraltar

Health Authority now comes from the Social Assistance Fund. So we do not know how much the subvention is as opposed to from the Consolidated Fund as it used to before. Well, we knew at least what the subvention was and certainly as regards the Hansard that he quoted me from, what I was saying was that there was a sum of money voted which represented x percent - if he said that I said 25% then I take his word for it - and that I knew that I was authorising the Government to spend x million pounds on the Health Authority but that I did not know - now that the Health Authority was an independent authority and not a Government department - whether how much of that money they were spending on bandages or on salaries or on all the Heads that used to appear as expenditure under the vote for the Health Authority. For him to say that my position now is no different is, with the greatest of respects to him, not the case. Then at least I knew how much he was spending on the subvention. Now I do not even know that. Before I knew how much it was but not exactly how it was being spent. Now I do not know either how it was being spent or how much is being spent in the way that I do not know how. How can he possibly believe that my position is not worse now than it was when I said that whenever it was last year, I find mindboggling and frankly a distortion of the reality? But he has said it. Mr Speaker, as to what other colonial constitutions provide, he has told me what they provide, what he has not told me is what they produce by way of estimates. If the Chief Minister stands up in this House and says that he knows for an incontrovertible fact that every colony that has such a constitution, not only has such a constitution, but produces estimates of revenue and expenditure in the truncated and efficient manner-efficient in my opinion - that he has laid before the House, then he has the beginnings of a point. But he has no point at all, if all he says is that they have got the same constitution. Now I want to know what they think constitutes compliance with that provision in their constitution. Even if that were the case I still would not be motivated to withdraw my challenge. Mr Speaker, because, frankly, as he well knows, to the fact that something has been done wrongly for many years and of course if it is being done wrongly for many year by the same English Government department, it should not surprise him that they perpetuate the mistake. Therefore the repetition of the mistake when it is always made by the same person, is hardly evidence that the mistake is not a mistake but is correct. With the greatest of respects, if he came and told me, what is the Foreign and Commonwealth Office going to advise the Chief Minister about my motion? To say, yes, Caruana is right would be to say and we were bloody idiots, I withdraw, and we have been fools in relation to all our other colonies and all our other constitutions for the last....I do not know if this goes back three hundred years or whether it is something that they have alighted on more recently or whether we were the first in 1969. But still the fact that they now cling to the same argument, is not something, frankly, that I find impressive or even persuasive. I do not see what option they would have. Mr Speaker, I

think the Chief Minister, at least, was politically honest, if not, at least, in answer to my points on their merits, he was at least politically honest when he says "Look, Mr Caruana may not like it but I have got the mandate of the people. I was doing this before. It was an existing tool I admit it, and therefore if I can use existing tools more extensively or more effectively or for greater purpose than used before, so be it." The question to which I have not had an answer is why it is necessary to use that tool. Is he not impressed at least by one of my arguments which is this? If this existing tool is correct, it gives him the tool to remove the need for an appropriation bill, altogether. That all the sections in the Constitution relating to the need for appropriation and the Consolidated Fund fall by the wayside, become meaningless mambo jumbo without any application and that it therefore lies in the power of the executive of the day by using this tool to simply empty the Constitution of all meaning. If nothing else that I have said this morning appeals to him as being an indication of the politically outrageous character of what he is doing, surely that at least, must strike him as an unusual feature of the powers of the executive, that it should be able to render nugatory whole sections of the Constitution at its whim. Courts will interpret the Constitution, if in doubt as to what it means, by what the legislature 'must' have meant. If what the legislature meant is not clear. I say that what the legislature meant is crystal clear, but if it is not clear and the Court has got to try and work out what it is that Parliament meant when they gave us the Constitution, I am confident, supremely confident that no court of law is going to find that what the Parliament must have meant is let us put (a), (b), (c) in the Constitution but let us give the Government of the day the right to reduce it to nil by this existing tool which we simply use to make our economic policy more efficient. Of that, at least, Mr Speaker, I am confident as to what a court of law would decide. Mr Speaker, the Chief Minister has this tendency to misquote me and I cannot say that it does not happen to me as well because it is very difficult. We do not always take a verbatim note of what he said and then when you try to reply "I did not say as he says that I said that he cannot do this politically." Of course he can do it, he is doing it, is he not? I have not said that he cannot do it politically. What I am saying is that to do it is a political abuse of the legal framework and of the Constitution and that he should not do it but as to the physical possibility of doing it, I can see all too well and all too easily that he is doing it. He asks me rhetorically "Let Mr Caruana tell me how I can do it. How I can administer the economy efficiently. How I can do all the miracles that I am presently performing without recourse to this tool." The answer is simple. I will tell him now. Why cannot he do it using the Consolidated Fund? Why not? It would not hinder him in the least. It would not mean that he gets less money than he now gets. It would not mean that he can spend less money than he now spends or that he could spend it on different things or not. The only thing that he gains by doing it as he does now is precisely what

the motion complains of. I get less information. This House gets to express the view on less of Government expenditure. This House finds out less about Government's revenue and he keeps more cards close to his chest, which is what he is obsessed with doing in general. That is what he gains and nothing else and he loses nothing else. And is he not impressed with my points, obviously not, so to that extent my question is rhetorically? By diverting all the funds as he could do to special funds from the Consolidated Fund, not only does he render nugatory the Constitution as I had just said, but that he renders this House ineffective without a role in relation to revenue raising measures, but that he would now render it irrelevant in relation to expenditure approval. How does he think, as he said in 1988, that this House should be the watchdog of public expenses? I am sorry that he thinks that I am not fit to be the watchdog of the Kennel Club. That is hardly compatible with some of the other things that he has said today but still I accept that he is irritated. I accept that he lost control and I accept that he said things that I am sure he does not believe to be strictly true. Whatever my lack of ability, as he sees it, to be the watchdog of such a brilliant economist as himself. I say that with tongue in cheek. Whatever lack of ability I may have, I certainly have less ability thanks to the way he organises Government affairs that I might otherwise have and instead of helping a poor unfortunate ignoramus like myself, what he is actually doing is making my position worse. If he were genuinely interested in assisting this unfit person to be his watchdog, what he should be doing is giving me more information and not giving me less. If he is interested only in appealing to those people that are going to be impressed when the Chief Minister comes on television and throws bits of paper at people that he is debating with; and if he thinks that people are going to be impressed by listening to him get angrier and telling Caruana that he is not fit to be the president of the Kennel Club; and if that is the level of debate in which he is interested, then I accept that I can never beat him at it. But I can never beat him at it simply because I am not prepared to indulge in that style of debating myself. If he is interested in intellectual debate, he knows very well that what I am saying is right and he knows very well what I am saying and whether he misrepresented me or not in his replies, he knows very well what I am saying.

MR SPEAKER:

Could I just ask one question to the Leader of the Opposition how much longer do you reckon you will be talking for?

HON P R CARUANA:

Mr Speaker, if you are interested in adjourning for tea I recommend it thoroughly.

The House recessed at 5.10 pm.

The House resumed at 5.40 pm.

HON P R CARUANA:

Mr Speaker, I said before the recess for tea that I thought that the Chief Minister was going to give me the answer as to why it was necessary for him to do things in this way and that I thought it was going to come when he mentioned that the European Community law allowed import duty to be used for particular purposes, for example, alternatives to the pensions schemes. But, Mr Speaker, it then did not amount to an answer because European Community law looks at what the Government is spending, not on what the Government spends through the Consolidated Fund or what the Government spends through a special fund and if it does it through the Consolidated Fund, it is caught by Community law but if it does it through a special fund it is not. That might apply to the companies and things that they do to companies like subsidising the shipyard. They can do it through a company but not directly. That is all very well but it does not amount to the explanation as to why, as a political necessity, they feel that they want to divert revenue and therefore expenditure away from the Consolidated Fund and into the special funds. The Chief Minister again in his explanations mentioning the £10m loan agreement that he had from a particular bank and that he had not used it and I can only emphasise what I said when I first spoke. That I am not concerned with what he has done or what he intends to do. I am concerned with what he might do and what he has the power to do and what I have not got the power to see if he does. Mr Speaker, he launched a tirade of personal abuse on me on the basis that he has explained about the Improvement and Development Fund and the lending to the companies. It cannot have been the seventh time because if it was the seventh time at the budget session that must have been by now the eighth or the ninth time and it is all part of his campaign. Mr Speaker, what relevance is that? I explained that to him and I did it in my own address in an attempt to prevent him from doing what he did yet he had to explain it all to me again and trying to score little brownie points on that basis. He knows very well that I understand how his borrowing was structured. The fact that that is how he has chosen to do it so far and he offers it as an explanation and therefore everything that I have said is bunkum. No. He has so far chosen to spend borrowed money through the Improvement and Development Fund in a manner that requires an appropriation bill under an Ordinance that he says that he might now change. But anyway the fact that he has done that does not mean that tomorrow he cannot do it differently and

I am not concerned with what he did last week or last year or what today is his intentions about what he is going to do the day after tomorrow. What I am saying is that he has erected a structure which entitles him to do as he pleases and I am grateful to him that sometimes he pleases and chooses to do things properly, otherwise you would be doing it improperly all the time. The question is not whether sometimes he chooses to do it properly. The fact is that he has the choice and I cannot influence his choice or influence when he can choose or when he cannot. The fact is that the structure enables borrowed money to be spent other than through the Consolidated Fund or the Improvement and Development Fund.

HON CHIEF MINISTER:

What do you mean by improperly?

HON P R CARUANA:

In what context? I beg your pardon.

HON CHIEF MINISTER:

In the context that you have just used it. It enables him to use it improperly. Improperly what?

HON P R CARUANA:

I cannot remember the context in which I have used it but certainly it was not improperly and again I have emphasised a million times in the context of misappropriation of funds if that is what he is concerned with. If I used the word 'improperly' and I cannot now recall that I did but if he says that I did I must have. What I am saying to the Chief Minister is that it is all very well for him to say what Caruana is saying about how he can spend borrowed money without coming to the House and in reply to that allegation say "But look I come, I do it through the Improvement and Development Fund. The man does not understand, I am going to explain it to him for the ninth time. The money goes to the company. It comes back. I give it to Mr Feetham for his Improvement and Development Fund and we come to the House." The question is not that that is what he did last week or next week. The fact is that he does not have to do it that way if he does not want to. He does not have to spend borrowed money through the Improvement and Development Fund or through the Consolidated Fund. He can now spend borrowed money through any special fund that he likes. Therefore, let him not come to say that to use the Improvement and Development Fund demonstrates that what I am saying about loss of the control of this House is irrelevant. What is irrelevant is his offering that as an answer to my allegation when it is no answer at all. Whether I do not understand or I do not care..... There is a third option and I will not repeat it again. The third option is that I understand and I care. The question is not that I understand or care to hear what

he has done or what he explains at nauseum, is his intention to do or not to do. The question is that the structure exists for him to do it and that is the third option. It is not just whether I care or whether I understand. I do understand and I do care. I do not know if he knows whether I care. He knows very well that I understand. The Chief Minister can take it from me that I would be most surprised if he thinks that he has the intellectual capacity to understand and think that I do not. If that is what he thinks, let him say it. I do not think that my professional training and my professional background and my educational and academic background and my qualifications to read simple accounts are necessary to know when I am having less dangled infront of me than I had dangled infront of me last year. I think that if he looks at my qualifications for that he will find that they are not worse than his, to put it not more strongly than that. He stands there pompously and asks me whether I am conducting a political attack or whether I am interested in his lecture or whether I am interested in the explanation. The answer is, Mr Speaker, that of course I am launching a political attack. I do not come to this House to be lectured by professor Bossano. Of course, I am launching a political attack. It is clear from the motion that I am launching political attack and I do not necessarily accept the explanations of the Chief Minister as if they were the gospel. I am glad that the Chief Minister raised the question of optical illusions because of course the rules of the House would not otherwise have allowed me to raise them since it would be new. The optical illusion to which I referred in the general election meaning that the fact that floors were going up in Europort and in other places did not necessarily mean that the economic activity that would create the economic wealth that we are all aiming for, was also being created. The optical illusion that office space equals or might equal or was capable of equalling economic activity to fill those office spaces has been blown out of the water, not for the first time, but for the second time. The first time was when we discovered that they were going to put a hotel in what was all going to be offices before and now there is a hospital and, therefore, this office space that was going to be the salvation of the economy is now less and less and less of the space that Europort is going to be now. From the developers point of view what the Chief Minister said publicly is quite right. From the developers point of view, they can fill the space with a hospital and with a hotel rather than leave it empty, of course, that is what they must do. Of course, that is right from their point of view. But the optical illusion begins to manifest itself. Mr Speaker, I am grateful to the Chief Minister for his explanations as to how he has structured the Social Assistance Fund and the divisions and how much he pays for each but really the fact that he had to give me that

explanation proves one of the points that I am making. That information that before I used to have the moment I opened my estimates now I need to wait until he gives me a voluntary explanation in this House, to know the Social Assistance Fund is divided into those three things and that £6m roughly is the contribution to the Health Authority; £6m is the home-ownership. I think I heard him say, that it was roughly a third in each of the three areas. Everything that we do, he says - if I have taken a note of him accurately -is to run a well run and efficient system and economy and to minimise the claims of others. That may very well be true. That is not what I complained about in my motion. What I complain is that even on the assumption that what he says is correct, he is doing it in a way in which I am less able to see it. In which I am less able to monitor that it is true and in a way that I am less able to act as a watchdog. It is true, the fact that I am less able to monitor it and that I complain that I am less able to monitor it, does not mean that he is not doing his job properly. It means simply that if he ever stopped doing his job properly my chances of finding out in time are reduced. Mr Speaker, the Chief Minister's drive for the independence of this community - let us say for now that all he meant to say was the economic independence, since we are discussing after all matters general to the economy-does not require him to not give the estimates of revenue or estimates of expenditure. I do not see why it is necessary to raise his political aspirations to the future development of this community in a reply to allegations that he is not giving me enough information. The suggestion presumably must be that the more information that he gives me the less chances are of achieving economic independence and I think that that is a logical non-sequetur, Mr Speaker. The Honourable the Chief Minister said that he has not treated my motion as one alleging a reduction in democracy but rather one based on legality. Well I am sorry that he should have done that, because to that extent really we have been at cross purposes for most of the day because I was at pains to try and make clear that what I was doing was the contrary. In other words launching an attack on a political basis because I do not see how the Chief Minister could possibly interpret the last six lines of my motion as being anything other than a political attack. As a cry in the face of what I see as a diminution in democracy in Gibraltar. How he thinks that the words "and notes with regret and concern that the financial information relating to the Estimates of Revenue and Expenditure available to this House is incomplete and reduced to the point where the role of the House in general and the Opposition in particular to act as watchdog of public money and expenditure is severely prejudiced" are a legalistic attack as opposed to one which bemoans loss of the democratic function of this House to act as a watchdog of the public purse, is really a conclusion to which I do not think the Honourable the Chief Minister was entitled to come. Not only because it was obvious from the wording of the motion that it is clearly intended

to be a political rather than a legalistic attack because even if it had not been clear, I went to the trouble of repeating that, I thought perhaps, too many times. But obviously not often enough. Mr Speaker, that concludes what I have to say on my motion. Obviously, the motion that I put to the House will not come to be voted upon because one must presume that the amended motion is the one that will ultimately remain on the table to be voted on when we finish in a moments time and I wish to say nothing in relation to the amendment.

Mr Speaker then put the question in the terms of the Chief Minister's amendment to the Leader of the Opposition's motion and on a vote being taken the following Hon Members voted in favour:

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

The following Hon Members voted against:

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

The amended motion was accordingly carried and the original motion defeated.

HON LT-COL E M BRITTO:

Mr Speaker, I have the honour to propose the motion standing in my name which reads:

"This House resolves that a select committee be appointed to be designated the Select Committee of Public Accounts to examine the accounts showing the appropriation of the sums granted by the House to meet the public expenditure and such other accounts laid before the House as the Committee may think fit and to report from time to time."

Mr Speaker, let me say first of all that the wording of this motion is exactly the same as the wording that has been introduced on two previous occasions in this House when a public accounts committee has been introduced and it is also the wording that is traditionally used both at Westminster and throughout Commonwealth parliaments. The Opposition, Mr Speaker, brings this motion to the

House for two reasons. The first reason, Mr Speaker, is because there are fundamental principles at stake. The first of these is that all funds appropriated by any democratic parliament are authorised by that parliament for expenditure for specific purposes and it is therefore the responsibility of the parliament as a whole and not just of the Government to ensure that the funds are properly accounted for and have been spent for the purposes authorised by parliament and in accordance with the law and any relevant regulations. The second fundamental principle , Mr Speaker, is that the elected representatives in any democratic parliament have a duty to ensure that the public is getting the best value for money in respect of three basic principles with which Government departments and other bodies are using the resources. These basic principles are economy, efficiency and effectiveness and in furtherance of these fundamental principles most democratic parliaments and certainly all those based on the Westminster model have a mechanism for scrutinising public spending. One of these mechanisms is a public accounts committee in which Gibraltar is one of the few if not the only exception in that it does not have one although as I have said before we have had one in the past. The second reason for introducing this motion, Mr Speaker, is that at the recent general election it was the manifesto commitment by the Opposition to introduce a public accounts committee if elected 'into Government. We consider it an essential part of any parliament to have one, we are therefore proposing that one should be set up. Mr Speaker, some might say that to bring this motion is a waste of time because the Chief Minister in answer to Question 102 of 1991 said that it was GSLP policy not to have public accounts committees and therefore it would be reasonable to expect the motion to be defeated. However, I put it to Members opposite and to the Chief Minister in particular, that the reasons given then in answer to that question as the basis for the decision not to support, in principle, the setting up of the public accounts committee are based mainly on the experiences of the period from 1978, when a public accounts committee was first set up in Gibraltar, to 1984 and is, in a way, an outdated misconception on the way on which the role of public accounts committee has evolved and developed during this time, especially, with respect, to that in UK in the House of Commons. This has followed directly on development since the National Audit Act of 1983, which in itself took a much more dynamic view to audit in relation to the reduction of public expenditure. During the recent Commonwealth Parliamentary Association Conference in Guernsey, I participated in a debate on parliamentary scrutiny public spending in which public accounts committees, to a certain extent, feature. I have also researched what has been said by speakers from many Commonwealth countries at previous conferences including a very interesting contribution by the Honourable, as he then was, Mr Restano, at the 1981 plenary conference. Not to suggest Mr Speaker, that he is not honourable now. But honourable with a capital 'H' then,

honourable with a small 'h' now. From the experience of the conference and contact with CPA members there and from the speeches of other members from a wide variety of countries at previous conferences, three main criticisms of public accounts committees and their activities emerged. It strikes me that with a will to have this parliamentary scrutiny these main problems can certainly be overcome and I think this is the crux of the matter. This is what I put to the Honourable the Chief Minister. The crack is whether there is a political will on both sides of the House to have parliamentary scrutiny of public spending because if there is a political will, then some of the reasons that the Chief Minister gave, like, for example, the question of time consumption and Ministers being too busy and so on, is just not a good enough reason for not having the scrutiny. It is a question of finding a way round the problem and finding a way of having the time. I am not suggesting that this is one of the answers but one of the things that I came across in my research was in one particular country, which escapes me at this moment, where because they had a similar problem to us in that they had no back benchers and that only Ministers were involved, they were in fact using ancillary bodies like the Chamber of Commerce or the Rotary. I am not suggesting that that is necessarily the answer. What I am saying is that, in principle, there can be ways found round the problem of Ministers not being available or if they are available not having enough time. The main criticism, Mr Speaker, of public accounts committees is that their recommendations usually come too late to be of any practical effect and the reason for this, as Members on the other side are aware, is that the activities of a public accounts committee are directly connected with the report of the Government Auditor, Principal Auditor, whatever his name or function is in a particular territory, and on the annual accounts and his report and his comments. Usually in small territories these accounts are published quite a number of months after the event and by the time the committee has met and presented its report any action that they recommend is far too late and in essence I agree with this problem. It is obvious from the views expressed by a lot of the speakers that they were all very conscious of this problem and all trying to see how they could solve it. There was a very lucid explanation, in fact, by a former finance Minister of Malta, Mr Lino Spiteri, in Guernsey. A gamekeeper turned poacher or visa versa, in which he laid great stress on this, on the importance of the activities of a public accounts committee being on proposed expenditure rather than on exposed expenditure because by the time it is exposed then it can be too late. Therefore, the modern tendency, especially in the House of Commons, is to monitor expenditure as it is happening or as it is about to happen rather than months or even years later after it has happened. The second criticism is that the government auditors department or whatever name it goes under although independent, is usually part of the executive and most speakers of Commonwealth countries tend to feel that it would be preferably for it to have a closer link with the legislature. This is certainly the way things have developed in UK since the

1983 Act, with the setting up of the National Audit Office and making this independent of the Civil Service and having much closer links with the legislature. The third criticism that emerges is that in many small countries, the terms of reference and the activities of the public account committee are too closely linked to the Westminster model and this does not allow it to work as well as it ought to in many cases. Despite these three main criticisms and other minor ones, the most notable point that emerges is that not one single country other than Gibraltar either recommends that the public accounts committee should be abolished or that there should not be one. Every single speaker, every single speech that I have read, every single contribution made in Guernsey, every single CPA Member that I spoke to were to a man unanimous in recommending that public accounts committee should exist in any democratic parliament. Their interests, rather than in doing away with public accounts committees, is on how to improve the workings of the committee, how to do away with the deficiencies, how to help the committee to maintain the principle of parliamentary democracy and how to see that their existence continues to be an active deterrent to corruption and to the misuse of public funds. I can do no better than to quote from an article in the April issue of 'The Parliamentarian' which has just reached most of us, in which Mr Quinn, a Member of the House of Keys of the Isle of Man, in an article titled "Spending controls - financial responsibility in the democratic process", analyses precisely the problems that I have been talking about, goes into detail into the difficulties and problems of public accounts committees in doing their work and carrying out the scrutiny effectively but despite innumerating all the problems, despite saying all the difficulties, like all the other speakers I have come across, he concludes his article with the following words, and I quote, Mr Speaker, "Financial responsibility in the democratic process is a desirable but invasive objective. Parliamentarians who seek scrutiny of the Executive's expenditure programmes may well have to settle for much less than they deem desirable. Perhaps they shall end up questioning whether effective parliamentary control of or influence over public expenditure is achievable. Of one thing I am certain. It would not be in the interest of democracy for parliamentarians to stop trying to effect control of or influence over public expenditure." Mr Speaker, I draw the attention of the Government to the fact that there is no time factor implicit in the terms of the motion and in this respect I urge the Government to support the motion rather than defeat it, until they have had a chance to give further and more detailed consideration to the points that I have raised and that I am about to raise in the knowledge that even if the motion is passed, they can leave the setting up of the public accounts committee pending indefinitely. As Members opposite know, there is at least one precedent for this. In the last House of Assembly we passed a motion to appoint a committee to study the possibility of televising life the procedures of this House and such a committee has

not yet been appointed. So there is nothing to stop us approving the motion today and then leaving the matter pending until the Government has either had a chance to carry out further studies or alternatively for the Government to amend the motion so that a select committee or a committee of the House is set up to study the whole question further. Mr Speaker, I am asking the Government to support the motion rather than defeat it for three main reasons. Firstly on the contention that the basis for the Government's decision not to support the public accounts committee has been made obsolete by developments in UK since the 1983 National Audit Act. Secondly, on the contention that the main criticisms that emerge throughout the Commonwealth about the workings of public accounts committees, can be overcome by producing a custom made local version of the UK developments since the 1983 Act and thirdly on the contention that it does little credit to Gibraltar's efforts to establish itself as a modern democracy and to its credibility and financial stability when doubts are cast about the effectiveness of scrutiny of its public spending. Mr Speaker, it would go beyond the scope of this motion to substantiate in detail the basis of the three contentions that I have made. I will simply try to summarise the arguments by quoting from correspondence I have received from the Journal Office of the House of Commons. This is from a letter from the Clerk of Journals from the Journal Office from the House of Commons in which in answer to my request has provided me with a lot of information but this is a letter based on some of his own additional information on how public accounts committees work. I quote from the letter. The first quote is "The Controller and Auditor General's powers were substantially (this is of course the equivalent to our Principal Auditor) revised by the National Audit Act 1983 which established the National Audit Office and separated its staff from the mainstream Civil Service and its hitherto close relationship with the Treasury. The Controller and Auditor General has long been an officer of the House of Commons. He is now also the head of a distinct department. It is notable that the extension of the powers of the Controller and Auditor General were a Government and not an Opposition initially, though it is fair to say that there had been for some time debate going on in political circles and in the Civil Service about bringing in the Controller and Auditor General's work closer to contemporary auditing requirements." The second quote says "The Public Accounts Committee's work is closely linked to the Controller and Auditor General and his department, the national audit Office. It is fairly unusual for the Public Accounts Committee itself to initiate an inquiry. Perhaps only once or twice a year. Most of its reports are based on value for money and audit inquiries carried out by the National Audit staff acting on their own initiative. Indeed the link between the Public Accounts Committee and the National Audit Office is so close that it has for some time been the practice of the Controller and Auditor General's Department to draft the reports of the

Public Accounts Committee. The evidence taken by the Public Accounts Committee is directly in respect of any one inquiry is sometimes not more than an hour's questioning of the Permanent Secretary on the report made to them by the Controller and Auditor General." The third quote "The Public Accounts Committee does not deliberately set out to question Government policy. Its eyes are firmly focused on administrative property and efficiency, though, like the National Audit Office, the Public Accounts Committee considers value for money and on this ground may in fact criticise policy decisions. It is rare for members of the Public Accounts Committee to act in a party political manner though they sometimes score political points of one another when questioning witnesses. However it is tacitly recognised that politicisation would discredit the committee's findings and for the same reason there is no ministerial pressure." The final point, Mr Speaker "An audit report sent to the Public Accounts Committee is first agreed with the Permanent Secretary of the department concerned. Some negotiations on an agreed text are lengthy but a final text is invariably agreed and when the Permanent Secretary gives evidence to the Public Accounts Committee, which nowadays usually meets in public, remedies to avoid the repetition of shortcomings are usually in place. A public accounts committee is, therefore, in many ways a long stop to an extensive auditing operation. The specialist role of the Public Accounts Committee should be remembered. It does not monitor departments from day to day. This would be quite impossible." Mr Speaker, I can think of no better way to finalise my intervention on this motion and no better way to stress the importance of a public accounts committee to underline the advantage to the Government, rather than to the Opposition, of such a committee and to make a final attempt to convince Members opposite to support the motion than to quote for the last time from the correspondence with the Journal Office of the House of Commons. The quote says "I think our Public Accounts Committee and National Audit Office system is very successful, not only in deterring corruption and maladministration but also in promoting efficiency. It should not be seen as an instrument of the official Opposition. On the contrary, possessing a machinery which removes it somewhat from party political and administerial influence operates overall to the benefit of the Government of the day. Government cannot be credibly challenged for maladministration on aspects of its functions if these have been given a clear bill of health by bodies of the standing of the National Audit Office and the Public Accounts Committee." Mr Speaker, I commend the motion to the House.

HON CHIEF MINISTER:

Mr Speaker, this will not take very long. The answer is no. It was no in 1992. It was no in 1988. It was no in 1984. It was no in 1980 and it was no

in 1978. That is to say we have never supported a public accounts committee. None of the arguments that the Member has used are new and it is not that we have not supported it in Government, I was offered the chairmanship of the Public Accounts Committee in 1978 when it was set up and not only did I not take it up, I refused to have any part in it at all and I did not support its setting up. Our policy is that we do not believe that there is any useful purpose as far, as we are concerned, in our political philosophy when we were on that side of the House. We had nothing to do with it. The Member may go back through the Hansards and the correspondence if he is interested on what went on when the matter was first raised by Mr Maurice Xiberras, I think it was, and originally resisted by the then Chief Minister, Sir Joshua Hassan, who did not think it was a good idea, but eventually he came round to doing it. I think the first Public Accounts Committee, if I remember, was chaired by Peter Isola and had Gerald Restano in it and Brian Perez, who was then a backbencher in the AACR Government on the grounds that it should not include a Government Minister. The experience that they had was not particularly impressive - not that that, of course, is an argument for saying a future public accounts committee would not perform better with different people than the last one did. Certainly they became dissolutioned with the performance of the Public Accounts Committee, but in any case, we were against the idea from the beginning. We continued to oppose it throughout its existence. Eventually in 1984 when we were the seven Opposition Members, the AACR dropped it because obviously we would not support it. We would not support its continuation and there was no point in them carrying on with the Public Accounts Committee which has the Government in it. In 1988 when we came into office we made no attempt to revive it and Mr Canepa by then was not pushing for it either because in any case I do not think they were all that keen on it when they were in Government. I am well aware of all those arguments but we will have nothing to do with a public accounts committee in Government or Opposition because we do not believe in it and therefore it will be pointless to say we will vote so that we have more time to think of it. We have been thinking about this one since 1978.

MR SPEAKER:

If there are no other contributors I will ask the mover to reply.

HON LT-COL E M BRITTO:

Mr Speaker, I am naturally disappointed at the answer from the Honourable Mr Bossano, not entirely unexpected, but I had hoped that I might have said enough to have persuaded him at least to have given it a little bit more time, especially because, with respect to what he has just said, respect to him not to what he has just said,

what he has just said is not entirely accurate because when in 1978 the first Public Accounts Committee was set up, and I have the copy of the Hansard here, the Honourable Chief Minister at the time Sir Joshua Hassan was saying, I think he was speaking about the Honourable Mr Bossano, "I think he might have made a very good contribution to the Committee having regard to his knowledge of the budget and so on, but he said that his commitment to his trade union work prevented him from dedicating the time that was required to carry out his work." There is no contribution from the Honourable Mr Bossano in this debate about being against public accounts committees and in fact voted in favour of it when it was set up. It was not that he said no as he said earlier. He actually voted in favour and when the next Public Accounts Committee was set up in March 1980, again there is no contribution from the Honourable Mr Bossano speaking against the Public Accounts Committee and once again he voted in favour. So he did not say no as he told us when he introduced his speech. I also cannot agree with him that the experience of previous committees was not "particularly impressive" because reading through, which I have no intention of doing, Mr Restano's contribution in the 1981 CPA plenary session, it is quite obvious that the Committee was working very satisfactorily and he reports in glowing terms from the workings of the Committee to the CPA, so much so, that those other members who had expressed reservations previous to him speaking took on board some of the points that he had made and said that he would be very interested in bringing them up in their own legislatures when they got back. In fact Mr Restano speaks about the cooperation of Government Ministers on the Committee. He says that as Chairman he had been worried about Ministers not being able to cooperate effectively and in fact he says "My fears were unjustified and the Ministers who sit in the Committee had been very cooperative". So I cannot agree that Committees have not worked in the past. Obviously they have. In conclusion, Mr Speaker, I must go back to the point that I made half-way through my speech. With respect to the Honourable the Chief Minister I am not at all convinced by the reasons that he has given. At the end of the day it is a question of political will whether there should be parliamentary scrutiny of public spending or not and it is obvious that on that side of the House there is no political will to have the parliamentary scrutiny. From what I said initially he did not feel that strongly about it himself because he supported the principle on two occasions in 1978 and 1980 and I cannot but reach the conclusion that now on the other side of the House, now in Government it suits the Government policy not to have public scrutiny just as in the previous debate that we have had today it suits them to adopt measures which we have tried to censure in a motion earlier on today.

Mr Speaker then proposed the question in the terms of the motion moved by the Hon Lt-Col E M Britto and on a vote being taken the following Hon Members voted in favour:

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

The following Hon Members voted against:

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

The following Hon Member abstained:

The Hon P J Brooke

The motion was accordingly defeated.

HON LT-COL E M BRITTO:

Mr Speaker, I have the honour to propose the motion standing in my name which reads:

"That this House is concerned that

(a) The contents of the report from The Timber Research and Development Association of Great Britain (TRADA) express the opinion that tests carried out on a door from Westside Development (Phase I) show that it would fail to achieve a fire resistance integrity performance of thirty minutes as required by law;

(b) There is a possible threat to the safety of occupants of flats in the Westside Development (Phase I) if the contents of this report are correct;

(c) There is an apparent contradiction between the contents of this report and those certificates in the possession of the Chief Fire Service which certified that the doors are of the required standard;

and calls upon Government to commission independent technical investigation and testing to establish whether the doors and accessories installed in Phase I of the Westside Development satisfy those sections in respect of fire safety of the Building Regulations and of the British Standard Code of Practice which are applicable to Gibraltar."

Mr Speaker, when all is said and done, this motion is about life and death, or should I say, the increased risk of death to the occupants of a flat or of a building if a fire starts and fire prevention measures have not been adequate. I urge Members opposite and indeed those officials with responsibility in the field of fire prevention to understand that this is the spirit in which this motion is presented to this House and to accept that if there is reasonable doubt, then there should be investigation to remove that doubt. Mr Speaker, in a motion of this nature, it is unavoidable that some degree of technical detail will find its way into the speeches at some stage. I have tried, in preparation for this motion, to do my utmost to keep this to an absolute minimum but some will be unavoidable. I appreciate that this can cause confusion and can even be boring and uninteresting to Members on the other side. To try to establish the scenario, as it were, I will try to summarise the situation succinctly without going into taking of details and then I will develop these individual facts that I will now bring out individually later on to make the situation clear. Mr Speaker, the situation is as follows. There are a number of facts that we have to take into account. Fact No.1 is that by law in any new building, any new development, including housing, all rooms, with the exception of bathrooms and toilets, must have self closing doors which are at least thirty minutes fire resistant. Fact No.2 is that there is a law enforcement requirement for this and that therefore before a certificate of fitness can be issued to allow the building to be used, there has to be an inspection by the relevant authority, in our case, the Fire Brigade, who must be satisfied that certain regulations and parts of the code of practice which are their responsibility have been met. This applies to all buildings in general. We now come to one particular item - the nigger in the wood pile - the direct cause of this motion which is the existence of a report from - it has been mentioned in the actual detail of the motion - a body called TRADA, The Timber Research and Development Association, a very reputable company within the British Construction Industry which has carried out tests on a part of a door taken from a flat in Westside Development (Phase I) and sent to UK. They have presented a report which shows that their opinion is that if a complete door in its frame were tested fully in a proper test, which has not been done yet, that this door would fail the full test that needs to be carried out. In other words that it would not be thirty minutes fires resistance. Fact No.4 is that, according to a letter that I have received from

the Minister for Government Services, the Fire Brigade is in possession of certificates that say that doors at Westside are thirty minutes fire resistant. Obviously, Mr Speaker, the situation is, and in fact No.5, that we have a direct contradiction. There is a report that says that one door has been looked at by a reputable UK testing centre and they feel that similar doors would fail the test and there are certificates in existence that say the contrary. One thing is obvious. They both cannot be right. One of the two must be wrong. That implies, the sixth fact which is that if the doors are not fire resistant to thirty minutes, as required by law. Then there is obviously a threat or shall I say an increased threat, to the safety of the occupants of those flats. Increased over what the threat would normally be if fire precaution measures were what they ought to be. Finally, Mr Speaker, fact No.7, is the insurance position which is a hypothetical one at the moment, but it is obvious that long term, if this situation were to remain unclear or unsolved, future claims on fire insurance companies might well become very complex matters and might well become very difficult to solve if there is some doubt about the fire precaution side of the doors. Mr Speaker, before we look at some of these individual facts in more detail, I would like to put on record the various actions that the Opposition has taken to try to establish the facts before resorting to bringing this motion to the House. I have to say, Mr Speaker, that at the various stages, we have found little cooperation either from the Government or from other entities involved and we have therefore had no option than first of all to bring the matter to this House at question time in the earlier part of this meeting and now in this motion because at question time did not bring out the answers that we were seeking. It all started back in late January early February of this year when unconfirmed reports began to reach Members of the Opposition about the degree of fire resistance or lack of adequate fire resistance, of the doors at Westside. I stress unconfirmed reports of reluctance by the Fire Prevention Department of the Fire Brigade to certify that these doors were thirty minutes fire resistant. In the view of this persisting rumours and approaches and questions by members of the public, on the 27th February, as Opposition spokesman for Government Services, I wrote to the Honourable Minister for Government Services asking for confirmation that the Chief Fire Officer was satisfied and I quote from my letter "That those Building Regulations and sections of the British Standard Code of Practice which are applicable to Gibraltar and relevant to the responsibilities of the Fire Brigade have been complied with as hitherto interpreted and enforced by the Fire Brigade in respect of Phase I of the Westside Development". Whilst waiting for a reply from the Minister, which incidentally never arrived, on the 3rd March, I sent a faxed message to Procon Limited, the project management and design consultants of the Westside Development and my fax read as follows: "It would assist me in allaying the fears of those concerned about the degree of fire resistance of the doors installed

in Phase I of Westside I, if you would send or fax me a copy of the manufacturer's certificate to which you referred during our telephone conversation last Friday, as confirming these doors were thirty minutes fire resistant. Anticipated thanks". And to this fax I received the following answer from Procon and once again I quote, "Thank you for your fax of the 3rd March, 1992, concerning the fire resistant doors on Westside I. I regret that I am not authorised to copy contract documents to third parties. However, I can assure you that the Chief Fire Officer has a copy of the relevant certificate and he is satisfied with it. I suggest that if you wish to pursue the matter further you take it up with the Chief Fire Officer." Which of course by convention, Mr Speaker, I am not able to do. As I said, Mr Speaker, I am still awaiting a reply from the Minister for Government Services. During the course of April, I was given a copy of the report of TRADA, The Timber Research and Development Association. In the absence of a reply to my letter from the Minister for Government Services, I tabled a question (No.52 of 1992) for answer at this meeting of the House which started on the 30th April. In essence this question asked for the same information that I had asked for in my letter. During the course of supplementaries to that question, Mr Speaker, I informed the House of the existence of and, as far as I was concerned, the serious implications of the contents of the TRADA report. Since the Minister's answers were to a great degree uninformative, at least of the information that I was seeking, and in fact the whole attitude on the Government benches, were not particularly helpful in allaying the worries that had been raised on this side of the House by the opinion expressed in the report that the door would fail a thirty minute fire test, on the 5th May I once again wrote to the Minister in the following terms and I quote, "As promised at the House of Assembly last week, I am pleased to enclose a photocopy of the report from The Timber Research and Development Association (TRADA), of the United Kingdom, in respect of tests to a door from Oak Tree Lodge, Montagu Gardens, Gibraltar. In view of the contents of this report, I would be grateful if you would let me know before the resumption of the meeting of the House of Assembly what action, if any, is being taken." In his reply dated 13th May, amongst other things, the Minister for Government Services replied and I quote, "I have gone back to the Fire Brigade and assured myself that the treatment afforded to this development in respect of fire prevention standards is exactly the same as is the case with every other development in Gibraltar. The Chief Fire Officer assures me that he is satisfied that the doors in question are of the standard required and that he has in hand a certificate which needs to be produced by the developer in such circumstances. You ask that I should supply you with copies of the certificates held by the Fire Brigade. These certificates are required to be provided by developers in order to satisfy the standards required by the professionals in the department prior to the certificate of fitness being issued. The scrutiny of these documents is not a matter for political

decision. I therefore do not ask to be shown the certificates myself and I do not agree that you as a Member of the House are entitled to be given copies by the department of information provided by the developers to them." That, Mr Speaker, is the historical background to the presentation of this motion. I now come into some greater detail to the various facts that I started of by painting the overall picture at the beginning of my presentation. I have no doubt that Members will be relieved to hear that I do not intend to quote chapter and verse from the Building Regulations and the British Standard Code of Practice. If I did it would take a fair amount of time. I will assume that the statements that I have already made that all doors except bathroom and toilet ones in new developments, such as Westside, are required to be thirty minutes fire resistant and that this will not be challenged. If it is I will have to refer them to the point when I exercise my right to reply. It is, however, relevant to explain what is meant by thirty minutes fire resistant. Let me say straightaway that it certainly does not mean fireproof or incombustible for a period of thirty minutes. It means that under rigorous testing conditions, under British Standards 476 Part 22 of 1987, the door set in its frame, as you would normally find it in the building, has resisted the passage of flames for a period of thirty minutes. Mr Speaker, this is a test that cannot be carried out in Gibraltar. There are simply no facilities for it and certainly it cannot be carried out by the Fire Brigade. It needs specialist facilities found, not just in the UK, but in specialists centres like TRADA. Let me stress that it is not simply a question of a door, out on the beach or in the middle of a waste piece of ground, setting it on fire and timing how long the door takes to burn. It is a scientific and carefully carried out test that sets the standard for the industry. Before dealing in detail with the report from TRADA, I think it is relevant to explain who the Timber Research and Development Association are. As I have already said, they are a very well known and reputable company within the British construction industry and as the name of the company itself suggests, it deals with research and development of the use of timber in all facets but especially within the construction industry. The company administers formal quality assurance schemes in accordance with British standards for such items as the fabrication of timber trusses, timber doors and windows etc. In respect of fire resistant, resistance of elements of construction such as doors, TRADA is one of the few laboratories of fire consultancies accredited by NMAS, that is the National Measurement and Accreditation Service for conducting assessments and tests. The building research establishment and other approving bodies such as the British Board of Agrement might also be expected to have the necessary expertise to do this. Mr Speaker, in order that the TRADA report appears on the record in Hansard I am afraid that I am obliged to read it in full. Members will no doubt be happy to learn that it is only just over a page and a half long. Before doing so, I must stress once again,

so that Members are aware of this as I read the report, that TRADA did not carry out a full British Standards 476 Part 22, 1987 fire resistance test. To do this they would have needed a complete door and door frame. My understanding, Mr Speaker, is that of a door taken from a flat at Oak Tress Lodge, Montagu Gardens, a section of this door complete with the hinges was sent to TRADA in UK for preliminary tests and an opinion to be carried out. These tests are enough to allow TRADA to form and to express an opinion on what would be the result if the full test were to be carried out and when I read the report now you will see what that opinion is, Mr Speaker. The report is dated 9th April, 1992, and it is in letter form and it is headed "'Fire Doors at Flat Oak Tree Lodge, Montagu Gardens, Gibraltar'. We thank you for your letter of the 26th March, 1992 and enclosures. We have examined the door and hinge sample you sent. Our findings are as follows: The door core consists of a 34.5 millimetre thick chipboard having a density of about 600 kilograms per metre cube. The door leaf is lipped all round with hardwood size 34.5 millimetre times 22 millimetres to 25 millimetres tongued 8 millimetres times 20 millimetres into the edge of the chipboard core. Both sides of the door are geared with hardwood approximately 0.5 millimetres thick. Voids up to 1 millimetre wide exist between the tongue of the lapping and the bottom of the groove and extend across 20 millimetres of the door thickness. We have not been able to determine the length of these voids from the sample available. There is no evidence of the door edges having been fitted with intumescent strips. Two pairs of hinges have been provided per door leaf. The hinges are 100 millimetre long of a soft metal probably aluminium having a bronze effect finish. Steel pins are set in thermoplastic sleeves. Door closing is effected by a coil spring door closer. It is not known if this would be on the risk side of the door or whether when shut will the door be latched. The door frame consists of 29 millimetre times 110 millimetre veneer chipboard rebated 9 millimetres. This is mounted in a lining out of 110 millimetres by 35 millimetres softwood. The joint between the inner and outer frame is covered on both sides of the wall by veneer chipboard architraves approximately 5 millimetres thick at the frame interphase position. Your drawing number "blank" indicates a gap of approximately 5 millimetres at the joint between the two frames. Your drawing shows no indication of any intumescent seal in the frame rebate nor any indication of a seal between the two frames. As we do not know the size of the door, whether they are single or double leaf, nor the method by which they are to be retained in a closed position or which is the risk side, we are unable to estimate the likely performance they would achieve if they were subject to a BS 476 Part 22, 1987 fire resistance test. We are confident however, they will not achieve FD30 performance. In our opinion these door sets are deficient in several respects:-

(1) A rate of charring of chipboard in the order of about 0.75 millimetres per minute can be expected with this density of chipboard. Without the support of a structural veneer the residual and charred chipboard may well collapse in under thirty minutes.

(2) Burning of the door particularly at the head could be expected where voids between the lipping and core exists if they were to exceed 2 millimetres wide.

(3) Similarly the void between frames protected by only a total of 10 millimetres chipboard will induce premature failure.

(4) Early melting of the plastic hinge pin booster will allow the door to drop by up to 3 millimetres producing an unacceptable large gap at the top of the door.

(5) If the hinges are of aluminium they can be expected to melt at about ten minutes into the test. The resulting gaps created will lead to early integrity failure at the hinge positions.

(6) The absence of an intumescent seal round the stiles and head coupled with the increase in door gap size due to the door dropping and the inevitable bowing will allow flame penetration round the door particularly at the head; and

(7) The door closer spring if mounted on the risk side will lose its temper and fail to exert a closing force on the door which if unlatched could well fall open.

As stated, it is our opinion that a full size door set to the details submitted would if subjected to a British Standard 476 Part 22, 1987 fire resistant test fail to achieve an integrity performance of thirty minutes. It is signed: Yours faithfully, John Pilkinton, Fire Engineering Department." Mr Speaker, I draw attention of Members to the thickness of the door as measured in this report, which is 35.5 millimetres. I am advised by experts in this field that doors manufactured in UK which are required to meet the British Standard of half hour minutes fire resistance all have a minimum of 44 millimetres of thickness not 35.5 millimetres, as has been measured in this case. I have here two or three catalogues of British doors. The first one is by a firm called John Carr and I will not attempt to quote from the whole catalogue but there are various thicknesses of doors 35 millimetres, 44 millimetres, but under the heading of the 44 millimetres there is always the note that they are half hour fire resistance doors 44 millimetres. Similarly down the page, half hour 44 millimetre. Another catalogue by a British firm called Hills. Once again half an hour fire shield doors - 44 millimetres thickness. One hour, as a matter of interest, 54 millimetres thickness. I also have a catalogue from Mitchells Building Construction for Components and Finishes where once again they say half hour type doors minimum finish thickness 44 millimetres. So what we are saying

in effect, Mr Speaker, is that we have a door which has been tested having been taken from a flat in Westside which is only 35.5 millimetres thick which we are told from what I am going to say in a few moments, is fire resistance to thirty minutes. A door, which I understand to be of Spanish manufacture whereas in Britain apparently no British manufacturer is able to achieve this with the door of a thickness less than 44 millimetres. I find it difficult to understand that with such a wide degree of thickness that no British manufacturer would be able to achieve the degree of fire resistance required with doors of a thickness less than 44 millimetre and yet it is able to be done somewhere else. This brings me on neatly to the certificates which in his letter of the 13th May, the Honourable Member opposite the Minister for Government Services, told me and I quote "The Chief Fire Officer assures me that he is satisfied that the doors in question are of the standard required and that he has in hand certificates which need to be produced by the developer in such circumstances as I quoted previously." As I quoted previously, he then went on to say that he was not prepared to show me the certificates which if they are available and he had done so maybe I will not be standing up now with this motion and the whole matter could have been settled there and then. However, Mr Speaker, one of the certificates was leaked to me unanimously by mail and it makes interesting reading, especially compared with the TRADA report. The certificate in my possession is issued by a Spanish entity called AITIM - that I understand is an abbreviation and I do not know the full name - of Madrid in Spain and the certificate certifies that a door, model T -30/4 which is manufactured by a Spanish firm Empresa JL JHER Sociedad Anonima is thirty minutes fire resistant. I would remind you, Mr Speaker, and I would remind Members opposite of the contradiction that we have but the TRADA report which says that the door would fail the fire resistance test of thirty minutes was carried out on a section of the door which was taken from Westside and sent to the UK. I would highlight five differences, and there may be more, between the report made by TRADA and the Spanish certificate. It would indicate a number of things to which I would come later. The first difference, Mr Speaker, is that the TRADA report gives the thickness of the door core, not the door, of the door core as 34.5 millimetres, whereas the Spanish certificate gives a thickness as 32 millimetres. The second difference is that the TRADA report says that the door leaf is lipped with hardwood size 34.5 millimetres times 22 millimetres to 25 millimetres. In the AITIM certificate the corresponding measurement is 38 millimetres times 32 millimetres. The third difference is that the TRADA report says that the door is veneered with hardwood 0.5 millimetres thick whereas the AITIM certificate says 1.2 millimetres plus an external covering on the exterior face of unspecified thickness. The fourth difference is that the TRADA report says that the door frame is mounted out in a lining of 110 millimetres by 35 millimetres softwood whereas the Spanish certificate says 140 millimetres by 40 millimetres. The fifth and final

difference is that TRADA says that the hinges supplied are of soft metal probably aluminium whereas the Spanish AITIM certificate says that they are of stainless steel. Mr Speaker, I do not for one moment question the integrity of either TRADA or of AITIM. Let us be quite clear about that. But it is quite clear that if one of them says that a specific door which they had tested is fire resistant to thirty minutes and the other ones says that it is not, then they both cannot be right. That is a clear contradiction. So we are left with two options, Mr Speaker, either they did not test the same door or alternatively they are testing to a different standard. Under the Gibraltar Building Regulations testing must be to British Standards 476 which is what we know that TRADA in UK uses. I put it to you, Mr Speaker, and to Members opposite that if the Spanish testing centre did test the same door and they do not test to British Standards 476, then the validity of the certificate, to say the very least, is questionable because we do not know what standards they test. The second possibility is that TRADA and AITIM did not test the same model of door which is a distinct possibility. However, both the report and the certificate give detailed measurements and descriptions of the doors for sections of the doors that they tested. So it would seem to me and it should be the same to Members opposite that it should be a very simple matter to engage the services of an independent professional to say whether the report or the certificate applies to the doors actually installed in Westside. Mr Speaker, neither am I questioning the integrity of the Fire Brigade or of its officers but I do question the validity of a system of fire prevention which so readily accepts and continues to accept and defend a certificate when doubts on its validity have been cast in this House by an elected Member backed by a technical report from a well known and respected British testing agency. I do also question the attitude of the Government and their reluctance to initiate any investigation or if they have done so, to make a public announcement of the results of such an investigation after they were made aware of the serious implications of the contents of the TRADA report which the Opposition made available to the Government on the 5th May. Indeed in his reply to my letter, in which I enclosed a copy of the TRADA report, the Minister does not even acknowledge having received the report or indeed indicate whether he intends to take any action on its contents. The Government's attitude, Mr Speaker, I regret to say, almost shows contempt for the workings of this House, the integrity of its Members and the constructive motives of the Opposition in bringing this matter to light in the public interest. Indeed it also shows a total disregard of the feelings and worries of those who live or will live at Westside and who are understandingly worried and they tell Opposition Members that they are worried by the reports that have been made on this matter and which they have read or seen in the media. I opened by saying that in essence this motion

was about life and death. If the contents of the TRADA report are correct there can be no doubt that in case of fire there is an increased threat to the safety of people living in Westside. The solution once again seems to me very simple. A door which is independently and professionally certified to be the same as other doors in Westside (Phase I) should be sent to UK. If not to TRADA, then to any other similar British testing centre for a full British Standards 476 test to be carried out. I, therefore, call upon Government, if it has not already done so, to commission such an independent technical investigation and testing to establish whether the doors and accessories installed in Phase I of the Westside development satisfy those sections in respect of fire safety of the Building Regulations and the British Standard Code of Practice which are applicable to Gibraltar. Mr Speaker, I will conclude with the introductory words of the section on fire resisting doors in the chapter of precautions against fire of the British Standard Code of Practice. I quote "Fire resisting doors are one of the most important links in the chain of fire safety precautions and care in their selection to ensure that they are adequate for their purposes cannot be over emphasised". I commend the motion to the House.

MR SPEAKER:

Honourable Members who wish to speak on the motion may do so now.

HON J C PEREZ:

Mr Speaker, first let me deal with two or three issues which the Honourable Member has raised. He said that the original letter that he sent me, I did not reply to, and I told him on the 30th April in this House, that both the City Electrical Engineer and the Chief Fire Officer were both at different intervals away from Gibraltar and their letters to me to enable me to reply to him did not reach me until very near the meeting of the House. By then the Honourable Member had already given notice of the question and that is why I did not reply in writing to him. He then said that I did not give him a definite reply, which I did. In this House, I told him that I had contacted the Chief Fire Officer and that I put the question that he had put to me to him and that he could confirm that in this particular case all the regulations and all the codes of practice of British Standard in chapter 4 - 1971 were being met in the case of Westside I. That was the view of the Chief Fire Officer and it continues to be the view of the Chief Fire Officer which I am not doubting. The Honourable Member is doubting. Let me also say that he has made a lot about the thickness of the door and he is completely wrong on that premise. You do not measure fire resistant by thickness because it very much depends on the material that you are using and you can use steel and you can have thirty minutes fire resistance with an inch or half and you can use timber and then it is a different width. So it depends on the wood that you are using, on the type of wood, on the inside

of the wood and the thickness. Fire resistance has nothing to do one with the other. Let me correct the Honourable Member when he says that these scientific tests are carried out with one door. They are not carried out with one door. They are carried out with two doors, with the frames and with the hinges. They are mounted and they are subjected to scientific tests. Something which TRADA has not done. Mr Speaker, it is quite evident that the Government cannot and will not support the motion moved by the Honourable Member. As it is worded the motion puts into question the procedures used by the professionals in the field, in this case those in the fire service as to the way they have gone about approving the Westside development in respect of fire safety and the way in which they have determined that this development complies with the British Standard Code of Practice. When the Honourable Member last raised this in the House, my colleague the Honourable the Chief Minister, made it abundantly clear that the only area of political responsibility involved on this issue was to check whether the City Fire Brigade had acted in the same manner as it would have in any other development and use the same yardstick as in other developments in the application of fire standards. That enquiry has already been conducted by the Chief Fire Officer at my request and the Honourable Member will know this from my letter to him of the 30th May. The Chief Fire Officer investigated with the TRADA report the allegations made by the Honourable Member and I replied to him saying that there was nothing to worry about, that the professionals had said that they were complying with the relevant regulations. It has been found, therefore, that those persons in the Brigade involved have acted in the same way in respect of Westside as they would have done in any other project. The motion therefore, Mr Speaker, in calling for an independent technical investigation is putting into question the professionalism and integrity of those involved in the application of fire safety and of the whole of the City Fire Brigade, given the inquiries already carried out and the results of these inquiries. It also puts into question the documentation received by the Brigade from the developers some of which is documentation received from specialised laboratories. I do not know whether it is AITIM or anything else. I do not involve myself at that level. I ask whether they have done anything different in the project to what they would have done in any other project. The answer is no and we are sure that it is thirty minutes resistant. I do not go into the detail, I am not a professional. Mr Speaker, giving the information that the Honourable Member has already been given in respect of the inquiry that has been carried out, one would perhaps understand that he should be questioning the whole system used in appraising all developments as to fire safety. But he is not saying that. He is specifically referring to those involved in appraising Westside and suggesting that they treat something different. That has already been determined as not true. Therefore, he must be questioning the validity of the information I received from the Chief Fire Officer. Had he questioned the whole system presently in place, then we would have had to go

back and check every single development in Gibraltar since all have been dealt with by the same criteria and the same yardstick and surely the same concern and consideration must apply to any other development as is the case with Westside. But the Honourable Member confines himself to the Westside development, thereby insisting that what he has been told by the professionals through me is wrong. Let us now examine what the Honourable Member is basing his arguments on. On a document which has been passed on to him by a third party who sent a piece of a door and a design of a door to a company or an organisation in the United Kingdom called TRADA for them to give an opinion as to what would be the result of a test of such a door were it to be scientifically tested. With the information provided, TRADA, admitting that they know not the size of the door or whether the doors are single or double leaf, nor the method by which they are retained in a closed position, say they are unable to estimate the likely performance the doors would achieve if they were subject to a BS 476 Part 22 1987 fire resistance test. They then contradict themselves and say that they are confident they would not achieve a nifty performance which is a half an hour fire resistance notwithstanding that they had already stated they were unable to estimate the likely performance. Mr Speaker, we are asked by the Honourable Member to presuppose that the piece of the door sent to TRADA was of an actual door at Westside, that the design was the correct one and that the description and information sent was accurate. We are then given by TRADA an opinion on what could possibly be the result of a scientific test if it were carried out and that opinion in itself is contradictory and here the case of the Honourable Member rests. He is prepared to question the professionalism and integrity of these servants employed by Government on the basis of what? Of an opinion which could possibly be the result of what? Based on information sent to TRADA by a third party none of which have been verified to be correct. TRADA, I may add, in all the company's headed paper at the bottom and in small print has the qualification as to the information supplied which is most important. It states "Whilst every effort is made to ensure the accuracy of advice even the company cannot accept liability for loss or damage arising from the use of the information supplied." Let me correct the Honourable Member on another issue. Twenty minutes fire resistance for internal doors is sufficient to comply with Building Regulations in Gibraltar. External doors are required to reach a thirty minutes resistance and that is not, at this stage, in question given that the door that is supposed to have been sent to TRADA is of an internal design. Nevertheless although the requirements for internal doors is twenty minutes, those at Westside have successfully undergone laboratory tests for thirty minutes resistance. Such documents have been provided by the manufacturers of the doors to the developers and in turn to the Fire Brigade. Over and above that there is independent documentation which verifies that supplied by the manufacturer. Since the whole issue was raised British Standards have been revised and now only twenty

minutes resistance is required for external doors after the Honourable Member had raised the issue, but the external doors again is not being questioned. Mr Speaker, given all the things that I have said I am proposing to move an amendment to the motion which reads as follows:

"Delete all the words after 'This House' and substitute as follows:

(a) Is satisfied that the treatment afforded to the Westside Development by the City Fire Brigade in respect of fire prevention standard is exactly the same as the treatment it has afforded every other similar developments in Gibraltar;

(b) Regrets any aspersions that may have been cast on the professionalism and integrity of those fire officers involved in fire prevention;

(c) Accepts fully that the work carried out by those officers has been done without any political interference whatsoever;

(d) Is satisfied that those doors checked by the City Fire Brigade comply with the relevant requirements, namely the Building Regulations 1991,

and calls upon the Opposition to properly verify the information it uses in this House before questioning established procedures and allow the professionals to continue to conduct their technical work without any political interference."

Mr Speaker, in moving this amendment I must stress once more how irresponsible it is for Members of this House to question professionals without what the Government considers is a proper documentation of the facts. Indeed the wording of the Honourable Member's motion itself is contradictory, when it first refers to an opinion by TRADA and secondly two lines down actually says that the report shows etc etc. First of all, it is hardly a report. It is a letter. Secondly, it cannot show or prove anything if it is only an opinion. Mr Speaker, whether it was or was not the intention of the Honourable Member of casting aspersions on those involved in fire prevention in the Fire Brigade, the way the motion has been worded does this. Indeed the way the Honourable Member has moved it in putting into question the judgement of the City Fire Brigade, continues to do that. It is an escapable conclusion which the Honourable Member must arrive at if he is not satisfied that the results of the inquiries carried out by the Chief Fire Officer are sufficient. The Government and indeed the whole House has a responsibility and obligation to protect those professionals it employs if it cannot be proved that they have acted incorrectly. Nothing that the Honourable Member has said proves this in any way, Mr Speaker. I commend the amendment to the House.

Mr Speaker proposed the question in the terms of the Hon J C Perez's amendment.

HON P CUMMING:

Mr Speaker, yesterday the Minister for Trade and Industry, the Honourable Mr Michael Feetham, on the question of the Port.....

MR SPEAKER:

We have to be careful. It has to be relevant to the motion. I will point this out. I was very liberal before both with the relevancy and repetition because it was a motion of censure and normally one gives a lot of scope to that. We are now technically talking about a kind of door whether this is permissible or it is against the regulations or whatever. So we have to stick to that.

HON P CUMMING:

Thank you, Mr Speaker, I am directly relating to the issue and the point is that the Government graciously accepted a point from this side and that does them credit. There is new evidence here. Can they not just look again at the problem? There is safety of our people here. Even if there were a slight doubt, all it takes is a willingness to look into it. This matter could have been defused before even the question came to the House. If there is some technical misunderstanding on one side or the other, this could have been clarified easily. So why then is it that although some Ministers seem willing to look at matters, the minds of others seem to be completely closed on accepting any point or any suggestion that comes from the Opposition? Naturally, it is very important for us to think what the reasons might be because it could be rigid thinking on the matter. Their minds are made up before. It could be that this is a psychological - a sort of pseudo macho - thing. Nobody makes me do anything I do not want to do sort of thing. That is bad enough, but of course, Gibraltar is a place rife for rumours and this sort of attitude on the part of Government Ministers gives great power to rumour-mongering. It may be totally unnecessary because obviously there is the human temptation to think that in fact, as we say in Spanish, there are cats locked up here in this matter. This is a cover for some corrupt practice and this does us harm. It does us harm not because the Opposition brings it up but because of the attitude the Government takes when we bring up this sort of thing. We have already had this before, in the last meeting from the Honourable Juan Carlos Perez when we pointed out, again, the danger of the gutter across the airport. A totally irresponsible attitude came from that. Obviously, where there is no suspicion , there is no grounds to suspect that that is a cover up of plot of some hidden corruption. That does not apply. It must have been the pseudo macho thing, nobody makes me move

my opinion. This is political irresponsibility which would give me a lot of worry if I was the public relations officer of the GSLP. Some years ago in the Garrison Library, some old gentlemen fell over a structure which was said to be unsafe and injured himself badly and there was a court case leading to the Garrison Library having to fork out an enormous compensation and having to sell books which were historical treasures to the highest bidder, which was very low, quickly to make funds. If somebody crosses the airport and does themselves an injury and chooses to take the matter forward and compensation has to be made, it has to come either from those funds which the Government prides itself in such efficient administration of. It is a total political irresponsibility and now if we translate that from the gutter across the airport to the houses at Westside, the political irresponsibility of that macho attitude is practically incredible. I cannot see Governments in other places doing that, unless we go to look at the Government of Idi Amin or something like that.

HON CHIEF MINISTER:

I know Idi Amin as well as General Franco. The Government of Idi Amin is presumably at the head of that Government.

HON P CUMMING:

With a bit of goodwill this matter could have been fused long ago. It is a matter worthy of being looked into or being investigated and treated with a bit more than just arrogance and defiance. Thank you, Mr Speaker.

HON J L BALDACHINO:

Mr Speaker, I think I am going to answer a few points made by the last speaker. I was not going to speak. I do not want to get involved in what is my profession because it is well covered by the professionals that we employ from whom the Government has had advice. The Honourable Member is very quick on using his words. I was hearing him speak on the previous motion and he keeps on bringing these words 'corruption' and 'irresponsible'. What is irresponsible is the way that they have presented that motion because that motion scientifically does not have any backing whatsoever. The test that the Honourable Member was speaking about before in his contribution is with a piece of wood that was sent there. We do not know if that was a door from Westside.

HON LT-COL E M BRITTO:

Mr Speaker, will the Honourable Member give way? What he should be more concerned is not whether the piece of door that was sent from Westside was from Westside. He should be more concerned whether the certificate on which everything has been based applies to the doors that are actually in Westside. That is what they should be concerned with.

HON J L BALDACHINO:

Mr Speaker, I am basing myself on the advice of the professionals that are employed by the Government and he is basing his arguments on a piece of paper which, like my Honourable colleague said, has underneath on small print that it is only an opinion and if used outside they do not make themselves responsible for whatever is expressed in that piece of paper. That is irresponsible. What is irresponsible is to come here to this House and say that it is a life and death matter when he does not know the real cause of death in a fire. The most scientific reason shown by statistics is that there are more deaths by smoke than by burning. The Honourable Member is saying that it is a life or death matter. Mr Speaker, what happens is that in a normal dwelling, in the twenty minutes, there is always somebody to raise the alarm quickly. In an office it is a different thing. A fire may occur after-hours and therefore you need more protection on the fire doors. That is why there is no requirements to have fire doors on the bathroom because there is a less likelihood of a fire occurring in the bathroom than anywhere else in the building. But he also mentions the latches from the report.. He said that if the door was unlocked then that would reduce the fire capacity of the door by twenty minutes. If you have a fire door then you should have a latch providing a self-closing door. It cannot be any other door. It has to be a self-closing door. A self-closing door means that it has the power or the equipment to close the door properly. If that is the case, then it cannot be what the Honourable Member was reading, that it would be unlatched. If it would be unlatched it will probably not be the door, it would be the equipment that closes the door. Mr Speaker, in all fairness, I think that he is referring to Westside I (Phase I) not to the whole of the Westside. It is not clear here. There are two projects and people might get confused.

HON LT-COL E M BRITTO:

Can I clarify that for the Minister? I have been talking specifically about Phase I of Westside I. Maybe in speaking I may have missed out the words 'Phase I' in part of the speech. But if I have done so let us be clear for the record that I am speaking exclusively about Phase I of Westside I, if nothing else because that is the only information I have.

HON J L BALDACHINO:

I just wanted it for a point of clarification in case other people were listening so that they know he is referring to Westside I and not to Westside 2 which is another project completely different. Mr Speaker, the only thing is that really the arguments that have been

presented by the Honourable Member really does not warrant the Government having a second look. There is nothing of substance in that argument and it is not based on anything that is scientifically approved. We can only go on something from a third party that says that they carried out the tests. The Chief Fire Officer is satisfied. We have had professional advice and we think that we have to support that advice because the Honourable Member has not presented anything to this House in his argument that proves the contrary.

HON P R CARUANA:

Mr Speaker, I only want to say two things. First of all I should say that I am sorry that the Honourable Minister's initial position should have been that he did not want to get involved in this because he is Minister for Housing and he does have a degree of political responsibility for matters in relation to semi-subsidised public housing but be that as it may, I accept the concept of collective responsibility and his colleague the Minister for Government Services dealt with it. The Honourable Member did, however, say as if we did not know, that more people die from smoke inhalation than from flames. Well I think that is common knowledge for those of us who do not have this experience in this field, but that is one of the reasons why we are concerned because one of the things that TRADA says is "Never mind whether the door itself is thirty minutes fire resistant or not". If they have hang on hinges like the ones that have been sent to us, never mind whether the door will resist fire for thirty minutes, it will not stand up on its hinges long enough to find out whether it would stand for thirty minutes and there will be a collapse of the door at the hinges and that would let the smoke penetrate through the collapsed door that has resulted, not from the fact that the door is not thirty minutes fire resistant but from the fact that the hinges tested appear, according to TRADA, not to be of the required standards. Therefore, they will not hold up the door long enough to find out whether it is thirty minutes fire resistant or not. That is why he is quite right when he mentions the statistics of smoke inhalation and they were not just talking about flames here. In fact we are not hardly concerned, as the motion suggests about death. Very few people, as he quite rightly says, get burned to death. Most people are choked to death long before the flame even reaches them and for him to say that there are people at home to raise the alarm, well he knows very well, because I know that he knows about these things that most people die in their beds long before they know that the fire has even started, let alone have long enough time. In a small flat with open doors most people die in their beds and they do not even get up to see what the smell is about. That is all arising from what the Honourable Member has said. What I wanted to say for myself, regardless of what the Honourable Member has said, is this, that it is surprising that having said that they do not consider that they have

political responsibility except to take the advice of the Fire Officer or a Civil Servant in any other context, that they should defend this motion with the degree of vehemence that they do as if what we were trying to do is to launch a political attack on them as I was doing before, which is not the case. I think, Mr Speaker, that the motion is obviously drafted in terms which shows that what we are concerned to do is to put the matter before the Government in an official sense so that those that have given us the information and have asked us to do what they consider to be our public duty in relation to this matter, will be left in no doubt that we have done all that we can. This motion does not chastise the Government. It does not chastise anybody. It is not an attack on the discharge by the Members opposite of their political duties. It is a statement of fact that there is this piece of paper, call it a report, a letter, small print or big print, which appears to say what it appears to say, I know nothing about fire resistant doors, but I read the report and I say, excuse the pun, there is no smoke without fire, and on that basis if no other, it appears that this report at least raises some doubt as to whether these doors do comply or indeed whether the same doors as are the subject matter of the fire certificate that the Fire Brigade hold are indeed the doors that have been installed. Anything is possible. That there is a possible threat to the safety of occupants in the flats, is a fact which follows inevitably if there is doubt as to whether they are fire resistant or not and that there is an apparent - an apparent even we have said, we have not said that there is a contradiction. We have said, because we are ignorant laymen on the matter, that there is an apparent contradiction therefore leaving the door open for the experts to say and show that there is in fact no contradiction. That is why we have used the word 'apparent', between the contents of this report and those certificates. We call upon the Government to commission an independent. Mr Speaker, I sincerely hope that all that we have said and done here today which the Honourable Members opposite appear to reproach us for, I would urge them to accept my assurance that this motion is not a political attack. I sincerely hope that all that we have done here turns out to be completely unnecessary.

MR SPEAKER:

If there are no other Members who wish to speak I will call on the mover of the amendment to reply.

HON J C PEREZ:

Mr Speaker, indeed there is no smoke without fire, but when that smoke is being put out by Mr Cumming pulling from one side of the blanket and Mr Britto from the other, on top of Mr Caruana lighting the match, then the smoke ..... I accept that in essence the technical data being presented here and a call for a technical inquiry is not a political attack. It is an attack on the professionals and it is our obligation to defend those professionals

when the proper documentation or verification of the facts are not there to sustain an attack on them. If you want to come here and question the work that the City Fire Brigade and that the Fire Officers have done on Westside I project when the Chief Fire Officer has already, as a result of questions gone back and verified himself that the work has been done properly, verified himself that the certificates in the possession of the City Fire Brigade are proper ones, then without a proper scientific test, some of the certificates, of which the fire service holds are of proper scientific tests already carried out. What we have is an opinion of a door that has been sent to an organisation on a design that has been sent by a third party who no-one knows who he is except Mr Britto. I do not know whether what has been leaked to Mr Britto is what the Fire Brigade has because it is not my responsibility to look at it. I do not know how to interpret that. It is up to the professionals to interpret that and I think what Mr Britto has got wrong is in trying to interpret something when he is not a professional in the field and he has got the wrong end of the stick and has thought that there is something great and big in it without having the proper facts with him. So if you look at the amendment to the motion, and I am talking specifically, Mr Speaker, to the Leader of the Opposition, he will see that the amendment to the motion is not a political defence. It is a defence of the professionals and of the work that has been carried out by the professionals because nothing that has been said this afternoon here really tells us that the professionals have acted wrongly. If there had been any evidence of that, Mr Speaker, then it would have been the Civil Service machinery that would have taken care of any default in the area. The Civil Service machinery would have had to be put into operation to look at where the professionals were wrong, why they went wrong and an internal inquiry would have had to take place. But no information that has been put in this House, Mr Speaker, can actually challenge the work that has been done by the Fire Service in Westside I.

HON P R CARUANA:

Will the Honourable Member give way?

HON J C PEREZ:

Yes.

HON P R CARUANA:

We cannot support the amendment really for the very reasons that the Minister is commending it to us. That is that it admits that we have cast aspersions on the professionals which we think that we have not. It suggests that the House is satisfied that those doors checked by the City Fire Brigade comply with the relevant requirements, namely, the Building Regulations 1991. It accepts that we are

satisfied with the fire treatment and if we are not, we are casting aspersions on the Fire Brigade when we know that the Fire Brigade in Gibraltar lack there is no reason why they should have it - the technical means to test for themselves whether these doors actually comply with British Standards. Presumably, therefore, what the Fire Brigade have is a system where they require certificates and things to be produced to them. To suggest that those certificates that have been produced to the Fire Brigade and that have been accepted by them in good faith may be mistaken or may relate to a door other than the one, is not, I am sorry, to cast aspersions on the Fire Brigade. Therefore, I will not accept that we are necessarily and inevitably casting aspersions on the Fire Brigade. I know that that is the role in which the Honourable Minister wants to cast us. That is not the reality.

HON J C PEREZ:

Mr Speaker, it is not what I want to do. These are the facts. On the 30th April this year when the Honourable Member raised the matter and I quote from Hansard. I asked for the Hansard to be prepared in order that I may have all the information available. Mr Speaker, I told the Honourable Mr Britto "I would refer you in particular to Building Regulations E15E11 and table 1 to regulations E1 and to sections 223, 211, 431 and 432 of the British Standard Code of Practice Chapter 4 Part 1 of 1971." The Chief Fire Officer has said that, yes, he is complying with all the sections and all the standards mentioned by the Honourable Member. This is the Chief Fire Officer writing to me telling me he is complying with all those sections and then the Honourable Member puts a motion saying that he is not satisfied with that, that he wants an independent technical advice because he has got a letter that has an opinion which on top of it is contradictory. What the Chief Fire Officer has not perhaps only the certificate - I am not sure that that is the right certificate - but he has got the result of scientific tests by organisations which prove that the British Standard Code of Practice is being adhered to. I have not asked the Chief Fire Officer to give me a copy of that because I would be questioning his professionalism and his integrity if I were to do that. It is enough for me that he has checked that those in fire prevention (a) have not done anything different to the Westside project that they would have done to any other project in Gibraltar, and (b) that they are all satisfied, as professionals that they are, that the certificates that they have in hand are sufficient to satisfy them that the doors comply with the British Standards. Whether the intention was that or not, Mr Speaker, the result of it is that aspersions are being cast on the work that has been carried out and of the investigations that the Chief Fire Officer has already undertaken, as a result of which I have already wrote a letter to the Honourable Member saying that no, nothing different has happened to what has happened in other projects and yes, on the

30th April I told him, he was complying with all the standards raised in his letter to me. So if he is not satisfied (a) with what the people in the Fire Service tell me, (b) with what the Chief Fire Officer tells me after the investigation he has carried out, then he must be questioning the professionalism or their integrity or both.

HON P R CARUANA:

Or the adequacy of the procedure which they have available to them to satisfy themselves with things that they are required to satisfy themselves with.

HON J C PEREZ:

The motion does not question the procedure. If the motion had questioned the procedure then we would have been looking at it in a different light. The motion questions Westside 1 project only. And if we are going to question the procedure then the same considerations on safety would apply to all the other developments and the same concern must be applied and then we would have to go and check back all the developments that we have done in Gibraltar.

HON P R CARUANA:

We do not have evidence that the procedure has failed in previous cases.

HON J C PEREZ:

You do not have evidence that the procedure has failed in this one. That is basically the whole issue. Mr Speaker, I think that that is irresponsibility not what Mr Cumming accuses us of. Of having insufficient evidence and raising something and putting into doubt the integrity and the professionalism of people with insufficient evidence to prove your point. No. I am not giving way to Mr Cumming. He talks about corruption as if he were talking about ice cream and he thinks that because he does not actually make the accusation that the Government is corrupt and mentions the word 'corruption' enough times that that is going to cast an aspersion on us. Well if he thinks that he is got something coming. I would like to certainly see him making more contributions in the House like the two that he has done today because he certainly demonstrates and go to the core of what the GSD is all about. Gutter politics, insinuations and the kind of politics which have gone by the wayside in Gibraltar a long time ago. He can only do harm to himself and to the party so I encourage him to make more contributions of the nature that he has done in this House because he can only do harm to himself. And since I believe that, instead of offering himself as a PRO of the GSLP, I suggest that the Honourable the Leader of the Opposition considers putting him as the Public Relations Officer of the GSD. I think he will do a very good job for the Government there. Mr Speaker, he talks

about the rumours that are abound. The rumours that are abound, Mr Speaker, are there because of the way that the Honourable Member has raised the matter. If the Honourable Member had not raised the matter in the House without the necessary documentation to support his case, then there would not be rumours and there would not be concern. We come back to the issues raised in the election. The perception of what he believes or they believe that people feel and think and the perception of what we believe is true. They say that there is dissatisfaction amongst different levels of people in this and that and they are the ones creating that dissatisfaction by the question that they raise and in the manner that they raise it. Fine, he can carry on doing it, but do not expect any applause from us and do not expect any kind of concrete constructive response from us because you are not being constructive at all, I am sorry. I accept that maybe the Honourable Member did not, in my view, intentionally want to cast aspersions on the professionals, but the way he has raised the motion, he has. I accept perhaps that the Honourable Member might have thought that the documentation that he has got in his hand is more than what he has, but that is no reason. Where Honourable Members fail is that if you have a policy should you want to be a policeman, you have a fire issue you want to be a fireman. If I were to do all the trades of all the people of all the departments that I am under, then I would be a jack of all trades. I do not indulge myself in questioning whether the certificates that they receive are the right ones or not or whether they are doing their job. As long as the system continues to operate satisfactorily, that is it. There is nothing that has been raised here on a concrete level or a substantive level to put in question the work done by those fire officers and I am afraid that we have the responsibility to defend them and that is gist of the amendment, Mr Speaker.

MR SPEAKER:

I will call on the mover to reply.....you should have spoken before.

HON F VASQUEZ:

I have not spoken yet.

MR SPEAKER:

But I said so. I made it very clear that Members could speak and then finally there would be the winding-up.

HON P R CARUANA:

Do I understand, Mr Speaker, you are ruling that my Honourable colleague, Mr Vasquez, may not speak on this motion?

MR SPEAKER:

He cannot. I said so, I explained the rules.

HON P R CARUANA:

I accept the explanations that have been given, Mr Speaker, but we are discussing....

MR SPEAKER:

All I can say is that if the Minister would like to stand up again and give way, perhaps the Member can speak.

HON J C PEREZ:

Fine. At least I will be able to reply to him which he probably did not want me to do and that is why he did not stand before.

MR SPEAKER:

The point is that I cannot allow the Member who put the motion on the amendment to have something said now to which he cannot reply. We are debating this as it were one motion. So it is the Honourable and Gallant Lt-Col Britto.

HON LT-COL E M BRITTO:

Mr Speaker, it is a matter of considerable personal regret, never mind party regret, for me to see the tone and the content of the Minister for Government Services's contribution on this motion. I have purposely tried from the very beginning, from the opening words, when I said "I urge Members opposite and those officials to understand the spirit in which this motion is presented" and throughout the whole motion, including later on, when I said "I am not questioning the integrity of the Fire Brigade or of its officials", I have tried throughout to defuse the political contents because of my genuine concern which I stressed at the beginning, that this motion when all is said and done is about human life. Therefore I find it regrettable and reproachable that the Minister has sought to make political capital and political points by trying to make accusations which are unfounded and warranted. I think that the whole attitude of the Government is ostrich-like. We have a situation, whether the Government likes it or not, whether they question the scientific value of the TRADA report or not, we have a situation in which doubt has been cast upon the certificates which are in the hands of the Fire Brigade. It simply cannot be correct that the opinion in the TRADA report and the certificates can both be correct and in the light of that contradiction, that is the basis for asking the Government to take further action to establish

whether there is or there is not a basis for that contradiction. To try to turn the whole thing into saying no, because the professionals have done this or have done that and if anything that we do now is casting aspersions on the professionals or acting against the professionals, is simply to hide behind technicalities in order to do nothing. I cannot accept, Mr Speaker, that there is.....

INTERRUPTION

Mr Speaker, I did the courtesy of listening to what the Honourable Minister was saying, I hope that if he cannot listen, at least be quiet whilst I speak. I cannot accept the Minister's point that there is a contradiction in the TRADA report. The alleged contradiction that he pointed out was that on page 1 the TRADA reports says "That we are unable to estimate the likely performance", is the words that he quoted from the report and indeed that is what the report says. But "We are unable to estimate the likely performance" means we are unable to say how many minutes the door will stand up to the passage of flames and it is not a contradiction with the final paragraph, which says that the door will fail. In order that it will not achieve the thirty minute integrity performance that is required. So it is not true to say that there is a contradiction in the report. To further say that it is not a scientific test and that it is not the basis for worry and for further investigation is also ostrich-like and untrue. I have a second letter from TRADA which repeats the opinion. The fact that- I understand because I was not directly involved - a full test on a door was not carried out was simply one of cost. Apparently, to have sent a full door to UK would have meant fairly substantial costs which the philanthropy of the third party concerned did not reach. That is why I am suggesting to the Government that they bear the cost of a further test in order to establish what the results would be. It is quite clear that from the experience of TRADA they are saying that by looking at the door - and they repeat it in the second letter that I have, which I obviously cannot introduce because I have mentioned before - "Do not waste your money, if you sent a full door it will fail the test." Mr Speaker, the fact that the professionals may have acted in the same way in this development as in any other development does not make them infallible. I made it a point in my report that I am not casting aspersions on the professionals. I do not want to do so and it is not my intention to do so, but I did say in my original speech and I repeat it. I question the validity of a system of fire prevention which readily accepts and continues to accept and the Minister continues to defend in this House a certificate when doubts on its validity have been cast, backed by technical reports. If there is genuine doubts that have been raised there ought to be some sort of willingness on the part of the Government to do something about it. Mr Speaker, I totally refute the Minister's allegation

that the rumours that are circulating are as a result of what has been said in this House either at question time or at the bringing of this motion. The rumours started in January or February of this year. The rumours were a direct cause of me writing to the Minister and to raising the questions in this House.

INTERRUPTION

MR SPEAKER:

Will you give way?

HON LT-COL E M BRITTO:

No, Mr Speaker, I will not give way because he did not give way to my Honourable colleague. The Minister said that the rumours that were circulating were as a direct cause of what the Opposition was saying and that is what I am repeating. I am saying that the rumours started in January or February of this year. Rumours reached, not just me, but other Members of the Opposition and as a result this is why we started the whole investigation. Mr Speaker, just one more point. The Minister started-off by saying that he had not replied to my letter because the Chief Fire Officer was not here etc etc and then because he had provided information in the House he felt it unnecessary. I would refer him back to the letter which I stress I have not yet received a reply to and I would refer him to the last paragraph which I will not bring up because it is a new matter. I would refer him to the last paragraph of the letter I sent him on the 27th February which he has not answered and which has nothing to do with fire doors and which has not been answered. I will not venture the subject because it would be a new subject. Mr Speaker, a reply is not in my possession. If the Minister has sent me a reply I would appreciate a copy. I do not have a written reply. Mr Speaker, it is not a question of fire standards, if the Minister refers to my letter I cannot raise it because it is a different subject, it is nothing to do with fire, it is to do with electricity.

HON J C PEREZ:

If he will give way I will tell him?

HON LT-COL E M BRITTO:

I will give way.

HON J C PEREZ:

On the electricity, the Honourable Member told me outside when he raised the question of fire standards that he had not raised the question of electricity here because there was no premise for it. That is what you told me outside.

HON LT-COL E M BRITTO:

Mr Speaker, I have no recollection.

HON J C PEREZ:

If he wants the reply of the electricity, which is the same as the one of the Fire Officer, by the City Electrical Engineer, I shall copy him the copy of the City Electrical Engineer as soon as I get to my office. But he already said that the question of electricity he did not raise here because he had already been satisfied by some other quarter, I do not know. It might have been another anonymous thing in the mail that he has received.

HON LT-COL E M BRITTO:

No, Mr Speaker, I am sorry but I do not have any recollection. I have recollection of talking outside with the Minister but not of saying that I was satisfied with the question of electricity and I may have said that I was bringing up one subject at a time but it is a bit of red herring. I would appreciate an answer from the Minister and we can leave it at that. Mr Speaker, I will not carry on. It is obvious that the Government intend to do nothing more about it. It is obvious that they intend to leave matters as they are. I will rest easy on my conscious that I have done what I have seen to be my duty under difficult circumstances because it has been alleged that it raises the possibility of questioning professionals which I did not want to do and it was not my intention to do. I have felt it a duty as an elected Member when the information that was provided to me in the TRADA report, to bring this matter to the House and to try to get the Government to act. It seems that I am going to fail from the amended motion that will no doubt be passed by Government majority. All I can say, Mr Speaker, is that I hope I am wrong. And I say that sincerely. I hope that I am wrong and I hope that the TRADA report is wrong because if the reverse is true and the TRADA report is right and at some time in the future we have cause to regret some fatality, then the onus will not be on me. It will not be on Members on this side of the House but it will be on somebody else's head. Thank you, Mr Speaker.

Mr Speaker then put the question in the terms of the amendment of the Minister for Government Services and the following Hon Members voted in favour:

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

The following Hon Members voted against:

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

The following Hon Members were absent from the Chamber:

The Hon P J Brooke
The Hon J E Pilcher
The Hon M Ramagge

The amended motion was accordingly carried and the original motion defeated..

HON P R CARUANA:

Mr Speaker, may I raise what I hope is a point of order? If it is not a point of order, Mr Speaker, will tell me. Mr Speaker, the Government has made certain regulations. They are under Legal Notices No.16 of 1992, No.17 of 1992, No.18 of 1992, No.21 of 1992 and No.22 of 1992, all of which, as I read the appropriate sections in the Income Tax Ordinance require to be laid before this House. Under the provisions of Section 28 of the Interpretation and General Clauses Ordinance, that means to be laid before the House at the next sitting which is about to finish in thirty seconds time. I do not know what the practice is for laying regulations before the House. I assume it is the practice as for laying all other documents before the House. If you go through the motions and they get thrown on the table. All I ask the Chief Minister at this stage to do is to have somebody look at legal notices that I have mentioned and if he is able now to give us an undertaking that if he finds that what I am saying is true, that those regulations will be laid before the House. As I say if he finds that I am right, that those regulations will be laid before the House, at least at the second opportunity if not the first, as raised. Mr Speaker, I have not heard them laid. If I have missed perhaps an agenda and I have arrived late and have not heard them laid, obviously I will withdraw unreservedly, but I think I will like that procedure adhered to to whatever it means just putting them on the table if so.

HON CHIEF MINISTER:

I will certainly give the assurance to the Leader of the Opposition that if in fact it has been an oversight, it will be corrected at the first opportunity. I really have to have it investigated because I have not got the slightest idea what it is all about.

MR SPEAKER:

Is the Leader of the Opposition satisfied?

HON P R CARUANA:

I am satisfied with the undertaking that I have sought has been given. I am not satisfied with Section 28 of the Interpretation and General Clauses Ordinance has been complied with, but I am satisfied that it will be remedied at the next opportunity if I am right.

MR SPEAKER:

I think what has been established is that as there is no deliberate act on the part of the Government not to lay them on the table as it is required. If it is an oversight I have no doubt that the Chief Minister will make sure that they are laid on the table at the next meeting.

HON P R CARUANA:

I accept, Mr Speaker, that if it happens it is an oversight. Of course the Chief Minister has yet to satisfy himself that he is required to lay them before the House, but I think if he finally looks at them, he is.

ADJOURNMENT

HON CHIEF MINISTER:

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

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

The adjournment of the House sine die was taken at 8.20 pm on Tuesday 30 June 1992.