GIBRALTAR

HOUSE OF ASSEMBLY

HANSARD

28TH OCTOBER 1993

(adj 26th November 1993,
3rd December 1993)

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Fifth Meeting of the First Session of the Seventh House of Assembly held in the House of Assembly Chamber on Thursday the 28th October, 1993, at 10.30 am.

PRESENT:

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

GOVERNMENT:

The Hon J Bossano - Chief Minister
The Hon J E Pilcher - Minister for the Environment and Tourism
The Hon J L Baldachino - Minister for Building and Works
The Hon M A Feetham - Minister for Trade and Industry
The Hon J C Perez - Minister for Government Services
The Hon Miss M I Montegriffo - Minister for Medical Services and Sport
The Hon R Mor - Minister for Social Services
The Hon J L Moss - Minister for Education, Employment and Youth Affairs
The Hon J Blackburn Gittings - Attorney-General
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

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

IN ATTENDANCE:

D Figueras Esq, RD* - Clerk to the Assembly

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 15th March, 1993, having been circulated to all hon Members were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Chief Minister laid on the table the following document:

The Gibraltar Development Corporation: Report and Accounts for the year ended 31 March 1992.

Ordered to lie.

The Hon the Minister for the Environment and Tourism laid on the table the following documents:

(1) The Hotel Occupancy Survey Report 1992.

(2) The Tourist Survey Report 1992.

Ordered to lie.

The Hon the Minister for Medical Services and Sport laid on the table the following document:

The Gibraltar Health Authority: Report and Accounts for the year ended 31 March 1992.

Ordered to lie.

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

Legal Notice 125 of 1993 - Employment and Training Ordinance - Training (Levy) Regulations 1993.

Ordered to lie.

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

(1) The Accounts for the Government of Gibraltar for the year ended 31 March 1992 together with the report of the Principal Auditor thereon.

(2) Gibraltar Heritage Trust: Report and Accounts for the period ending 31 March 1993.

(3) Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 18 to 22 of 1992/93).

(4) Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 4 of 1992/93).

(5) Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 1 to 4 of 1993/94).

(6) Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 1 of 1993/93).

(7) Legal Notice 110 of 1993 - Income Tax (Allowances, Deductions and Exemptions) (Amendment) Rules 1993.

(8) Legal Notice 114 of 1993 - Income Tax (Allowances, Deductions and Exemptions) (Amendment) (No. 2) Rules 1993.

(9) Legal Notice 133 of 1993 - Income Tax (Allowances, Deductions and Exemptions) (Amendment) (No. 3) Rules 1993.

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 1.05 pm.

The House resumed at 2.35 pm.

Answers to Questions continued.

The House recessed at 5.00 pm.

The House resumed at 5.20 pm.

Answers to Questions continued.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that this House do now adjourn to Friday 26th November 1993 at 9.00 am.

Mr Speaker put the question which was resolved in the affirmative and the House adjourned to Friday 26th November 1993 at 9.00 am.

The adjournment of the House was taken at 11.25 pm on Thursday 28th October 1993.

FRIDAY 26TH NOVEMBER, 1993

The House resumed at 9.05 am.

PRESENT:

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

GOVERNMENT:

The Hon J Bossano - Chief Minister
The Hon J E Pilcher - Minister for the Environment and Tourism
The Hon J L Baldachino - Minister for Building and Works
The Hon M A Feetham - Minister for Trade and Industry
The Hon J C Perez - Minister for Government Services
The Hon Miss M I Montegriffo - Minister for Medical Services and Sport
The Hon R Mor - Minister for Social Services
The Hon J L Moss - Minister for Education, Employment and Youth Affairs
The Hon J Blackburn Gittings - Attorney-General
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

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

IN ATTENDANCE:

D Figueras Esq, RD* - Clerk to the Assembly

COMMUNICATIONS FROM THE CHAIR

MR SPEAKER:

Before we start with Bills there is a statement I would like to read.

In order to reduce any possibility of an honourable Member being obstructed, molested or insulted when entering or leaving the House of Assembly or intimidated in his parliamentary conduct by an act of contempt, I have directed as empowered by section 2 of the House of Assembly

Ordinance, that the precincts of the House of Assembly be re-designated to include the lobby of the House, the pavement on the western side of Main Street, in front of the House and the whole of the area of the Piazza and the public highway on its three sides.

No kind of demonstration by one or more persons shall be permitted within the precincts so defined and the Royal Gibraltar Police has bee informed accordingly.

I must explain that contempt is an act or omission which obstructs or impedes the House of Assembly in the performance of its functions or which obstructs or impedes its members or officers in the discharge of their duties or which directly or indirectly has a tendency to produce such results.

SUSPENSION OF STANDING ORDERS

The Hon the Minister for the Environment and Tourism moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to lay on the table the Air Traffic Survey Report 1992.

Ordered to lie.

The Hon the Financial and Development Secretary laid on the table the Report of the Registrar of Building Societies for the year ended 31 December 1992.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE EUROPEAN COMMUNITIES (AMENDMENT) ORDINANCE 1993

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the European Communities Ordinance be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of the Bill is self-evident. We actually moved, in our desire to be ahead of the game, quite quickly in implementing the European Economic Area in anticipation of the vote in Switzerland where the

referendum was held. Therefore the Bill in our case, as indeed subsequently happened with the amendment that was brought in at a later stage in the United Kingdom, has to reflect the decision of Liechtenstein to require a certain period of adjustment which was not envisaged at the beginning because everybody was expecting that either both Switzerland and Liechtenstein would stay out or would come in given, amongst other things, that Liechtenstein is in monetary union with Switzerland and does not have its own currency. As it is, of the seven EFTA members, six have joined with the Community in creating the European Economic Area. The result of the European Economic Area, in our case is, of course, that the three of the four freedoms that apply between ourselves and the 12 member States also apply between ourselves and the six EFTA countries that have joined. One area where we are out, as everybody knows, is the question of the export of goods from Gibraltar to the Community. We are currently looking at how the arrangements that we have in the Community under the generalised system of preferences, will be affected by the new arrangements since the EFTA countries did not have a uniform external GSP arrangement. That is, each EFTA country was free to have different GSP arrangements and we are assuming that the probable outcome of the European Economic Area will be that the same rules that apply between us and the Community on the movement of goods will apply between us and the EFTA countries on the movement of goods but this is not 100 per cent clear at this stage. I commend the Bill to the House.

MR SPEAKER:

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

HON F VASQUEZ:

Mr Speaker, I have heard the comments of the Chief Minister and it appears that the majority of his comments are directed at section 2 of the Bill which deals with the amendment to the European Communities Ordinance to take into account the fact that Switzerland is delaying the participation in the Agreement. As far as that is concerned, section 2 of the Bill is quite clear, Mr Speaker. The rest of the Bill is not so and the first comment that I would wish to make from the Opposition is that section 2 of the Bill is a rather misleading piece of legislation. It is headed "Amendment to European Communities (Amendment) Ordinance, 1992". On reading it, it becomes very apparent that it is not an amendment to the European Communities Ordinance at all but an amendment to the Interpretation and General Clauses Ordinance because on examination of section 6 of the European Communities (Amendment) Ordinance which it is purporting to amend, that was a consequential

amendment of the Interpretation and General Clauses Ordinance. So really 80 per cent of this Bill has little to do with the European Communities Ordinance but an amendment to the Interpretation and General Clauses Ordinance. Mr Speaker, I have heard the comments of the Chief Minister. I have read section 3 of this Bill. I have read section 6 of the European Communities (Amendment) Ordinance 1992. I have also read section 23 of the Interpretation and General Clauses Ordinance and I have to say that I applied my mind to this I had great difficulty in interpreting what it is that section 3 of this Bill is attempting to say. I was hoping that we would get some clarification. I was hoping perhaps the Chief Minister would talk us through this Bill to explain exactly what it is that this Bill is saying. The drafting is so opaque it is virtually impenetrable. Apart from anything else, to some extent the Bill is simply illegible, it does not make sense in English. If one looks at paragraph (g) it says, "where in any Ordinance", then it goes on to sub-paragraph (ii) "relates to matters in respect...." That, to me, does not make any sense at all. I think the word "which" is missing although I was hoping that the Chief Minister would confirm this because I cannot understand what this Bill is saying. I think I understand what it is saying, Mr Speaker, certainly if I look at sub-paragraph (ii) and assuming that the word "which" is supposed to be there, this Bill reads, "where in any Ordinance which relates to matters in respect of which rights, powers, liabilities, obligations and restrictions referred to in sub-paragraph (i) arise or have arisen, there is no such provision as is referred to in that sub-paragraph, that Ordinance may be amended, varied or added to by regulation made by the Government for the purpose of etc". The impression I get, Mr Speaker, is that what this Ordinance is empowering is Government to amend by regulation either an empowering Ordinance or at least to state that any regulation passed under the Ordinance has the effect of contradicting the empowering Ordinance. That is my interpretation of the Ordinance, Mr Speaker. I think I am correct in saying that and all I can say is that that is in direct contradiction of section 23(d) of the Interpretation and General Clauses Ordinance which says, "Where an Ordinance confers power on any authority to make subsidiary legislation, the following provisions, unless the contrary intention appears, have effect with reference to the making, issue and operation of such subsidiary legislation. (d) No subsidiary legislation shall be inconsistent with the provisions of any Ordinance". So on the one hand we have subsection 23(d) saying that no regulation shall be inconsistent with the provisions of any Ordinance and then immediately afterwards, at subclause (g) saying something entirely different. I think that is the intention of this Ordinance, Mr Speaker. As I have said, I have read it several times; I was hoping one of the Government Members would talk us through it and explain to us through what I consider to be an impenetrable and opaque piece of legislation.

HON P R CARUANA:

Mr Speaker, Government Members know, as a matter of principle, that the view taken by the Opposition is that whereas we recognise Community obligations have got to be transposed into the laws of Gibraltar, where the mechanism through which Community law is transmitted to Gibraltar gives an element of discretion to Gibraltar as to how that Community legislation should be implemented. For example, if it comes in the form of a directive the implementation of which is an obligation under the Treaties, then we consider that this House should be consulted as to how directives are legislated into the statute book of Gibraltar. We therefore see no good reason, in the case of directives, why the Government must reserve unto themselves the power to implement directives by regulation as they see fit when it is not necessary, under Community law, that they reserve that power. Therefore, although we understand that that water flowed under the bridge some time ago and that really the Government already have that power under amendments that have already been made to the legislation, we do not, in principle, support any improvement of that power.

MR SPEAKER:

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

HON CHIEF MINISTER:

Mr Speaker, taking the point made by the Leader of the Opposition, I recognise that they have got a different policy from the Government but as he himself has acknowledged, the policy positions of either side are well-known and this has been in place for some time. All I can tell him is, in fact, that as he has rightly indicated, regulations require no action at all, they are mandatory and immediately effective throughout the Community. Directives give the freedom to the member State - a highly contentious issue as to whether that means us or it does not mean us and not to anybody else, to do it by legislation, regulations or administrative action and that act of transposition is, in fact, in all the member States open to one of those three mechanisms. As a matter of course, we try to do it by administrative action where possible, by regulations where there is no choice and by primary legislation when we feel there is no way that the regulation can be effective in doing it and that generally is the procedure that member States tend to do. In fact, he may well be aware that in the United Kingdom they are arguing now for virtually photocopying the terms of the directives because the amount of parliamentary time taken up by the transposition into national law of Community

obligations where regulations are not used. Regulations are used in many areas, for example, we brought in the second banking coordination directive by a change to the Banking Ordinance; the United Kingdom brought it in by a regulation which they left us out of arguing that we could not be brought in by regulation. But it is a problem that is being addressed at the moment by what I understand, as a layman - the Opposition Member will probably understand it better than me - is considered to be a major cultural change in the way the United Kingdom legislates and from what I have read of it, it seems that because the base of the United Kingdom system is common law and the base of the system of the Community is Napoleonic code, they are having difficulty, one understands from the view expressed by the experts on this, in transposing the requirements expressed in the language of the Community into the effective measures expressed in the language traditionally used in the English legal system. It is argued that this is opening avenues for people to take infraction proceedings on the basis that the United Kingdom has failed adequately to give effect to the requirements of Community obligations. There is now a look at simply lifting the wording of the directive and grafting it on to the UK. Certainly this is something we have been looking at for some time and the United Kingdom have been arguing that it could not be done but they are now looking at it themselves. I will give way.

HON P R CARUANA:

Mr Speaker, I fully take on board the basic sentiments of the Chief Minister that if we took through the legislative process in this House every directive that needed to be transposed into the laws of Gibraltar we would get bogged down. On the other hand, where those directives relate to subject matters that are capable of affecting profoundly interests in Gibraltar, then one simply deprives this House of its function of examining that legislation the way in which the Government have chosen to implement. For example and I will not take any more of the House's time now because we will deal with that Bill when we come to it - we consider that insofar as there has been creativity in the legislation relating to the Package Travel, Package Holidays and Package Tour Ordinance which is to implement a directive on that subject matter, that there has been a failure to take into account of the particular circumstances of Gibraltar and we hope to be able to persuade the Government that really that Bill must not be legislated in the form in which it presently is in the interests of trade in Gibraltar and nobody else. That is an opportunity we may not succeed in persuading the Government but we have the opportunity and we have the opportunity because it comes before the House in the form of a Bill. If it were not; if it had just been published in the Gazette one Thursday morning then, of course, we would not have that opportunity which is one of the purposes that this House is intended to serve.

HON CHIEF MINISTER:

I accept the validity of that argument, Mr Speaker. In fact, I can tell him that that Bill also was brought into effect in the United Kingdom by regulation. But, in fact, the existence of the Bill shows that we do not intend to do everything by regulation. For example, I can tell the hon Member that where we have tended to do things by administrative action, it is in areas like the taking of samples to test the purity of drinking water or the level of pollution of bathing water; the reason why we felt, in our case, we had to do it by administrative action is because in the case of the United Kingdom, the United Kingdom effectively does it by regulation because the physical work is done by another institution and to us it does not seem logical to have a system where we pass a law telling the Department of the Environment what to do. What happens in the United Kingdom is that the Department of the Environment will have inspectors who will make sure that local authorities are doing what is required by the Nation State. Therefore, in our case where it is a function of a Government department then the Government department is given the guidelines which conform with the requirements of the Community and told, "This is how you must do it" and they produce a report showing that it is being done which we then send to UK and UK then sends to the Commission. I think, where we bring it in by regulation, we generally do it on the basis that we may want to test, in some areas, the effectiveness of it and, if necessary, review the practicalities of the operation. And where we think it has something that tends to break new ground where this business of package holiday, we decided it required legislation because it was something, frankly, totally new in the sense that we were not amending something in existence or widening the scope of something that was already there. We were doing something in a completely new area, the effects of which we are not 100 per cent sure and certainly one where we are quite open to any suggestions that will enable us to comply with Community law on the one hand and not to put unnecessary burdens on the trade. So we are certainly interested in hearing the comments when the time comes.

Taking the point made by the Hon Mr Vasquez, Mr Speaker, all I can say is that obviously the Government take full political responsibility for the policy of the amendment to section 6 of the European Communities Ordinance and have also got to take the responsibility for any drafting errors the member has made even though the drafting is not a political task because the Government accepts that it answers for the performance of the civil service as well as for the political decision-making. But obviously, as far as I am concerned, the role of the House is primarily to debate policy and the hon Member may disagree with the policy about changing section 6 but whether the grammar is correct, we can parade 'A' levels or 'O' levels in

English literature, I am not sure whether that is something which we can debate with each other. Clearly I will go back between now and the Committee Stage and find out whether there is a requirement in any way to change any of the bits that are there as it is drafted at the moment to make it easier for the hon Member to understand. But the purpose of the exercise here is really to bring into the ability to provide for subsidiary legislation the new areas to which the Ordinance extends Community rights as a result of the bilateral agreement between the Community and the six EFTA countries.

Question put. On a vote being taken the following hon Members voted in favour:

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

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 CHIEF MINISTER:

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

THE CONTRACTS (APPLICABLE LAW) ORDINANCE 1993

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision as to the law applicable to contractual obligations in the case of conflict of laws be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the legislation seeks to bring to Gibraltar, as I understand it, a number of international conventions which have been in existence for a considerable time and I believe that the requirement for us to bring this into our statute book is something that has been raised with the administration by people in the profession in order to enable them to achieve a mechanism that will allow decisions of the court in things like maintenance payments, debts and so on, to be pursued in other jurisdictions. I am also advised that, in fact, we expect that this will mean really that although it is a two-way traffic, we are more likely to be making use of it. This deals with the Lugano Convention and so on.

HON F VASQUEZ:

If the Chief Minister gives way. I think the Chief Minister is directing his comments on the Civil Jurisdiction and Judgements Ordinance which comes later, the first Ordinance is the Contracts (Applicable Law) Ordinance which implements the Rome Convention. I am sure the comments he will make will be similar in nature but I do think he is addressing his comments towards the wrong Bill, Mr Speaker.

HON CHIEF MINISTER:

Well, Mr Speaker, the two Bills, I understand, arise out of the same representations and are concerned with the Rome Convention, the Luxembourg Convention and the Brussels Protocol all of which deal with the implementation of contracts in jurisdictions outside Gibraltar and the ability of such contracts to be implemented in Gibraltar. We have taken both measures at this stage following representations that go back, I believe, a very long time but in some of the areas there were external difficulties in the other jurisdictions in relation, in particular, to the Brussels Protocol which we had pending before we felt we could move on it and be able to ensure that the jurisdiction of our own system was being as effectively recognised elsewhere as we were being required to recognise for other people. The view of the Government has been that we were happy to support this measure which we understand will make Gibraltar attractive as a competing jurisdiction but only when we were sure that other people would recognise our courts in the same way as we were required to recognise those of others and we were not prepared to see an obligation introduced in our legislation without the right being also there for us to pursue the honouring of contracts

in other jurisdictions. At the same time the second piece of legislation has that effect in the area of implementing orders where I understand things like maintenance orders may be an important part of it. But the concept is the same in both cases. Although it is a technical area, frankly, where what we are really talking about is where the legal profession will be able to make use of this mechanism, the reason why I am presenting it rather than the Attorney-General is because we see it as a political issue in terms of the recognition of the status and the jurisdiction of Gibraltar rather than as a matter of purely internal legal administration. Paragraphs (a) and (b) of clause 2 say "a Convention" and I am advised that it should read "the Convention". In cases where something has gone wrong between the drafting and the printing, the view that we take is that we are not putting forward an amendment which requires a vote because it is not a matter of substance, it is a matter of the way that it has actually appeared in the print and therefore rather than move amendments at the Committee Stage to change an "a" into a "the", I am informing the House at this stage in the Second Reading that in paragraphs (a) and (b) of clause 2 it should be read as "the Convention" rather than "a Convention". And in clause 4(1) the words "Any question of" should read "Any question as to". But, of course, the effect of those changes do not alter the meaning; they just make the meaning clearer. Obviously when we come to the one that we have already gone through, if there are similar rewording that can make things better for the Hon Mr Vasquez we will seek to do so. I commend the Bill to the House.

MR SPEAKER:

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

HON F VASQUEZ:

Mr Speaker, the Opposition naturally support the policy of this Bill. The Rome Convention was a Treaty recently ratified and applied in the United Kingdom. It really harmonises private international law between the signatory countries in a way which clarifies the law of which country applies in situations of contracts between nationals of signatory countries. To a great extent it actually applies the existing common law as to private international law which determines matters of forum and the applicable law on forum convenience, etc. Any Bill, Mr Speaker, which gives local effect to European treaties and conventions is one step further towards Gibraltar taking its proper place in the international community and one step further towards making Gibraltar a sophisticated and fully developed jurisdiction and this Bill is therefore to be welcomed.

MR SPEAKER:

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

HON CHIEF MINISTER:

I do not wish to add anything to what has already been said. I think it is self-evident that this is something that is good for Gibraltar.

Question put. Agreed to.

HON CHIEF MINISTER:

I beg to give notice that the committee Stage and Third Reading of the Bill will be taken at the adjourned meeting.

THE LITTER CONTROL (AMENDMENT) ORDINANCE 1993

HON J E PILCHER:

I have the honour to move that a Bill for an Ordinance to amend the Litter Control Ordinance be read a first time.

Question put. Agreed to.

SECOND READING

HON J E PILCHER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill in front of us seeks to do two things. As Opposition Members will see, the fines in this particular Ordinance have been put into the standard scales and this is quite standard - if I can use the word - Mr Speaker, in most of the Ordinances, as we bring them to the House of Assembly to standardising the fining mechanism. The important aspect of the Bill is the one related to the change in various sections which brings into being the new definition of litter for the purposes of this Ordinance and the introduction of the terminology "dangerous litter" which means litter which by reason of its size, volume, nature or the place in which it has been thrown down, dropped or deposited could constitute an obstruction or a danger or a health hazard. The idea of creating two types of litter is related particularly to the creation of the fixed litter offences. The fixed litter offences, undoubtedly, has worked. It has meant that apart from the major impetus given by the Government in trying to clean up Gibraltar, the fixed penalty offences has created a

situation where people now understand that not only are the Government using the mechanism of trying to mentalise people and to create a cleaner Gibraltar but we have also got a stick with which to hit people through a fining mechanism if, obviously, they break the law. However, Mr Speaker, having gone down this path quite successfully, what we have found is that we had to create a new mechanism because it was, we felt, unfair to have a situation where somebody was walking down the street and dropped a packet of cigarettes on the ground and was given a fixed litter ticket of £25 - it is now amended to £30. We also had a situation where somebody put five or six bags of refuse or dumped a lorry in the corner of one of our side streets and the mechanism was then that we either took them to court which is a very long process or we issued a fixed litter offence and the person paid £25 or £30. I think the enforcement authorities took the path of issuing a fixed litter ticket and we felt at that stage that by the introduction of dangerous litter what we would then have is the standard fine for people who drop litter as such and a standard fine for those who drop dangerous litter which, as I have explained in the definition, is a much bigger offence than just dropping a packet of cigarettes on the ground, Mr Speaker. The Litter Control Committee believes that this would be an added mechanism in order to fine people who break the law. In the case of the fixed litter ticket, a person who believes has been unfairly treated or unfairly fined has the right to go to court and argue it there. But obviously he is always starting from the premise that the court will understand that the litter ticket is £150 and therefore if he is found innocent the ticket would be quashed. Normally the fining mechanism will start from £150. The Government and the Litter Control Committee believe that this will be an added mechanism in order to maintain Gibraltar clean, 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 L H FRANCIS:

Mr Speaker, the Opposition support, in general terms, the principles of the Bill other than our usual objection to the standard scales which we will bring up later at the Committee Stage. The only other point we would wish to raise is that in the definition of "dangerous litter" we have the term "dangerous litter means litter which by reason of its size, volume, nature or the place in which it hs been thrown down, dropped, or deposited could constitute an obstruction or a danger or a health hazard". I would just like to give notice that in the Committee Stage we

will be proposing an amendment to eliminate the word "could" so that it would read "dropped or deposited constitutes an obstruction" since in whose opinion something could cause an obstruction or could be a danger? It makes it rather vague and ambiguous and we would like to give notice that we will be raising that at the Committee Stage. Thank you, Mr Speaker.

HON P R CARUANA:

Mr Speaker, simply on a point of principle and I endorse what my hon Colleague has said. We support the principle of reasonable measures that strengthens the administration's hand in the common purpose of keeping Gibraltar clean and, indeed, enhance it; making Gibraltar cleaner than it actually already is rather than just maintaining it. But if we are going to draw a distinction between ordinary litter and dangerous litter, then the difference must be in the dangerous and therefore for litter to cease to be litter and to become dangerous litter it must actually constitute a danger or an obstruction. The moment that one introduces the word "could" one is really destroying the distinction because every litter is capable of being dangerous in certain circumstances. If one says "which could constitute an obstruction" really one is bringing it back to square one. Really what the Ordinance should say is everything is litter but if it constitutes an obstruction or a danger to health or hazard then it is dangerous litter and therefore we are going to deal with it more severely. Although it is more a matter for the Committee Stage, we raise it as a matter of principle at this stage because it does actually go to the principle of the Bill which we think is not actually being properly implemented by the words used.

MR SPEAKER:

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

HON J E PILCHER:

Mr Speaker, in the first instance I thank the Opposition for their support. I think in questions of litter control we have always had the unanimity of this House and I thank the Opposition for that. Mr Speaker, in the case of the specific point made on the changes of the word "could" to "will", I would like to say - and obviously I cannot stop the Opposition putting in as many changes as they would want to bring in the Committee Stage - that having raised it in the discussion in principle, I would also like to say that we have also looked at that possibility and we decided to go for the word "could", Mr Speaker,

because if we go for the word "will" then the litter would have to constitute an obstruction, a danger or a health hazard at that particular moment and that is not the purpose of the dangerous litter. We must remember, Mr Speaker, that in the first instance dangerous litter is really a terminology that we need to use to understand the difference between one and the other. But the word "could" has been purposely brought in and I will give the hon Member an example. If somebody takes the rubbish out of his house and puts it in the corner of a side street, at that particular moment that rubbish does not constitute a health hazard but because it has been deposited in the corner of a side street in the middle of August in three or four days time that rubbish would become putrid and therefore, at that stage, would be a health hazard. What does the authority do, Mr Speaker? Does the authority wait for three or four days until it becomes putrid and therefore is a health hazard? What the law is seeking to do, Mr Speaker, is making people understand that if they put, for example - and this is only an example and I could mention a thousand examples of why it should be "could" - the person who is depositing the rubbish in a place where he knows will not be collected, knows that if that is not collected that household refuse will eventually become a health hazard and that is the reason for the word "could". It would be, in my humble opinion, the decision of the judge at the end of the day whether it could or it could not and therefore whether it would or it would not. Thank you, Mr Speaker.

Question put. Agreed to.

HON J E PILCHER:

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

THE PACKAGE TRAVEL, PACKAGE HOLIDAYS AND PACKAGE TOURS ORDINANCE 1993

HON J E PILCHER:

I have the honour to move that a Bill for an Ordinance to transpose into the national law of Gibraltar Council Directive 90/314/EEC on package travel, package holidays and package tours be read a first time.

Question put. Agreed to.

SECOND READING

HON J E PILCHER:

I have the honour to move that the Bill be now read a second time. The Bill in front of us today, I believe, gives long awaited protection to clients of the tourist industry. It is not perhaps to this extent but it is quite standard in most European countries and certainly in most countries of the western world, where there are mechanisms and ordinances that protect the clients in the tourist industry. Many organisations have been set up and are regulated by countries in order to protect the client. I have done a little bit of research and I think the previous Gibraltar Governments have, in fact, tried to put mechanisms into place for the protection of the client but mostly during the closed frontier. It was difficult because it was always felt that it was tight for the trade particularly in an area as small as Gibraltar where the turnover related to the smaller travel agents. It was very, very difficult to be able to implement serious legislation. The Government were advised some two years ago that there would be a requirement to introduce legislation for the protection of clients and these discussions have been going on backwards and forwards with the trade now for the last couple of years. EC Directive 90/314 in its existing form was something that the Government felt could await no longer and having drafted the Bill it was the intention of Government to discuss this with the trade. We have not only been discussing it with the trade over the last two years but more particularly over the last two months since we published the Bill. There are many areas of the Bill which are not yet totally clear particularly from the clarification of certain areas which I will now explain. I would like to affirm the words that the Chief Minister has said that we are open to advise from the Opposition if they believe that what we are trying to do and what the EC is trying to do can be better satisfied in any way by amending any of the areas. I would like also to advise the House that it is not the intention of the Government to proceed with the Committee Stage and Third Reading of this Bill at the adjourned meeting but at the next House.

I would like to hear the comments of the Opposition Members to this Bill but very briefly the Bill is divided into four main areas. The first area, I think, is an area of the proper information which a tour operator has to give to a prospective client because we have had many situations in the past particularly on brochures where there were always hidden areas which the tourist did not realise until he actually got to the destination and was asked to pay a supplement or was asked to pay departure taxes. The first aspect of that, particularly the one related to clauses 4 to 8, is an explanation of the proper information that the tour operator/travel agent is now duty bound to give by law to a prospective client. There are not any

difficult areas there except for perhaps clarification of words as they appear in the Bill, for example, "so short". I think we need to identify what the word "short" is. In my opinion, 72 hours is a period short enough for the purposes of the information. The second aspect of this Bill is proper contracts between the parties. Again this is an area which has been sadly lacking where there is now in the Bill clearly specified what the contract between the two parties has to specify. There are areas where, because of differences in the perceptions in national laws, for example, in hotel classifications, perhaps there needs to be certain clarifications in some areas but there is very little difficulty in understanding and accepting that a contract between those two parties has to be one that clearly explains to the individual the holiday that he is buying and the problems that he is getting into. Let me just give an example, it is now the onus of the travel agent - called "the other party" in the Bill - that in the contract he has to specify the visas required by the individual when purchasing the package because we could find and we have found ourselves in situations where the person buys the package, tries to board an aircraft to take him to that area and he is told that if he does not have a visa he cannot go. At that stage what the Ordinance is doing is putting the onus of responsibility on the travel agent to advise, under contract, the information required and the contractual obligations required. The third part of the Bill - it is a long Bill so I am virtually skimming over it, I cannot go into every single aspect of it - and, I think, the most important part is the security that has to be provided by the entities that deal with package holidays which is, as I was saying at the start, Mr Speaker, a quasi normal situation in other countries. It is a bonding structure particularly on the back of a problem relating to liquidation or insolvency of the entity that is selling the package tour. We have seen, particularly in the UK, and across the board in Europe and, unfortunately, in Gibraltar over the last couple of years, small and even big travel agencies/tour operators going into liquidation and having a situation where a lot of people who have booked their holidays and paid for their holidays cannot recover their money, cannot go on their holiday. What is even worse, Mr Speaker, thankfully not in the case of Gibraltar but certainly in the case of UK, is that people who have bought packages, who have been transported to a third country and then cannot come back because the entity that took them there has gone into liquidation and they find themselves stranded in the country where instead of being a holiday it turns out to be a total trauma. It has to be two of the three or four areas, that has to contain a bonding structure so that the client is protected from liquidation, from insolvency and, in fact, from other areas of the Bill, Mr Speaker. There are difficulties in this area this is one of the reasons why the Government feel that we are going to delay the Committee Stage and Third Reading of the Bill. It relates to the peculiar

circumstances of Gibraltar, Mr Speaker, because it is a small market. In discussion with the trade this has been put in question by them and we are now going back and making sure that our understanding is the understanding by law. We feel that the situation of a package sold in Gibraltar is only for the element of the package which originates in Gibraltar which means that the travel agent in Gibraltar would not be responsible if he sold an onward package of a Thomsons or a Kuoni or a Virgin. That aspect of the package is not an aspect of the package which the local travel agent/tour operator would be responsible for because the law of Gibraltar will only make the travel agent responsible for the package that is the package of the originating country. This, Mr Speaker, is our understanding. It is not very, very clear and this has been brought to the attention of the Government by the trade and before we proceed with the Bill we have to make absolutely sure that that is what it should contain and say and if it does not we will bring our own amending legislation to ensure that the package is an originating package. If not then we will have to go back to the drawing board with this Bill because, if not, the bonding related to a package which is more than just getting a plane and an hotel and a package created by Gibraltar is a problem so we might have to seek further advice, Mr Speaker. The last element of the Bill and, as I say, I have just broken it very briefly into four sections, is the monies in trust. This is an element of the directive which the United Kingdom has not totally transposed into their national law. Notwithstanding the fact we felt that, if nothing else, in the First and Second Readings of the Bill it should be there. I would like in the first instance to hear the comments of the trade which I have and obviously we would also like to hear the comments of the Opposition. It is an important aspect of the protection of the client because particularly in these days of difficult cash flows for businesses and difficulties in liquidities of businesses, it is always very easy for a business to utilise the deposit being paid by a bona fide tourist. It is easy for them to use that deposit for cash flow and liquidity of the business and then the business gets into difficulties, goes into liquidation and the person finds that the deposit that he has paid is not a deposit that has been paid for his holiday but has been paid to help the cash flow of the business. I think that if we could set a mechanism in place in Gibraltar which was not a very difficult administrative or costly mechanism by which those monies which a bona fide client buying a holiday deposits, goes to a trust until that money has to be paid for the execution of the contract for the holiday, I think that would be a protection of the client which would be of benefit to the many, many holidaymakers that emanate from Gibraltar. However, I understand the difficulties of creating that and, again, it is an area that I am now looking at particularly with the accountants to see how this could be set up without it being an administrative nightmare

or a very costly element because then it would defeat the purpose for which it had been created. But, having said that it is not something that we can leave out if we wanted to but to say, as some people have said to me, that the UK left it out and therefore we should does not follow because this is why we debate our own legislation in this House and we believe that we should have stricter or better legislation than the UK it will not be the first or the last time that we have done it. Mr Speaker, there is a lot more that I could but I think at this stage I would want to hear what else the Opposition would want to raise and therefore I commend the Bill to the House.

MR SPEAKER:

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

HON F VASQUEZ:

Mr Speaker, as the Minister is aware and the Leader of the Opposition has already indicated, we in the Opposition cannot support this Bill for a number of reasons which I am going to deal with at some length because, obviously, this is the only opportunity we get to refer ourselves to the policy of the Bill and it is quite a long Bill. I think the first point I would wish to make is we accept that this Bill is enacted in implementation of an existing EC Directive but the problem as we see it is not so much what the EC Directive says as what has been added to it either by a UK draftsman or by a draftsman here in Gibraltar. As presented, this Bill is unacceptable and unnecessary to a great part for the implementation of the Directive. I should say that we in the Opposition are aware of the responsibilities of this legislature and we are aware that we must enact EC Directives locally to the extent that the law enacted in Brussels has application in Gibraltar. So obviously we need to enact EC Directives. And we also accept quite candidly that we need to pass consumer protection laws. We are the ones who have been saying it, and certainly in the field of package travel it is to be welcomed that laws are being passed to protect consumers from the malpractices of unscrupulous travel agents or travel agents who do not organise their businesses sufficiently well. But that said, we in the Opposition are very cognizant of the fact that we have to be careful that we do not lose sight of Gibraltar's circumstances in the enactment of any EC Directives. It appears to us that this Bill for a large part has been drafted by a UK draftsman. And it seems very clear that it has been drafted specifically to prevent and avoid abuses by large companies flying very large numbers of tourists to various destinations and either going bust and going down holding many millions of pounds of deposits paid by prospective

holidaymakers or leaving many thousands of tourists stranded in various parts of the world. Obviously we have seen this, we have seen a number of especially UK travel operators that have gone down in this very ignominious fashion leaving people stranded. Fortunately, Gibraltar does not have that sort of tourist industry at all and this is a Bill which is a sledgehammer to crack a very small local nut. Although it refers to package holidays, package tours, it really applies to all local travel agents and local travel agents have two principal functions. One is that they act as agents for large tour operators which already are covered in their home jurisdiction by the provisions of this Directive. I am referring, of course, to Thomsons, Kuoni, Cosmos, Virgin etc. So to the extent that the local agent is ferrying people onto existing large tour operators, the consumer is already protected because if Thomsons goes down then any person in Gibraltar who has bought his ticket through Exchange Travel for a Thomsons holiday will be protected under the UK legislation. I note that the Hon Mr Pilcher has said that it is not the intention to cover local travel agents who are merely acting as agents for existing tour operators, unfortunately as drafted this Bill does because the definition of package holiday in clause 2(1) of the Bill, Mr Speaker, makes it very clear that package means the pre-arranged combination of at least two of the following components: (a) transport; (b) accommodation and we all know that local travel agents on the whole what they do is if I go along and buy a Thomsons holiday he will book my holiday with Thomsons but he will also book me on a flight for London and book me for an overnight stay in Gatwick, for example. By merely booking my flight and putting me in overnight accommodation he falls into the definition and therefore he falls under all this enormous sledgehammer which has been created under this Bill and that, I think, is a principal amendment that has to be considered for this Bill. If it is intended to cover the local trade only to the extent that the local trade is itself organising package tours then the definition of "package" under the Bill has to be looked at very carefully. Coming to the second principal function of local tourist operators, is that they organise their own small packages; they organise groups of Gibraltarians travelling abroad they will book the holiday and organise the package or, for example, coach tours into Spain or Morocco or whatever and to that extent obviously local travel operators have to be covered by the Directive in the Bill. The point is this that any measures that we enact in Gibraltar in application of the EC Directive must comply with the requirements of the Directive without losing sight of the particular situation of the industry in Gibraltar and we fear that in this Bill the cloth of the Directive has not been cut to suit the local operator. The cut of this Bill makes a suit for a very large, very powerful German or British tour operator, it does not suit the requirements of the local travel agency industry. I take heart from the assurances that the Minister has given us

that obviously the Bill will be reconsidered and thank goodness for that, Mr Speaker, because if this Bill was to be enacted in its present form it would drive many local operators to the wall, have no doubt about it. I want to be specific on that, I want to now turn specifically to the various provisions of the Bill. The Minister has said that really the Bill is divided into four parts. I think the Bill is actually divided into two parts. Clause 3 really acknowledges this. In the application section it says "(1) This Ordinance applies to packages sold or offered for sale in Gibraltar. (2) Sections 4 to 15 apply to packages so sold or offered for sale on or after the date determined under section 1. (3) Sections 16 to 22 apply to contracts which, in whole or part, remain to be performed on the date determined under section 1". So really it is two main parts, clauses 4 to 15 and clauses 16 to 22. The differences between these two parts may not be immediately apparent, one needs to study the Directive, which I have in front of me, to understand the distinction and to understand what this Bill is purporting to do. Stated simply and briefly: clauses 4 to 15 apply the general provisions of the Directive whilst clauses 16 to 22 apply only one article of the Directive, that is article 7, and embellishes article 7 in a way which the Directive does not require. This is what we in the Opposition think it is totally unnecessary and it is going to be very counterproductive to the local industry. Dealing first with clauses 4 to 15: these as the Minister said deal with, for example, the information that must be stated in brochures; the information that has to be included in a contract for a holiday; the various implied terms in every contract for a package holiday, etc. All these requirements set out in clauses 4 to 15 are set out distinctly in the Directive and therefore if we are going to enact the Directive we might consider them onerous, we might consider the provisions meddlesome but we have to apply them and therefore we can have no quarrel with them. They are, for the most part, unavoidable and they are, for the most part, desirable as introducing a measure of consumer protection, so no quarrel with that, although there are two points I would make. The Minister said that it was not the intention of the Bill to make the local tour operator responsible for a Thomsons holiday, for want of a better word. Well, if the Minister looks at clause 15 he will see that the Bill does exactly that. The clause reads "The other party to the contract" - the other party being the travel agent - "is liable to the consumer for the proper performance of the obligations under the contract," bearing in mind that under the definitions section "any package" is covered by this, ie the fact that the local travel agent has put the Gibraltarian tourist on a plane and puts him on an overnight stay in Gatwick makes him liable under the Ordinance, so he is already liable "irrespective of whether such obligations are to be performed by that other party or by other suppliers of services". So it says that

the travel agent who has sold a holiday, even though he is not supplying the service, even though Thomsons is supplying the service, if Thomsons is in breach of any of the provisions of this Ordinance, the local travel agent has to face the music. That is something, again, which we would urge Government to reconsider and look at very carefully because it could destroy local businesses. There is one other aspect of the first part of the Bill. Although I said in general terms the first part was acceptable, there is a rather invidious element which is not contained in the Directive and that are clauses 4(2), 5(3), 7(3) and 8(4). These are all similar provisions in four different clauses. I will read clause 4(2), "If an organiser or retailer" ie the travel agent "is in breach of sub-section (1) he shall be liable to compensate the consumer for any loss which the consumer suffers in consequence". Again, this is not a requirement of the Directive. This is liability, this is the imposition of civil contractual liability on the person selling the holiday is not something required by the Directive. To some extent a person who sells a holiday and does not perform a contract is going to be, obviously under our law of contract, is going to be liable anyway but as we know this Bill imposes a number of further obligations which may not be included in the contract, it actually refers to implied terms of the contract. The way that it is drafted, this Bill is making the local operator liable for any breach of these implied terms or onerous terms imposed by the Bill, something not required by the Directive. I have the text of the Directive here. An English draftsman has put that in and the effect of this is, again, that it is going to make local operators liable for things that are not in the contract, items and elements of the contract which have been included by the statute. It is our view, in the Opposition, that this law essentially is a consumer protection measure and as such we need to impose those obligations contained in the Directive but the local tour operator should not be made liable civilly for any breach of those. What any breach of those requirements should entitle the consumer to do is to complain to a consumer protection authority and then the consumer protection authority can investigate and, if necessary, fine the operator. But the Government must not, for goodness sake, open the floodgates to civil claims against these businesses that may well have the effect of driving them against the wall. I have referred to clauses 4(2), 5(3), 7(3) and 8(4) so my submissions and my arguments are directed to those four sub-clauses. I concede that in fact clause 15(2) of the Bill makes a similar provision. Again, it is a similar sub-clause to the ones I have referred to, which says "The other party to the contract is liable to the consumer for any damage caused to him by the failure to perform" etc. I have not referred to that clause because, in fact, article 5 of the Directive specifically requires that. It is only in respect of that clause which that imposition of civil liability is required by the Directive, in respect of no other clause does the

Directive require that. So why should we have it? Why should we have greater protection and greater prejudice to the travel agents than anywhere else in Europe? Mr Speaker, that closes my address as regards the first half of the Bill.

Turning to the second half, clauses 16 to 22. None of these sections, with the exception of clauses 16(1), appear in the Directive. The Minister said that Britain had not applied the bond provisions but that we were doing so because they were.....[HON J E PILCHER: The trust provisions.] ....the trust provisions, that is right. I apologise. In fact, there is nothing in the Directive about bonding, insurance or trusts. All the Directive says, at article 7, it basically repeats clause 16(1), and that says "The organiser and/or retailer to the contract shall provide sufficient evidence of security for the refund of the money paid over and for the repatriation of the consumer in the event of insolvency". That is what the Directive requires. The local operator has to be able to show that he can either refund the consumer's money or repatriate him in the event that the company goes bust. That article 7 is incorporated in clause 16(1). Every single other clause of this Bill is the work not of a Brussels draftsman but the work of either a UK or a local draftsman and we consider that the provisions are far too onerous. Again, to use the analogy, the sledgehammer to crack the nut. As drafted, and bearing in mind that the Brussels Directive does not require any of this, all the Brussels Directive requires is that some security be given. In other words, that the authorities in Gibraltar be satisfied that every package operator is able to either repatriate or refund. That has been interpreted as imposing the following obligations on the local tourist trade operators: (1) there is the requirement for a bond set out in clauses 17 and 18 whereby travel agents must secure a bond to cover all the estimated costs of repaying to customers all monies paid for contracts which cannot be performed in the event of insolvency; (2) they have to take out an insurance, under clauses 19 and 20; (3) in addition, they have got to set up a trust where any monies they take from the consumer, they cannot put into their account, they have got to pay to a trustee who will hold the money until the trustee is satisfied that the money has been spent on the holiday and the holiday has been completed. We all live in the real business world and I have spoken to operators in the trade and it is the view of everybody that these three things together will impose an impossible burden on the small businesses of Gibraltar. Bearing in mind also that we are not faced with a situation where tourists are going to be abandoned overseas because, let us say, XYZ Gibraltar Travel Agent Ltd goes bust. XYZ Gibraltar Travel Agent Ltd does not charter flights, does not have its own airline; all it does is put people on other people's flights and if any company goes bust on which a local tourist is he is going to be covered by the provisions of this

Directive as implemented in the home State of the country that supplies the airline. So those tourists are always going to find their way back home. All we need to do is guarantee that basically the travel agent is not putting the money in his pocket and not effectively ordering the holiday and he goes bust and the holiday has not been ordered. It is the view of Opposition Members, Mr Speaker, that that can perfectly and adequately be achieved by the provision of a bond. Most of the reputable players in the field already provide that bond, they all have that bond, it is the usual practice. In fact, those affiliated to IATA have to do it by course. IATA requires a bond from an affiliated travel agent and so a lot of the travel agents already provide that bond, a lot of the travel agents already provide the security that the consumer requires. It would simply drive a lot of perfectly competent, perfectly solvent local operators to the wall and it would cause the local businesses and industry enormous hardship to enact the Bill as at presently drafted. It is our view, Mr Speaker, that a lot in clauses 16 to 22 is simply unnecessary, it is not required by the Directive and it goes completely over the top. It is our view that these clauses must have been drafted in England, I cannot believe that a local draftsman, bearing in mind the necessities and circumstances of the local industry, has drafted clauses of that nature. So I take heart from the assurances that the Minister has given that this Bill will be reconsidered. We would ask for it to be reviewed very carefully, after very careful consultation with the trade. Let us please, and I urge that this House does not take the Italian attitude to legislating which is, "Well, we will pass the Bill but we are not really going to impose these obligations". If it is in the statute book it is because we are going to enforce it, if we are not going to enforce it these provisions should simply not find their way into the statute book. We cannot support this Bill as presently drafted. We acknowledge and we support the principle and the logic of the Bill as a consumer protection measure but we think that this Bill, as presently drafted, has not been thought out carefully and is going to have adverse effect on the local trade. In fact, it might even accelerate the very situation which it is trying to avoid. Clauses 21 and 22 provide the trust provisions and they say that the trustee shall take the costs of administering the trust out of the monies paid into the trust. So we could, Mr Speaker, have the absurd situation where a travel agent pays money into a trust, goes on to the trustee and says, "I need these £15,000 now to get these seven tickets for the package tour to Barbados" and the guy says, "No, I am keeping that, those are my fees for administering the trust" so the travel agent cannot buy the tickets for the holiday. It is an absurd situation but it may actually provoke the very situation it is trying to avoid. Not enough thought has been given to this, Mr Speaker, and we cannot support the Bill in its present form.

HON CHIEF MINISTER:

Mr Speaker, let me say that as a matter of general policy the approach of the Government to transposing into the national law of Gibraltar, Community obligations is that we do just that, we transpose Community obligations and we do not do things that we are not obliged to do. Certainly I can tell the Opposition Member that if there is the remotest possibility that there are things here that are not required they will not be there by the time the Bill is passed. Let me say that it is not true, in fact, that this is something that has been done hurriedly, it is something that has been in the pipeline for a very long time because I can tell Opposition Members that we, as a matter of policy, were refusing to implement these measures in Gibraltar when the United Kingdom published its original draft regulation transposing the obligations into United Kingdom law by regulation and we found that the definitions that had been used effectively left Gibraltar out. It is one of the very few occasions when we actually succeeded in being put back in when the final legislation came out in December 1992. That is in the area of bonding where we have used the same wording as in the United Kingdom where it provides who is entitled to provide the bond and it says, in clause 17(7) in the definitions, "'authorised institution' means a person authorised under the law of a member State to carry on the business of entering into bonds of the kind required by this clause". I am drawing the attention of the House to this particular point because, in fact, the wording there is the same wording as there is in the regulation that was passed in December 1992 in the United Kingdom. But the original wording said, "'authorised institution' means a person authorised under the law of another member State" and instead of saying "a member State" it said "another member State" and wherever the United Kingdom says "another member State" we are told by the United Kingdom that we are not either in another member State or in the member State UK which means we are suddenly left out of the Community. In fact, this particular Directive has been transposed into the national law of the United Kingdom recognising Gibraltar as part of the Community and allowing, for example, an insurance company or a bank in Gibraltar to be able to compete for the business in the whole of Europe of providing bonds only because of that change of that one word. This is a particularly important issue for us because in the case of the Second Banking Coordination Directive, the United Kingdom has given effect to it, as I mentioned earlier, by regulation and not by an Ordinance like we did, and in the regulation in the United Kingdom which was published in July 1992, hon Members will see that a bank is described as a credit institution licensed in the United Kingdom by the Bank of England or licensed in another member State and therefore as a result of that particular piece of legislation of July 1992, Gibraltar banks are not Community banks in the

United Kingdom although according to the view of the United Kingdom they are Community banks in the other eleven member States. We were not able to persuade the United Kingdom to change that regulation and therefore the final version of the regulation in December 1992 still left us out. So we finish up, in our view, with the absurd situation that a bank in Gibraltar is not a licensed credit institution in the United Kingdom to do business other than to sell bonds to package tour operators because in the initial legislation in package tour operators, the authorised institution that could provide a bond was defined the same way in both regulations; in the one on banking and in the one on package tours. In December 1992 it was changed in one and not in another. Having brought the matter up with the Foreign Office on the basis that it showed that the reason that they had given the Government of Gibraltar for excluding us was not acceptable, they have argued that it is not possible to provide for Gibraltar by regulation, that it is ultra vires to do it in the case of Gibraltar although not in the case of anybody else. It would follow that the package tour regulations of the United Kingdom of December 1992, which apply to Gibraltar, would then be ultra vires. I have to say that rather than persuade them that the rest is wrong and that they should be included, their response has been that it may well be that it is ultra vires and that we should be kicked out of the bonding as well as of everything else. So we have not made a great deal of progress using that argument. But the position that we took was one of deferring the implementation of this in Gibraltar until we were satisfied that the reciprocity existed and therefore the provisions here which are the result not just of drafting in Gibraltar but also of consultation with the EC unit in UK as to what the member State responsible for our external affairs considers the legislation in Gibraltar has to look like to avoid the possibility of that member State being exposed to infraction proceedings, which is the only reason why they can interfere in our powers of legislation. The only way that the United Kingdom can come along and tell us what to do, as far as we are concerned, is if they say, "Look, what you are doing places us in a position of risk in that we may be taken to court for having failed to fully transpose into the laws of the member State our Community obligations because we are doing it in the UK and not doing it in Gibraltar". That is the only argument that we accept and we accept the validity of that argument. But even in that context our position has been that we are not prepared to do it unless at the same time as we are giving other people rights in Gibraltar, Gibraltar institutions enjoy those rights in the UK and in other member States. Therefore the debate over this particular point held up the bringing of this to the House for the last six or seven months so it is not a question that it has been put together in the last couple of weeks, but we will certainly take careful note of the arguments that have been put there and between now and the Committee Stage we will take a very close look

at it and if we feel that there is mileage in reducing any burden on the local trade then we will put off the Committee Stage to a future meeting of the House rather than take it now.

HON P R CARUANA:

Mr Speaker, in support of the comments made by my hon Friend, Mr Vasquez, and in a nutshell, I think, the Opposition's objection to this Bill is really that it fails to take account of the fact that whereas this is a Directive primarily addressed at tour operators, it is in effect in Gibraltar being applied to people who are almost exclusively travel agents. I think that no one in this House wants to transfer to traders on the Main Street liabilities which the European Community believes ought to be borne by the tour operators. If somebody fails to comply with the European requirement as to consumer protection in the three week holiday that they have sold in Tokyo, do we really want to make the Gibraltar travel agent liable in damages to the Gibraltarian who buys the three week holiday in Tokyo? Do we want to make the Gibraltarian travel agent responsible for that? Do we want to impose upon the Gibraltarian travel agent bonding requirements? This is another area that the Minister has got to look at. As presently drafted the bonding requirement required of the Gibraltarian travel agent relates to the value of the entire package, not to the value of the package that he has provided. So if one buys a £25,000 round the world cruise from one's local travel agent, the local travel agent has got to produce bonding and insurance to the value of £25,000; not to the value of the £129 that the flight to London costs which is the only thing that he has actually provided. So we have got to protect the local travel agent from the bonding, we have got to protect the local travel agent from the insurance requirements in respect of those elements of the package that he has not himself provided and then, of course, we have got to make sure that if any of these large companies do breach their obligations that the people who encourage our local consumers to sue are the package tour companies and not the local travel agent from whom he happened to buy the ticket. I think there is common ground between us on both sides of the House on this point. As to the question of the trust and the trust arrangements, as we understand the provisions, what it means is that if I go to a local travel agent and buy myself a £1,000 holiday to the Caribbean and I have to pay obviously the £1,000 before I go - I have not yet found a travel agent that will let one go and pay later, but still - and he has got to put that £1,000 in a trust until the contract has been performed. The contract is not performed until I have gone to the Caribbean and actually used the return flight because the contract will not finish being performed until I come back because my return flight forms part of the package under the contract. That requires

the local agent to be able to persuade the Caribbean tour operator to let me use his aeroplanes, to let me use his hotels before he has been paid because the local travel agent cannot release the money because it is stuck in this trust that the Minister is threatening to create. All I can tell the Minister is that it is going to be necessary for us all to go to La Linea to buy our package tours, not because we do not want to buy them in Gibraltar but because I do not think the local travel agents will be able to sell us package tours because none of their principals - none of the Thomsons, Cosmos, Kuoni - are going to allow local travel agents to sell packages to consumers for which the agent cannot forward the money to the tour operator basically until the consumer comes back and says, "I have had a great time, the hotel was fine, the meals were good and I am not going to sue anybody for it". The system will break down and I really do not think that in this House we can re-invent the wheels of commerce. We are all in favour of protecting the consumers from abuse, we have got to find ways of doing it but we must not put our small businesses out of business and really not stack up the odds against them as against our competitors who are only a stones throw away and could provide the same service without this handicap. I think, Mr Speaker, I do not want to sound any more critical of the Bill given the indication that Government have given that really their minds are open on it and I think we will wait to hear what amendments they consider, if any, appropriate to come back with in due course.

MR SPEAKER:

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

HON J E PILCHER:

Mr Speaker, most of the points raised by the Hon Mr Vasquez have been addressed, have been covered and there are areas which we are now seeking clarification and which, in fact, I did mention in my initial contribution that that is specifically why we were not proceeding with the Committee Stage and Third Reading of the Bill until a future meeting of the House of Assembly. However, I think it is true to say that both sides of the House know exactly what we want to do but, obviously, I cannot let the Leader of the Opposition get away with certain of the comments that he has made because he has been playing to the gallery and they are incorrect. The bonding structure, he knows quite well, is not related to the package, it is related to turnover. So a bond works related to the turnover so if a specific amount of money is received one obviously relate that to the turnover. The second point I would like to make which was made by the Hon Mr Vasquez, Mr Speaker,

is the one related to the Italian attitude. The Italian attitude is in no way related to the attitude of the Government of Gibraltar. We are a serious Government, Mr Speaker, who intend to put on our statute books whatever both sides agree and what the trade feels is what is good for Gibraltar in the protection of the client because it is the Opposition Members who spend their lives advising us of problems of consumer protection. Well, we have here an element of consumer protection and it might he a hammer or it might not, we in conjunction with the trade which is the most important thing will sort this out. I said at the beginning, the trust element of it is the least important of the lot. As I understood it, the trusts would work similar to how a lawyer's client account works where money is not intermingled with the flow of the business money but kept separate to be used for the purpose for which it was meant to be used. So if I deposit £x with a lawyer for the purchase of a property, the lawyer keeps it in his clients account and does not use it until it is ready to be moved for the purchase of the property. That is how, as I understand, it is supposed to work the trust and if due to drafting it is not doing that but going much further then we will correct that. We need to put in the legislation some form of bonding which perhaps may not have to be as onerous as this, Mr Speaker, and this is what we will take away and check. Coming back to the initial point, I said - this is why the Opposition Member was not correct - that, as I understand it, the package operator's - and I heard what the hon Member said because he did read the aspects of what constitutes a package - package created in Gibraltar would be the flight and the hotel which was booked from Gibraltar but not the onward package which is sold in the UK and therefore the agent here is acting as an agent of the UK and is being sold under the terms of the UK legislation. That is how I understand it but, Mr Speaker, I will go back and check this which is what I said initially.

Question put. On a vote being taken the following hon Members voted in favour:

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

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 J E PILCHER:

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

THE BIRTHS AND DEATHS REGISTRATION (AMENDMENT) ORDINANCE 1993

HON ATTORNEY-GENERAL:

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

Question put. Agreed to.

SECOND READING

HON ATTORNEY-GENERAL:

I have the honour to move that the Bill be now read a second time. The object of this Bill is to make comparable provision in respect of the registration of births as those contained in the Ordinance for the notification of deaths and to thereby ensure that the registrar of Births can take steps to ensure that every birth occurring in Gibraltar, is registered. The new section 10 of this Ordinance enlarges the number of persons entitled to register the birth of the child without the father or mother of the child being dead or ill or absent. Persons can now register if they were present at the birth; or if they were the occupier of the house in which the child was born, or if he or she knew of the happening of the birth; or the person who has charge of the child can also register. Section 11 is amended so that the persons who are referred to in the new section 10, that is, fathers, mothers, persons present at the birth, occupiers of the house and persons having charge of the child, can be required to go to the Registry and sign on being given notification by the registrar. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON F VASQUEZ:

Mr Speaker, we in the Opposition were rather startled to learn that, in fact, there was no compulsion on the registration of a birth in Gibraltar or that, indeed, the registrar did not have the power to compel the registration of a birth in Gibraltar. To that extent we see nothing controversial in this Bill and would welcome the new provisions to the Registration Ordinance.

MR SPEAKER:

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

HON ATTORNEY-GENERAL:

Mr Speaker, I have nothing further to add.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

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

THE COMMISSIONERS FOR OATHS (AMENDMENT) ORDINANCE 1993

HON ATTORNEY-GENERAL:

I have the honour to move that a Bill for an Ordinance to amend the Commissioners for Oaths Ordinance be read a first time.

Question put. Agreed to.

SECOND READING

HON ATTORNEY-GENERAL:

I have the honour to move that the Bill be now read a second time. The object of this Bill is to amend the Commissioners for Oaths Ordinance and to make provisions now for applications for appointment as a Commissioner for Oaths to be made to the registrar as opposed to the Governor

and to make provision also in Gibraltar for the registration of public notaries practising in Gibraltar and for the annual registration of such persons. The Bill converts the penalties for offences relating to Commissioners for Oaths and Notaries from a pecuniary amount to a reference to a level on the standard scale and introduces the offence and related penalty of practising as a notary not having been registered. The Bill also makes a consequential amendment to the Interpretation and General Clauses Ordinance to provide for rectification of the Register of Commissioners for Oaths and public notaries which is dealt with in the new clause 8. 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, I start by addressing the last observation made by the Attorney-General when he says that the amendment to section 8 is consequential in that it allows to enable registers of notaries to be amended. It is a remark that which, frankly, we in the Opposition take serious umbrage. First of all, it is not consequential and, secondly, it is not limited to the register of notaries. There is nothing in this Bill which requires it or requires as a consequence of it, to legislate in terms of the proposed new section 8. Therefore where the heading says "Consequential amendment" we believe that that is straightforward, misleading drafting. The provisions of section 8 maybe something that the Government wants to do for other reasons, but it is not consequential on the preceding sections of the Ordinance. In other words, nothing in the preceding sections of the Ordinance requires, as a consequence of them and therefore is not consequential, that the power to amend registers should be given to a non-specified registrar in circumstances described in this section. Therefore it is not a consequential amendment at all. It is certainly not a power to amend only the register kept under this particular Ordinance. The AttorneyGeneral said that this was in order that the register of notaries could be amended. One of our objections to this Bill is that precisely under a Bill that seeks to regulate the registration of notaries, there is an attempt made to amend the Interpretation and General Clauses Ordinance in a general sense in relation to all registers kept under any Ordinance: the Register of Ships and the Register of Gibraltarians and the Register of Marriages, Births and Deaths and the Register of Companies and the Register of this and the Register of that. By virtue of this provision, of the Commissioners for Oaths (Amendment)

Ordinance, all public registers kept in Gibraltar under any Ordinance, as it says in the third word of that line, can now be amended in these circumstances and we think, as a matter of legislative practice, that the Interpretation and General Clauses Ordinance which is inherently an Ordinance of general application to all legislation should not be amended by the last clause of a Bill relating with a specific subject matter, namely, the Commissioners for Oaths (Amendment) Ordinance. I think that an Ordinance as primary as the Interpretation and General Clauses Ordinance should only be amended by legislation of equal importance either by an amendment to the Ordinance itself or as it has been in the past, by such things as the European Communities Ordinance and things of that kind. But certainly not by this. I have to say, Mr Speaker, that we have objections in principle, and I think I made these points when we were discussing the new shipping registration at the Second Reading. But it raises the question where it says in sub-clause (2), "The person charged under any Ordinance to maintain a register or index may correct or cause to be corrected any clerical error or obvious mistake in any register for which he is responsible". It raises the question of "obvious mistake" by whom? An obvious mistake by the person who has made the entry in the register is understandable. That is to say, if the clerk who makes entries into the public register makes a wrong entry accidentally then that is an obvious error. But an obvious error made by the supplier of information that eventually gets into the register.... for example, if I submit a document for registration and there is an error in that document and that error is transposed into the register, does this section permit the register to be amended when I go and say "I am sorry, I made an obvious mistake in my document, it should not have said this it should have said that. Please therefore amend it"? Of course, these are registers on which people search, people rely and therefore people have to know that information that they have gleaned from the register cannot subsequently but retrospectively be amended under the guise of "obvious mistake". Therefore, as I said at the time of the Shipping Registry, I would like this to be slightly more tightly worded to make it clear that it is "obvious mistake" by those who administer the register and not "obvious mistake" by those who provide the information to that purpose which he accurately then translates into the register.

Mr Speaker, I turn now to the principal purposes of the Bill. It was not immediately clear to us in the Opposition when we first read it, whether this was an attempt to usurp the functions of the Archbishop of Canterbury. In other words, whether this was an attempt to regulate the appointment of notaries locally as opposed to now, as Members of the House know, notaries public in Gibraltar are appointed still by the Archbishop of Canterbury who is responsible for their appointment and he sits at the top of the College of Notaries in the United Kingdom.

When we saw this piece of legislation which spoke of registration of notaries in Gibraltar, it was not clear to us whether what we were doing was, in effect, cutting the ties with that regime and setting up a regime for the local appointment of notaries so that from now on notaries in Gibraltar would be appointed by the registrar on terms and qualifications to be prescribed or whether all we were seeking to do was to create in Gibraltar a register of notaries appointed as they have always been appointed. And I would welcome from the Attorney-General when he is replying to me, if he could clarify just for the record, which of those two we are doing. In other words, are we just registering those people who have been authorised by the Archbishop of Canterbury to practice as notaries public in Gibraltar or are we saying that rather antiquated and colonial regime should be cut adrift and henceforth in Gibraltar we should appoint our own notaries public under this Ordinance and in this register on qualifications and on terms and conditions to be prescribed as the clause says. Mr Speaker, another point that I would wish to make, leaving to one side all minor points of correction and amendment which I will raise obviously at the Committee Stage, is that the regime appears to be one of annual reappointment and, of course, the importance of this point depends to a very large extent on what answer I get to the one that I have just posed because the clause in relation to registration of notaries says "Applications for re-registration as a notary public must be made in effect each year, by the 31st October". We have no objection whatsoever to the Government obviously raising revenue if the Government, as a matter of policy, wish to charge an annual fee licence fee perhaps - from notaries then that would be entirely a matter of policy for the Government and which we would not have a particularly strong view against. But to raise a licence fee is not the same as to require annual re-registration. In other words, it is very different for the law to say, "To practice as a notary in Gibraltar you must pay the annual fee of £5". That is very different to saying, "To practice as a notary in Gibraltar you need, in effect, the Government's permission every year". In other words, this is not an appointment for life, this is an annual appointment and one has got to be appointed every year, which is implicit in the concept of re-registration. We accept, in fact, we welcome any legislation that introduces a process of regulation on supervision of notaries and commissioners for oaths to ensure that standards are maintained in a way that does not bring Gibraltar into disrepute. But, of course, as in everything that is regulated by law, in order to be able to de-register somebody for misbehaving, we do not have to make them liable to annual re-registration. We do not, in principle support a regime that requires practitioners, whether they be lawyers, accountants, notaries, dentists, doctors from needing, in effect, the Government's permission every year to carry on their business. Therefore, in the absence of cogent

argument as to why this is necessary, which I look forward to hearing in a moment, we do not see why there ought to be a regime of annual re-registrations as opposed to a regime of annual licence fees, if that is what is required and a regime of supervision with power to the registrar to de-register. In other words, to cancel somebody's appointment if they misbehave. A final point that I would make, Mr Speaker, at this stage on the general principles, of course, is that we do not know who the registrar is going to be and many of the issues that I am touching upon to a great extent are affected by who the registrar is proposed and if the Government could give us an indication of their intention as to who the registrar is going to be we would welcome it.

HON F VASQUEZ:

Mr Speaker, there are just one or two comments I would want to make in support of the Leader of the Opposition's arguments. The first is this, it is reference to the registrar, the Bill refers to various duties to be carried out by the registrar and, in fact, that terminology is taken from the principal Ordinance which also refers to the registrar without identifying or in any way clarifying who that is. One assumes and, in fact, I have not checked the Interpretation and General Clauses Ordinance, it may well be that under that Ordinance it provides a reference to the registrar as being the Registrar of the Supreme Court, I do not know, but certainly it might help this Bill if that was clarified. If it is, indeed, the Registrar of the Supreme Court, that the Bill should make clear that any reference to the registrar is to the Registrar of the Supreme Court.

Turning briefly to the question of the registration of public notaries. Section 7(2) as amended by this Bill, will read, "The Registrar shall register a person having the prescribed qualifications and having provided the prescribed information as a Public Notary". Just in confirmation of what the my hon Friend Mr Caruana has already said, it is not immediately clear to us whether that means that the registrar is simply going to ask existing notaries to prove that they are notaries and therefore register them or whether the registrar is going to reserve to himself the right, upon proving the prescribed qualifications, to appoint new notaries. It may well be that no one has given this matter any thought. If that is the case, I would want to throw this into the ring, Mr Speaker. It may be useful to consider the history over the last 10 years of the practice of notaries public in Gibraltar. Until the opening of the frontier there were actually only one or two public notaries practising in this jurisdiction. In 1985 the frontier opened and there was a fantastic rush of work because all of a sudden there was an enormous demand for notarisation of documents to

be used in other jurisdictions from Gibraltar. Not surprisingly the legal profession soon latched onto this and a number of local legal practitioners applied to become notaries public. All that required was a letter to the Faculty of Notaries administered by the Archbishop of Canterbury enclosing 30 testimonials from local lawyers and businessmen certifying that the applicant was a fit and proper person, that is all. No examination, nothing of the sort, just a letter and a number of local lawyers simply got off their application, sent them off, got their 30 signatures and effectively became notaries public and they soon cornered the market. Around 1987 it would appear that they realised they were on to a good thing and they got in touch with the Faculty of Notaries at the Archbishop of Canterbury's Office and said, "We have now formed an Association of Notaries in Gibraltar. We would be grateful if in future anybody who applies to become a notary was to be vetted through ourselves". And, not surprisingly, the Faculty Office said, "Yes, why not. If you are the Association of Notaries in Gibraltar we shall make it a requirement that anyone who is applying to become a notary must put the application through the Association of Notaries in Gibraltar". That was in 1987. It may come as no surprise to this House that since 1987 there have been no further notaries appointed in Gibraltar and, effectively..[Interruption] yes. There is a nice little trade in this sort of work. So I see that clause 7, we now have for the first time a register of notaries. I put it to the Government that they may want to consider taking upon themselves the whole matter of appointment of notaries to practice in Gibraltar. The fact is that until 1989 or 1990 all that was required to practice as a public notary was to get this leave from the Faculty Office in Canterbury and all they asked for was a letter with 30 testimonials. It now appears that subsequently, more recently in the last two or three years, there has been an examination introduced which anyone wishing to practice as a notary public now has to pass. That is a more recent development and the fact is that we in the Opposition see no reason why the Government should not put its own framework into place to administer the offices and the practice of public notaries and the qualification of public notaries in Gibraltar. We do it for commissioners for oaths and there is no reason, in our view, why this should not also be done for public notaries and we would urge the Government to take this matter in hand.

HON CHIEF MINISTER:

Mr Speaker, I was not aware of the latest episode that the hon Member has brought to the attention of the House and I am grateful to him for it because I think it is certainly something that needs to be addressed if, indeed, some association was created in 1987 which has virtually made sure that nobody else can ever get into the business.

I thought the whole episode of the Archbishop of Canterbury was something that the Leader of the Opposition was inventing tongue in cheek but obviously it is serious and although I am not embarking on a state/church debate, we were originally looking at this with the far less ambitious aims of simply having some system because nobody was able to explain to me very clearly how notaries public were born or how they died. They just seemed to be there like old soldiers and I thought that since we have got other areas where people have to register and if they are in business they must demonstrate that they are still operational, one of the main ideas of having people annually registering is simply a reflection of something like what we do with trade licensing where people have to renew their ability to trade on an annual basis and demonstrate that they are actually practising and using the licence rather than simply giving the impression because they have been there for a very long time, that we have got, in looking at the capacity to handle business, we might feel that there are 20 people and there may only be two or three or four or five who are active and the rest are not active so they would not want to keep on re-registering or getting re-licensed or whatever we choose to call it. We did not think it required anything more than just keeping a record of who was practising and making sure that that record was up-to-date. I think the points that have been raised by Opposition Members mean we will want to take a closer look at the system in the light of what has been said.

As regards the consequential amendment, we could have simply brought a one clause Bill amending the Interpretation and General Clauses Ordinance and we would have done exactly the same thing as we have done there. In fact, I raised the question, when the Bill was going for drafting, "What happens if somebody in compiling the register makes a mistake? How is that dealt with?" And having looked at putting something in this Ordinance for this register it was looked into in the context of other registers and I was told, "Nobody seems ever to have thought of making provision for this in any other register". It would appear that what we are doing here, which we could have done by bringing a one clause Bill, we could have simply made the provision in this Ordinance for these registers and then change the Interpretation and General Clauses Ordinance by bringing an amending Ordinance to that law. But it is not the first time that we have done something to another law at the same time as we are doing it in one. We have done it to the Interpretation and General Clauses Ordinance in a similar fashion. Of course, if Opposition Members do not like it then they vote against it but we have done it before, we think it is a good way of doing it and we see no reason why we should not do it because it would not make any difference except that we would just have two bits of green paper instead of one bit of green paper with half a page more on it saying the same thing. [HON P R CARUANA: Except we cannot find it.] Well, the hon Member

is correct in that particular concern and we have promised action on that, which has not yet materialised, but I think we are now closer to producing something which will be capable of being accessed electronically and up-to-date and then that will deal with that particular problem. I take the point that the hon Member has made in the second bit of clause 8A(2) about whether we might need to look again at the wording of that between now and the Committee Stage to make sure that what we mean is that if somebody inputs the thing incorrectly and, particularly if we have got things that are electronic and are being transposed from paper into memory, then the realisation of that mistake should be capable of being corrected without any further ado. It is different where the information that has been supplied is incorrect, then I think that information has to go in as supplied, I would have thought, and therefore if the user of the system then realises a mistake then presumably the user has to go along and put in an amending application. That is how we intend it should work but I will ask people to look at it again to make sure that it is only capable of that interpretation and not any other one.

MR SPEAKER:

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

HON ATTORNEY-GENERAL:

Mr Speaker, I did not really think that this was going to be so very controversial. I take the point that was made about the Archbishop and I have listened very carefully to what the Chief Minister has said. I am not a notary public. I am not quite sure how one becomes one. I think in England one only becomes a notary public if one is articled to a notary but that seems to be a different here. situation here. But if the rules have always been that one has to have the official stamp of the primate, then I guess that the intention here is not to change those rules and we thought, Mr Speaker, that this was, as I said, uncontroversial and merely keeping a register of commissioners for oaths and joining into that by way of a separate register, a register for notaries public. I do not know what the rules are here, Mr Speaker, but my hon Friends can tell me and it is not a question of ignorance because I have not had to look it up. In England one has to apply, I think it is on the 31st October every year for what we call an annual practising certificate and no one is suggesting in the British jurisdiction that one has to be relooked at if one wants to be a solicitor. One is merely filling in a form to say, "I am still alive, I have not gone bankrupt".

HON F VASQUEZ:

If the hon Member would give way, Mr Speaker. The point is this, and I am just really supporting the comments that the Leader of the Opposition made. One needs a practice certificate in the United Kingdom but in the United Kingdom it is the Law Society which is the statutory body entrusted with the administration of the profession which grants that certificate. What we fear is that in Gibraltar it will be the Government of Gibraltar, the executive arm of Government were to be tasked with handing out the certificates, that is an entirely different concept. I am grateful.

HON ATTORNEY-GENERAL:

As I understand it, every person who practises law in Gibraltar is either a member of the Bar or a solicitor qualified under English law and I do not think it would be possible for a person to be disbarred or struck-off the role of solicitors by the Government unless, of course, there was an application for disbarment. This Ordinance was intended merely to be, as the Chief Minister said, for the Government to keep a register of commissioners for oaths and notaries public and for them to re-apply every year. It makes, in my submission, sense because since I have been here there must have been 10 or 12 new persons who have been admitted as practitioners in law, either as solicitors or barristers, and unless someone keeps a bit of paper which we can call by a different expression a register, one would not know how many there were. As far as the consequential amendment is concerned, the Leader of the Opposition is so disgusted that he has walked out, in fact, I am only going to support what the Chief Minister has said that - oh he has come back - it is merely providing by one bit of paper instead of two bits of paper that the register can be rectified. I take the point made by everybody in clause 8A(2). But that, I would have thought, was looked at as the Chief Minister said, altering what is clearly a clerical error or obvious mistake. If somebody prints 1893 instead of 1993 then that does not require rushing off to the Convent to get the Governor's permission to file a statutory declaration to alter that.

Question put. On a vote being taken the following hon Members voted in favour:

The Hon J L Baldachino
The Hon J Bossano
The Hon Miss M I Montegriffo
The Hon J L Moss
The Hon J C Perez
The Hon J Blackburn Gittings
The Hon B Traynor

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 F Vasquez

The following hon Members were absent from the Chamber:

The Hon M A Feetham
The Hon J E Pilcher
The Hon L H Francis
The Hon M Ramagge

The Bill was read a second time.

HON ATTORNEY-GENERAL:

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

THE IMPORTS AND EXPORTS (AMENDMENT) (NO. 2) BILL 1993

HON ATTORNEY-GENERAL:

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

Question put. Agreed to.

SECOND READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the Bill be now read a second time. This is a sensible Bill, in our submission and, Mr Speaker, I am going to be very careful in what I say because, in fact, what we are talking about in the trade are people who secrete drugs on their person and this Bill is allowing for intimate body searches in some circumstances. The Bill is also allowing for persons who are suspected of having consumed dangerous drugs to be kept for a period of time by the Customs Department and the time, I think is being dealt with, as 96 hours. Presumably everybody in this House would know why we have chosen 96 hours and I think, in the Bible, it is referred to in one stage as 'it will come to pass'. The situation is that I would hope, Mr Speaker, that this is an uncontroversial Bill. It is directed at giving more powers in the constant fight against drugs to which we recently heard that the Chief Minister is totally committed as,

indeed, we all are. The protections here are that orders can only be given by Customs Officers of at least the rank of Customs Surveyor, there has got to be reasonable grounds, matters have got to be reduced to writing. If a person has his body searched one has to record which bit of the body is being searched - I would not have thought that there are too many orifices which can be investigated. Hopefully, it will be a constant fight against drugs, as I have said. 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 H CORBY:

Mr Speaker, I would like to deal with the 'Amendment to section 8(4)' and with regards to the verbal instructions there is a danger here that this practice can lead to a junior member of the Customs Department taking unto himself responsibilities for the internal search by obtaining oral instructions. We, in the Opposition, think that as part of the surveyor's duty, especially in Gibraltar where he can be contacted very easily and available to present himself whenever this is necessary because the time element factor is a negative one; written authorisation is always a better way of doing things. It makes it a more official and an effective means of implementing the law. So we think that as far as 'oral' is concerned, sub-section (4) says, "he shall confirm it in writing as soon as is practicable". We think that the Customs Surveyor must be present to give written instructions. Maybe a printed form could be available for him to sign there and then expediting the case. I will refer again, Mr Speaker, to 'Amendment to section 8(7)'. I cannot understand how a person cannot be told the reason for the seizure and who, in this case, determines when a person is likely to become violent or incapable of understanding what the seizure is all about. Again, I would like to compare this with the police arrest in which no matter how violent or incapable of understanding the person may be, he is still read his rights. In this case I am going to suggest, at the Committee Stage, an amendment to insert after the words, "from whom it is seized shall be" the words "informed in writing immediately of the reason for the seizure". That I will bring up at the Committee Stage, Mr Speaker. On 'Amendment to section 9(3)', we are of the opinion that the person shall be kept in custody of Customs Officers for a period not exceeding 96 hours; this should be done and nobody should be held for 96 hours without a Court Order. Although, Mr Speaker, we support the principle of giving Customs Officers more powers in the fight against drugs, to which we are all committed here in the House, we require these amendments to be made in order that we can support the Bill. If they are not then we will abstain on it.

HON P R CARUANA:

Mr Speaker, even legislation which is for reasons that we all support has got to be good legislation and the fact that we support the ultimate aim of the legislation does not mean that we can turn a blind eye to some of the wider principles that the law seeks to protect citizens from. For example, whereas we all support the role that the police serves in a community in law enforcement, we nevertheless consider it appropriate to protect the citizens from even isolating cases of abuse of police powers by prohibiting the police from keeping somebody in detention for more than 24 hours without bringing him before a Court for, in effect, for a custody order. There are some exceptions to that under the Prevention of Terrorism legislation. But the general principle of the law is that if the police wish to detain someone, usually it is 24 hours, in some instances they have got to bring him to the Magistrate as soon as practicable but, effect, what happens is that no one is kept in detention for more than 24 hours before being brought before a Magistrate and of course then the Magistrate may make an order authorising that person to be detained in custody. We think that the same principle as applies to the police, Mr Speaker, should be extended to the customs. In other words, that the customs should not have powers of detention that are not, in principle and in practice, indeed, enjoyed by the police which is not to say that it would deprive the section of any strength or purpose. In other words, it would in no way prevent the purpose for which the section is required which is, incidentally, a purpose that we entirely support, that the Customs Officer should bring the person before a Magistrate and have the Magistrate order the period in detention rather than as a simple administrative act by the customs themselves which, incidentally, is not a power enjoyed by the police. There is another thing achieved by this Bill the Attorney-General has not covered in his brief summary of it. That is that the effect of substituting the existing sub-section (2) which is, in effect, to extend the power of the customs throughout the territory of Gibraltar which, again, is something we do not object to but let the record show that we are aware that that is what we are doing. Section 8(2), as presently drafted, in effect, gives the Customs Officers powers at points of entry and at points of exits and just before one is about to board and just after getting off an aeroplane. The effect of doing away with that and replacing it with the sub-section (2) that in effect does not refer to areas of town, so to speak, means that the customs enjoy these powers throughout the whole of Gibraltar as, indeed, we think that they should. If the customs find somebody in the middle of Main Street who they have reason to suspect, there is no reason why they should not exercise powers that this House feels that customs should have. There is no reason that they should exercise it when somebody gets off an aeroplane but not somebody who they find on Main

Street. I think it is just as well to record that that is also an amendment being introduced by this Ordinance. Mr Speaker, I think added to the comments made by my hon Friend, Mr Corby that concludes our observations on this piece of legislation.

HON CHIEF MINISTER:

Mr Speaker, we are not prepared to accept the amendments proposed so therefore the Opposition will have to abstain. As far as we are concerned, we do not normally depart from safeguards but we do when it comes to drugs. We have done it previously in the area of putting the onus of responsibility on somebody convicted of drug trafficking to prove that this assets have not been obtained by getting the money from drug trafficking and normally people under the British legal system do not have to prove their innocence, normally somebody else has to prove their guilt. In the case of drugs we take a tougher line. These are the powers that the professionals say they need, they feel that they need to be able to act quickly on suspicion and on the spot and we are giving them the weapons that they are asking us to give them and we will stand by that politically.

HON F VASQUEZ:

Mr Speaker, just a short interjection really to underline the objections. I think as a principal objection from the Opposition to this piece of legislation. I have heard what the Chief Minister has said about the Government's concern to combat the drugs trade and it is something that every Member of this House is completely in agreement with. Obviously every step this House can take to combat this social ill is something that has the entire support of this House. But nevertheless, that is not to say that we must drop our guard from allowing to pass under our noses pieces of legislation which may have the effect of infringing civil liberties. The point is simply this, I for my own part and I think I am speaking on behalf of all Opposition Members, cannot understand what particular mischief the amendment to section 9 of the Ordinance is addressing itself to. This is the amendment to the principal Ordinance which allows a Customs Surveyor to detain an individual for up to 96 hours, that is four days. A Customs Surveyor, a civil servant, having greater powers than a Police Officer in Gibraltar. Obviously the reference to 96 hours, as the Attorney-General has mentioned, is the reference to the time that the medical practitioner presumably has advised Government is necessary for the passage of a foreign body through a human body. That may be the case. I am not aware, Mr Speaker, of any incident in which a police investigation has been prejudiced by the lack of this power. If a Police or Customs Officer

has reasonable grounds to suspect that somebody who has entered Gibraltar is carrying in his person a prescribed substance, all they have to do is take that person to the Magistrates' Court and say, "We have reasonable cause to suspect that this man, for whatever reason, has come into Gibraltar and has in his person a prescribed substance" and the Magistrate, if he can be convinced of those reasonable grounds, will effectively make an order limiting that person's liberty. That person will be detained in custody for a period of seven days until either the police is convinced there is nothing inside him or that that foreign body passes through. There is no requirement in law, no need and no mischief to be addressed which requires a civil servant to have the power at his discretion to detain somebody in custody, not in police custody, but in the custody of Customs Officers for four entire days, far greater powers than even the police have in Gibraltar and for that reason we cannot support the policy of this Bill.

HON P CUMMING:

Mr Speaker, the Chief Minister has said that normally the Government is very keen on safeguards but not in the case of drugs. This is the whole point here that we have to be sure that it is a case of drugs and if it is definitely we have got to hit them with everything that is necessary. Here we are talking about protecting an innocent person from innocent use of excessive powers, that the person will have speedy access to a Magistrate and be able to say, "There are not reasonable grounds, I am innocent" and speak up for himself and so be set free and not have to be put in prison for four days, subjected to body searches outside in the parameters of the court by Customs Officers. This seems extremely excessive. They can still have the powers but through the Magistrate.

MR SPEAKER:

If no other hon Member wishes to speak I will call on the Attorney-General to reply.

HON ATTORNEY-GENERAL:

Mr Speaker, I do not want to appear to be pedantic or to be too positive and this is not meant to try and tell the Hon Mr Vasquez the situation in other jurisdictions. But it is very well known, in fact, in the common law, that Customs Officers have always had powers greatly exceeding any Police Officer and that certainly is, without doubt, in the United Kingdom. They could do things that really upset the most high-powered squads of New Scotland Yard. They can do all sorts of things under their ancient powers

because they were collectors of money for kings and queens for a few hundred years. I do not need to say more about that. They have vast powers in England I do not think it is of any significance at all to say but in Gibraltar a Customs Officer has got more power than a Police Officer. Well, he has not but he has for this purpose because when I was discussing this matter with the Chief Minister and someone mentioned "Well, if normally a person is arrested and is suspected of having drugs in his body, why should he be kept by the customs and not handed to the police? Or why should the police not have the same powers?" It is perfectly obvious that persons do not normally run up and down Main Street swallowing condoms containing cocaine. They might, in fact, try and hide a small piece of cannabis in their mouth, that is called obstruction under the Misuse of Drugs Ordinance, that is dealt with universally. But this is directed at importers who carry drugs or who are thought to carry drugs in their body. And to answer the hon Member who thought that everybody should have his rights read, if he looked at yesterday's paper - and I am not trying to score - he would have seen that a person who was at an airport, I believe in London, suddenly went into convulsions and died on the spot because, in fact, he was carrying internally several condoms containing cocaine and they broke and of course he died. I do not want to score. One cannot give a person his rights, all one can give him is his last rites.

HON H CORBY:

If the hon Member will give way. That is all very well for the Attorney-General to say and end this on a joke, which it is not. Drugs is not a joke, it is a very deadly and serious thing. Let me say that he still has not addressed why the 96 hours and it cannot be taken to the Magistrate and be dealt with in that way?

HON ATTORNEY-GENERAL:

The Chief Minister has dealt with this. This is a policy matter. The advice that persons have in the fight against drugs is not contained only in the jurisdiction of Gibraltar. We are given information, we are given advice, we are given feedback from literally all over the world in an attempt to fight what is really a global problem and if the policy decision of the Government is that a person suspected of consuming dangerous drugs has them in his body then he will be kept for 96 hours and if he does not like it then he can do two things: he can either lump it or he can apply for habeas corpus.

HON P R CARUANA:

No he cannot. Will the hon Attorney-General give way?

MR SPEAKER:

Order, order, order. I am afraid the Leader of the Opposition has had his say. If the Attorney-General wants to give way. Yes, he has given way.

HON P R CARUANA:

That is what I was asking for, Mr Speaker. I cannot explain Mr Speaker's urgency in that, that is exactly what I asked the Attorney-General, whether he would give way. I am extraordinarily surprised at that last remark. He cannot ask for habeas corpus and that is precisely the reason why this ought not to be legislated in this way. One cannot apply for habeas corpus to secure one's release from a detention which is lawful and this would lawful. Provided that there is reasonable ground, that is all. One is in the slammer for 96 days before one has been anywhere near a Magistrate. I would ask the Attorney-General to address himself to that point. All the Customs Officer has to be satisfied of is that he has to have a reasonable suspicion, not the Court. He has to have a reasonable suspicion that the person is secreting drugs. In those circumstances the detention is lawful and habeas corpus simply does not apply. In that respect that is precisely why we ask that it is the Court, and not the Customs Officer, that decides whether there ought to be detention for 96 hours. Finally, if the Attorney-General would just address this point, and I am grateful to him for having given me way and given me the opportunity to ask, presumably, important as we think the fight against drugs are, we are not going to throw all caution out of the window. Are we saying that the fight against drugs is important but the fight against rapes and murders are not? Because I think that the fight against rapes and murders are very important, just as important as the fight against drugs but it does not mean that we give the policeman the right to keep people locked up for 96 hours without the permission of the court.

HON ATTORNEY-GENERAL:

That really is playing the old lawyer, Mr Speaker. What, in fact.....[HON P R CARUANA: Is that not what the hon Member has been doing all morning?] What, in fact, the Leader of the Opposition wants me to say is we do not think murder and rape is important. Well I am not going to say that because it is a silly thing to say. We always end up squabbling. It is a silly thing to say, Mr Speaker, because one cannot say because we are directing a fight against drugs that we do not think murder and rape and arson and pillage and everything else is important. Of course it is important, we know that. But, in fact, the hon Member is wrong about whether in fact a person has rights because he can only be detained for 96 hours if

the Customs Surveyor - that is his rank - has a reasonable suspicion that he has taken drugs. All he has to do is apply for a prerogative writ, judicially review the reasonable suspicion of the Customs Surveyor: go straight to the Court. [HON P R CARUANA: It takes a month.]

MR SPEAKER:

Order, order.

HON ATTORNEY-GENERAL:

If the hon Member wants to speak, speak. It does not take a month. We all know, certainly in the Government because we are still paying for it, how easy it is to go to Appeal Courts and every other court in another case which has just left our jurisdiction. They can go to court like that, at a drop of a hat. The courts are open to all, like the Ritz Hotel.

MR SPEAKER:

If the Opposition want to pursue that matter they can introduce an amendment at the Committee Stage.

Question put. On a vote being taken the following hon Members voted in favour:

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

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 ATTORNEY-GENERAL:

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

THE PUBLIC HEALTH (AMENDMENT) ORDINANCE 1993

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Question put. Agreed to.

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. The general principle of this particular Bill, Mr Speaker, I think could be described briefly, for the avoidance of doubt, that is to say, it is a technical change. In 1988 the Government introduced and the House passed an amendment to the Public Health Ordinance which had the effect of passing on to the owner of property the liability for payment of general rates in circumstances where the occupier, on whom the liability would normally lie, did not pay. Also in that year, I think it was, Mr Speaker, the Government passed legislation which had the effect of repealing earlier legislation passed by the previous administration which had actually removed the penalty payments for non-payment of rates. So in 1988 the Government reintroduced the penalty payment. The point of the Bill, Mr Speaker, to which I am now coming, is that there is a doubt as to whether the amendment in 1988 and, indeed, also the liability to payment of penalties, apply in respect of the salt water rate and that briefly, Mr Speaker, is the purpose of the amendment in the Bill before the House today. For the avoidance of doubt to make it clear that it is applying, not just to the general rates but also to the salt water rate. Mr Speaker, I hope that this explanation commends itself to the House 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 F VASQUEZ:

Mr Speaker, we in the Opposition are well aware as to why Government seek to pass this Bill and we are exactly aware of the judicial doubt that has arisen as to whether Government can levy under section 272A these salt water rates and penalty arrears, etc. The fact is, Mr Speaker, that we are opposed to the policy underlying section 272A

and obviously we have to oppose this Bill as well. I want to briefly explain why for the record, Mr Speaker. It is very clear that the Government, since 1988, has made two fundamental changes in our rating laws, since it first came into power. Very shortly after it was elected in 1988, it enacted this section 272A which for the first time made owners liable for rates which were unpaid by the tenant and that was not long afterwards followed by the amendment to the Public Health Ordinance in 1990, the amendment to sub-sections 273(3) and 273(6) which made owners, again for the first time, liable for rates even in respect of empty commercial premises that they were making active attempts to let, ie premises which commercially were of questionable value. Those two developments in Gibraltar have coincided with what we now see has been a significant downturn in economic activity in Gibraltar. The fact is we are going through a difficult period economically. The value of commercial property has dropped; tenants are defaulting on their rent and the effect of these amendments to the Public Health Ordinance are to make rates a tax on the ownership of property. Historically, Mr Speaker, that is something that rates were never designed to be. Historically, rates in Gibraltar, as in municipal authorities in Great Britain, were charged by the City Council to defray the expense of the provision of municipal services in Gibraltar such as sewers, water mains, etc. They were a levy, Mr Speaker, and historically they continue to be in England and they always were in Gibraltar, a levy on the occupation of property. Under this administration, and insidiously, rates are no longer a levy on the occupation of property, they have become a tax on the ownership of property, something they were never designed to be. A landlord, especially, Mr Speaker, in the circumstances of the present economic climate in Gibraltar, as a result of the policy of the Government, now finds himself owning a property which he may not be able to let because, as we see, there has been a disastrous downturn in demand for commercial properties, certainly in the old part of town. We have seen at least one case where a landlord has been left on the lurch owing tens of thousands of pounds to the rating authority because the tenant has not been paying his rates and has not communicated his failure to pay rates to the landlord. For these reasons we consider that the rating system in Gibraltar, as presently operated, constitutes a pernicious tax on property which frequently works exceedingly unfairly against the owners of commercial property which often is of questionable commercial value. It is to be noted, for example, Mr Speaker, that the provisions of section 272A do not apply to the Crown. So whereas a private landlord, if his tenant defaults on rates, becomes liable to the rates payable by the tenant but the same does not apply in the case of the Crown. Mr Speaker, we in the Opposition are opposed to the policy of section 272A. We are opposed to the change in the whole rating system to make it, in effect, a tax on property and as a result we cannot support the measures being taken to make section 272A work more clearly and more effectively.

HON CHIEF MINISTER:

Mr Speaker, of course the Opposition Member has not been talking about the general principles of the Bill before us because the general principle of the Bill before us is to correct the wording of the sections in question which were passed by this House before the Opposition Member was a Member of this House and, of course, the hon Member can be against every piece of legislation that has been passed in the House of Assembly since the 1969 Constitution came into effect but he did not have a say in the matter because he did not stand for election in 1988 and he was not here. Therefore that was debated in 1988 and that was passed in 1988 and that was published in 1988 and therefore there was nothing insidious or pernicious about it except that obviously every contribution by the Opposition Member is insidious and pernicious. I suppose by analogy, since that is the subject matter which he chose to speak on this occasion, then it must be insidious and pernicious. What we are bringing to the House is an amendment because somebody has questioned, like he has done today in a number of other areas, whether the wording of a particular section provides an accurate reflection of the policy of the majority of the House. Since we are not sure whether that questioning is valid, for the avoidance of doubt, as the Financial and Development Secretary has said, what we are doing now is changing the wording so that there is no doubt that the policy which we implemented in 1988 is the policy we want to see translated in the laws of Gibraltar and we are not debating the wisdom of that policy because we debated that in 1988 and we won the debate. We had that view when we were sitting in the Opposition benches and we proposed similar provisions from the Opposition to the previous Government. We were unable to persuade them and therefore we had to wait till we were the Government to do it and the Opposition Member will have to wait till he is a Member of the Government, if he is ever going to be able to do anything about it. Because the answer is that we certainly understand why he feels the way he does but he should have stood for election in 1988 in order to put the arguments then because this is not introducing anything new, it is not making any changes to the rates, it is simply ensuring that the policy defended from the Opposition prior to 1988 and from the Government since 1988 is the law of Gibraltar because that is what parliaments do. Parliaments legislate what the majority in parliament wishes, not what the minority in the Opposition wishes and we wished it before and we had to wait and we did it in 1988. Therefore he has got no right, Mr Speaker, to come along in 1993 and start re-opening a debate which was won in 1988.

HON P R CARUANA:

Mr Speaker, with the greatest of respect to the Chief Minister I cannot say that I agree with his analysis that this House is not at liberty on the occasion offered it by the hon Members themselves in bringing this Bill to the House to consider the matters of principle that arise from the Bill that they now, not in 1988, bring to this House, presumably because they were not careful enough in drafting their legislation in 1988. Certainly whether the need for the legislation is simply to clarify or to correct a mistake, the fact is that it is before us and it gives us a legitimate opportunity to consider the policy that won the day in 1988 in the light of subsequent events.

Mr Speaker, I only have two points that I want to make in relation to this. The legislation introduced by the Government utilising their parliamentary majority in 1988, as they will no doubt use it now again, has operated injustice in two respects. Mr Speaker, prudent landlords in the light of that legislation, ought now to make themselves responsible for the rates. What they ought to be saying to tenants is, "This is you rent inclusive of rates" because as he is liable for them anyway, rather than allow the bill to mount up what the landlord should say is, "I let you my premises and the rent is so many pounds per month inclusive of rates". That way the landlord is sure that the tenant is, in effect, paying the rates and not leaving the landlord saddled with the bill. But that operates injustice in the case of domestic protected tenancies because the landlord is not at liberty to increase the rent to include the element of rates. So therefore in the question of such tenancies, the landlord is literally at the mercy of the tenant. So that is one area where the Government might like to consider ameliorating the effect of this by in effect giving landlords the ability to protect themselves against adverse consequences of the law. Mr Speaker, the second is this, and I say it in relation perhaps only to rates on salt water and the penalties thereon because as far as the general rate is concerned, the Chief Minister is quite right, the general rate is not in front of the House in this Bill, what is in front of the House is the salt water rate and the penalty. I make the point therefore in respect of salt water rate and penalty but the Government should understand that it applies with equal vigour to the general rate and that is this; that there has to be a degree of care in how this law is implemented given that the landlord is ignorant of this liability. I can give Government Members an example which I think will appeal even to them. A situation in which a landlord had a tenant who left in 1987 and when the tenant left he owed the Government £800 or £900 in rates. The tenant went away from Gibraltar in 1987 and the landlord re-let the premises and the new tenant has faithfully paid rates ever since. Unknown to the landlord, penalties have been accruing on the £1000 that was due

in 1987, between 1987 and 1993 and now the question arises, is the landlord going to be made responsible for the £11,000 compound penalty - not rates - that has been accruing without his knowledge, since 1987 in respect of something that was owed by a tenant at that time? Mr Speaker, that is why we say that whilst the hon Members are entitled to legislate whatever legislation they wish using their parliamentary majority, that the law must provide protection for people who become innocent victims of it in circumstances where a reasonable administration would not heed to burden the citizen with the ordinary consequences of the law. Therefore, Mr Speaker, it is for reasons such as that, that the Opposition consider that this law operates too onerously on property owners and for that reason do not support it. If the law were amended to protect the landlord from some of the more unfair applications of the law, then the Opposition might be able to take a different view.

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I shall not intervene.

Question put. On a vote being taken the following hon Members voted in favour:

The Hon J L Baldachino
The Hon J Bossano
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J L Moss
The Hon J C Perez
The Hon J E Pilcher
The Hon J Blackburn Gittings
The Hon B Traynor

The following hon Members voted against:

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 were absent from the Chamber:

The Hon M A Feetham
The Hon Lt-Col E M Britto

The Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

THE EUROPEAN ECONOMIC INTEREST GROUPING ORDINANCE 1993

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to give effect in Gibraltar to Council Directive (EEC) No. 2137/85 on the European Economic Interest Grouping be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the provision that we are making in this Ordinance is one which allows an entity to be created out of bodies that exist in more than one member State and therefore it is not limited to the company structure but it is capable of being used in respect of bodies that have got corporate identity witnout necessarily being incorporated under the Companies Ordinance in Gibraltar or under the comparable legislation in other parts of the EEC. We are, in fact, following very closely what is provided in the Directive in transposing it into the national law of Gibraltar and we are, on this occasion again, moving much more rapidly than other member States. We do not know whether it is an area that will generate new business but what we want to do is to make sure that we have the vehicle available if there are people interested in making use of it. If it is available here before it is available elsewhere, then we have got a better chance of attracting the business to Gibraltar. The one omission, really is that it does not operate between ourselves and the UK for the reasons we have already gone into about whether we are in or whether we are out when we come to the UK. So we have tested this out with people in London and they said it would require, if there was a UK element

and a Gibraltar element, a third element in another member State to come under the definition of having to be in at least two member States. Obviously it does not mean that it cannot be in more than two but if it is just us and UK it counts as one. I therefore commend the Bill to the House.

MR SPEAKER:

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

HON P R CARUANA:

Mr Speaker, the Opposition support the Bill. Hon Members may be interested in a brief explanation as to what this animal actually is that is being created. It is calculated, Mr Speaker, to break down some of the practical barriers that exist to business people from doing business in another Community country arising from a different culture or a different legal system. For example, if there is a firm of lawyers in Gibraltar and a firm of lawyers in France and a firm of lawyers in Denmark or shoe manufacturers in each of these countries, and they want to form themselves into an association to market their products or to organise their retailing activities, they form this sort of association. But an important characteristic of this association is that one does not actually carry on the trade through it, the trade continues to be carried out by the Gibraltar member of the association in Gibraltar or in France, by the Dutch member, by the Danish member and by the Greek member. This is an umbrella organisation that binds them in a sort of association through which they can channel their common expenditure but it is not the vehicle through which they carry out the business. So they would still carry on the business in their separate legal entity's names that form the association. Mr Speaker, I think that there is scope for this if Gibraltar can set this mechanism up quickly. I think there is scope for the establishment of Gibraltar as an offshore centre in which organisations of this kind can be established and perhaps I think these things are so little known in the European Community that we might mark it and pioneer it. I have nothing to say on the principles except this, Mr Speaker, and ordinarily I would have raised it at the Committee Stage but in order to give Government Members maximum time to consider the point, it refers really to section 10 which deals with the name that these European Economic Interest Groupings can have because they have names and registered offices. Whilst they cannot use the word "limited", "unlimited" or "public limited company", I was surprised that there was not also a restriction on using names that are otherwise restrictive. For example, there are certain words which companies cannot use in

Gibraltar such as "bank", "trust", "sovereign", "royal". There are a number of words that require special permission and I think it would be an anomaly if a European Economic Interest Grouping registered in Gibraltar was free to use all these words which are registered and which could connect them with Gibraltar and I think that this is something that we ought to consider. I have read the regulations; I do not think there is anything in the regulations that impinges on this legislature's right to restrict the use of certain words in the matter of the public interest and I would commend to the Government to consider whether they think that that can be done whilst faithfully re-legislating the regulations.

MR SPEAKER:

If no other hon Member wish to speak I will call on the Chief Minister to reply.

HON CHIEF MINISTER:

All I will say, Mr Speaker, is that I will check that particular point to see if we can do it at the Committee Stage.

Question put. Agreed to.

HON CHIEF MINISTER:

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

THE SOCIAL SECURITY (INSURANCE) (AMENDMENT) (NO. 2) ORDINANCE 1993

HON R MOR:

I have the honour to move that a Bill for an Ordinance to amend the Social Security (Insurance) Ordinance be read a first time.

Question put. Agreed to.

SECOND READING

HON R MOR:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, in the last meeting of the House, I did say that at this meeting we would be bringing legislation in connection with the dissolution of the Social Insurance Pensions Fund by the end of the year. I think it is appropriate, Mr Speaker, to go over the historical background of the Pensions Fund once again so that we can look at the events which have led to the introduction of this Bill. Perhaps it may best be appropriate and of interest to, very briefly, go over some details of the Pensions Scheme itself. The Pensions Scheme is what is termed as 'a pay as you go' scheme which in effect means that the scheme is financed by the contributions from contributors so that all those who have contributed are not necessarily guaranteed a pension, but they have to rely on whether in the future there are sufficient contributors and sufficient contributions to be able to receive a pension. This is the sort of scheme that we have. It was started on the 3rd October 1955 and it was actuarially conceived at the time that a Social Insurance Fund should be set up over a period of 10 years and that during these 10 years the workforce would be contributing towards the fund but no pensions would be paid out of these until 10 years later. The actuaries estimated that the fund should hold about two years of benefits so that if at any time contributions ceased for any reason, then for two years beneficiaries could obtain the money whilst some solution was found. It might be also interesting to note that in 1955 there were about 12,200 alien workers in Gibraltar and about 6,000 Gibraltarians working so in 1955 we had a labour force of over 18,000 workers. Ten years later, on the 3rd October 1965, old age pensions started to be paid and, obviously, have continued to be paid. There were some teething problems with the scheme when it started, some workers were denied contributing to the scheme because of the fact that they were non-industrials and earned over £500 at the time. But eventually, on the 1st January 1975, everyone was compulsorily insured. As we all know, Mr Speaker, by a political manoeuvre by the Spanish Government at the time - this happened on the 9th June 1969 - the frontier with Gibraltar was closed and this was later to produce catastrophic consequences on our Social Insurance Fund and has rendered this well and truly bankrupt. As we know, Mr Speaker, when the frontier closed there were around 6,000 Spaniards who had been working in Gibraltar and from then on they were denied entry into Gibraltar, either to work or even to pick up their pensions. By the Spanish authorities, let us be clear on that. At no time has it been by anything done by either the British Government or the Gibraltar

authorities. In 1970 an attempt was made by the Integration With Britain Party with yourself, Mr Speaker, at the time as Chief Minister of Gibraltar, to hand over £0.5 million which were calculated at the time to represent all the contributions that the Spaniards had made to the fund. We learned later that apparently the Madrid Government refused to accept the £0.5 million. I remember we had a motion in this House when we were in Opposition and we had questioned, in fact, whether it was £0.5 million or £0.75 million held in the fund because in 1986 the AACR administration had been saying that in the apportionment of the fund, that in that exercise £0.75 million were said to belong to the Spaniards. I did a lot of research into that period and, in fact, I did find in one of the Hansards there was a debate where the Leader of the Opposition at the time - I am not sure whether he may wish to draw attention to this in his autobiography - shot up from his seat all excited and shouting, because of the fact that the IWBP Government was intending to hand over £0.5 million to the Spanish authorities. In 1973 legislation was introduced in an attempt to freeze the Spanish pensions. This amendment said that in order to obtain revalued pensions a person must have either contributed 10 contributions since 1970 or be a resident of Gibraltar. The effect that this produced was that in most cases the Spaniards who had already qualified for a pension became entitled to a pension of 12 shillings and another eight shillings if there was a dependent spouse; so altogether £1 a week or at today's rate it would be 200 pesetas. The total contribution that each Spaniard made during the 14 years, between 1955 and 1969, was £37.45 - roughly 7,500 pesetas. From the 1st January 1986 those who were already pensioners in 1969 and we were told there were about 700 of them, overnight became entitled to something in the region of £70 a week for a married couple; at today's rate it is £71.70 as from the 1st January 1988. £71.70 a week is something like 40,340 pesetas a week. If one were to multiply that by 365 which is the number of weeks they have been receiving since 1986 up to the end of this year, one would find that a person on a full pension would have received £26,170.50; that is 5,234,100 pesetas for £78.00. So that I think shows the extent of the problem that the Social Insurance Fund had to face. In fact, I know that in some instances the Spanish Government have been over generous in some of these pensions because - I am recalling from memory - at the time those who were 45 years or over because of the fact that they would obviously have difficulty in finding employment in Spain, the Spanish State promised social assistance to them until they became entitled to a pension and that they would guarantee a minimum Spanish pension to them. This happened and there are cases where not only are they getting a Gibraltar pension but they are also getting a full Spanish pension and the Spaniards realised this some two years ago and they did attempt, in fact, to stop this and just perhaps look at any case where they might top up the Gibraltar

pension to make it the same as the minimum Spanish pension but they have not so, in fact, in many cases Spaniards are getting a Gibraltar pension and a full Spanish State pension. Mr Speaker, what actually made the Spaniards entitled to the Gibraltar pension was, in fact, the residential clause, the clause contained in our legislation when they joined the Community in 1986 because resident in Gibraltar was the same as residents in the European Community. The GSLP, Mr Speaker, since 1980, we had been pressing the Government of the time to take some action so as to avoid any possible future liability on the Spanish pensions. The excuse that was given to us by the previous administration was that our legislation could not be amended and that was the advice they had from Dr David Hannay who is now the British Ambassador in the United Nations. Since we came into Government we have checked on this and there was absolutely no reason at all why we could not have amended the Social Insurance Scheme so as to prevent any access to revalued pensions by the Spaniards. As we all know, Mr Speaker, under the Brussels Agreement, Sir Geoffrey Howe, agreed to pay the pensions. It would seem he did it unilaterally without the local Government being aware that he had done so. I would say he not only put his foot in it, he put his whole leg in it. The position on the 1st January 1986 was that the bill to pay Spanish pensions was estimated at £7 million. The Spaniards only had £4.5 million which was the £0.75 million which they had in 1969 updated to the level of 1986 and I think my hon Colleague, the Financial and Development Secretary was the person who at the time was responsible, as far as evaluating the pensions. Because the bill was estimated to be £7 million a year, the British Government provided £16.5 million which together with the £4.5 million represented £21 million and would cover the period from the 1st January 1986 to the end of December 1988. The GSLP's position in the 1988 election was stated very clearly time and again, that we would not pay a single penny towards the cost of Spanish pensions. When we got in in 1988, I found that the money which had been provided for the payment of Spanish pensions was running out by, I think it was, the 27th September 1988. So we approached the British Government and said, "There is no money left. After that date we will stop payment". Let me say that there were already letters prepared to hand over during that period because we were definitely not going to pay Spanish pensions after that date. This led to discussions being held between the Chief Minister and Mrs Lynda Chalker, now Baroness Chalker, and as a result of those discussions the British Government provided £2.36 million to make up the shortfall between September and December 1988 and the discussions also led to an agreement between the British and Gibraltar Governments to the effect that it was recognised that the Social Insurance Fund was not financially viable. The British Government undertook to provide the funds to pay the Spanish pensions provided that the benefits would not be increased during a five year period and that the fund

would be dissolved after five years and these five years end on the 31st December this year. So, Mr Speaker, I think just to say very brief historical background on the Social Insurance Fund and this is the reason why this Bill has been brought before the House. It is a Bill to provide us with enabling powers to dissolve the Social Insurance Fund and allow us to introduce interim arrangements prior to the coming into operation of occupational pension arrangements. 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, I am tempted to remind the Chief Minister on what he said to my hon Friend, Mr Vasquez; of course he has not been addressing the principles of the Bill but given that the subject matter is so important I think it does not lend itself to jesting. Because, of course, the principles of the Bill are not the history of the Pension Fund or Gibraltar's obvious and urgent need to wind it up but rather the principle of the Bill is that the Government wants the power to do that by regulation rather than through this House. This Bill contains just one section which says, "The Governor may, by regulation, make such provisions as may appear to him necessary or expedient for the purpose of the winding up and dissolution in an equitable and non-discriminatory manner of any fund provided for in this Ordinance and without prejudice to the generality of the foregoing and notwithstanding any other provision of this Ordinance, such regulations may ..." and then it sets out a long list of things that the Governor may do by regulation. So the principle of the Bill is really whether this ought to be done by regulation. Let me hasten to say that the Government has the full support of Opposition Members, both inside of this House and indeed outside of this House, in their efforts to protect Gibraltar from the consequences of not dealing with this pensions problem at this point in time. We recognise also that there is, to a degree, a need for agility of foot and that the question of timing is important and we do not ignore any of those things. It is a pity that the winding up of the fund is not done by a Bill brought to this House because that would give the whole House the opportunity to vote unanimously on it and thereby send outside of these shores the very clear political message that the House of Assembly is unanimous in the strategy adopted to deal with this problem and to protect Gibraltar from this problem. It is an opportunity of which we are deprived on this side and therefore I content myself with expressing to Government Members the sentiments of the Opposition that this is a

problem that needs to be dealt with. However, we still consider that there is scope for dealing with this problem in the House. In other words, whatever the Government is going to publish in these regulations, as publish they must, so this is not a question of secrecy, this is not a question of saying, "We cannot tell you in public because the Spaniards might hear it" because the Spaniards can buy the Gazette and read it. So there is no need for secrecy in order to protect the national interest here. Whatever it is that the Government was going to publish in those regulations to wind up the fund, as it must now publish before December, that really could and in our view should have been brought to the House in the form of a Bill that could certainly, unless Government Members were planning to do something outrageous, could have been legislated in the minimum possible time. But at least it would have given both sides of the House the opportunity to speak to the proposal. And, of course, we divide, in the Opposition, the issue of the pensions caused by the Spanish pensions problem into two. One is immediately to wind up the fund in order to protect Gibraltar from the consequences of not doing so, of not ending the scheme. The consequences of not ending the scheme at least should be that there would be an enormous row between Gibraltar and the United Kingdom Government as to who, if either of them, were going to carry on making the payments on the basis that they are presently being made. Certainly if we do not wind up the scheme the Spanish pensioners would retain an entitlement to the pensions and therefore the question would be not whether they are entitled to collect the pensions but simply who would pay, Gibraltar or Britain. Therefore it is urgent and we recognise that it is urgent to draw the line, so to speak, under that problem. Separate to that is what we replace it with? And what we replace it with; we now have a hint from the explanatory memorandum of this Bill that it might be an occupational pension arrangement. It is unfortunate that we have to look at the explanatory memorandum for clues about what Gibraltar's future arrangements may be but, certainly we would be less than happy, in fact, we would be completely unhappy, if the new arrangement, such as it might be, were also to be introduced by regulation and we think that the subject matter of the substituted arrangements - I am trying to choose my words carefully, not to call them a pension arrangement - I think are of sufficient importance given the traditional position of pensions in Gibraltar, I think to be introduced in the form of primary legislation in this House. I think it is legitimate for the Parliament of this community to discuss the new arrangements that will be put into place in Gibraltar which both overcomes the problems that we face as a community but nevertheless continue to make adequate arrangements of the sort from which we do not need protecting. Again, perhaps I have chosen my words far too carefully in that rather cryptic remark but I am certain that Government Members will appreciate at least why I am trying to do that. This Bill

does certainly speak of interim arrangements but that really is principally in the explanatory memorandum, although it is also contained in certain of the sub-sections of the empowering rules, as drafted and coupled with other legislation that already exists in section 20 of the Public Finance (Control and Audit) Ordinance and the whole regime that now exists for the regulation of funds which we now know is being done by regulations, this coupled with that, in effect, I think gives Government Members ample power to introduce the new arrangements by regulation without coming anywhere near this House. Government Members know that we believe that matters of public importance in Gibraltar ought to be debated in this House and, I think, that that is a matter of sufficient public importance to warrant the use of primary legislation in this House rather than subsidiary legislation in the Gazette. Therefore, Mr Speaker, whilst offering Government Members the assurances of the Opposition that if they brought primary legislation to wind up the fund we would support it and we would ensure its passage prior to D-Day, we do not think that the public interests of Gibraltar require that to be done by regulation. We therefore, having expressed our full support to the Government in the winding up of the fund, we do not support their desire to do it outside of this House rather than inside of this House. For that reason we will be abstaining on this Bill which, I repeat for the avoidance of doubt, is not a Bill which winds up the Social Insurance Fund; if it were we would vote unanimously and rapidly in support of it. This is not a Bill to wind up the fund, this is a Bill to give the Government the power to wind up the fund by regulation, something which would quite easily be done in this House by primary legislation. Therefore, given that the Bill is a Bill to give the Government power to do things that this House should be doing, we will be abstaining on the Bill itself.

HON P CUMMING:

Mr Speaker, the GSD, of course, has a lot of sympathy as has been said with the problem that this brings to the Government and the question of the pensions. The fact is that we cannot pay the pensions; the fund is bankrupt. Studies have been done apparently. The Chief Minister told us previously that if we all paid £30 more tax per week then we might be able to pay, that, of course, is simply not on, that is something that Gibraltar cannot be reasonably.... We have got to pay from the fund and we cannot pay from the fund and therefore the fund has to be wound up and a new one started. The GSD, obviously, agrees with the Government in that position. Nonetheless this is a very serious decision. The Chief Minister, particularly, and other members of the GSLP with a trade union background will appreciate that this is a very serious matter, that somebody by the result of decisions should

end deprived of their pensions. Therefore, obviously there are many complicating factors to this matter but nonetheless we must just glance for a moment with humanitarian eyes on this matter. We have had very little information with regards to this whole problem. The Government's policy has always been absolute minimum of information and therefore it has been very difficult to get to grips with an analysis of this problem because simply we have not had sufficient information. Sometimes it is seen that this is a relatively small matter because there is a small amount of money involved and we have not known until now that the Hon Mr Mor has told us that many of these Spaniards, I think he said a few are getting full pensions in Spain as well as this. The point is that we do not know whether there is going to be a humanitarian problem. Are these people going to be in need because we stop paying them the pensions? Not because, if they were we are going to pay our £30 a week extra tax, not for that reason but perhaps we could, in a spirit of regional friendship and cooperation, work together with other people to put pressure on the different sources that have obligations to help. We just do not know whether, in fact, these people are doing very well out of their pensions and it may be that they are small amounts. I was talking to a Gibraltarian lady the other day who, after a lifetime of work has come to her pension some years back and was telling me that she did not get a full pension from her old age pension. And I said, "Why is that?" and she said, "Because I spent five years in England in 1930" or something, I do not know, and so she was deprived of a few pounds to the full pension but she consequently wrote to UK giving her details and and now gets that deficit made up from the UK system. I assume that this is related to the European system now of pensions and it is a very civilised one, if one works for five years in Spain and five years in France one can accumulate a full pension; it seems a very civilised arrangement on the whole. Why is it that the fund is bankrupt and why is it that we say Franco removed the Spanish workers from here as a hostile act to Gibraltar and that is the beginning of the problem? But, of course, there must be some relationship between this problem and problems that politicians throughout the world are worrying about that as the working population shrinks because jobs are less and elderly people live longer, that there is a problem that eventually countries are going to have to do something about, either reducing pensions because they are going to find the same problem that we have, that the funds are going to become bankrupt. There are too few paying in and more and more people drawing out and the funds internationally of old age pensioners are going to have problems and already different experts are analysing and studying the situation. In Gibraltar, of course, this problem is greatly exaggerated because we have had a very big workforce under the MOD and now this is constantly being reduced. So if Franco had not taken the workers away they would have stayed here 10 or 15 years longer, they

would have kept paying in their contributions, the problem would not have been so severe, the problem would not have been so close but, surely, there must have been a problem looming because of the structure of the labour market in Gibraltar and the problems with the MOD. This is a problem obviously that the MOD is responsible for and Sir Geoffrey Howe in an ideal world obviously should have made sure of all these problems before going ahead with it. In an ideal world, of course, the dockyard would have remained open and we would have been able to pay all the pensions. In an ideal world, of course, the Chief Minister, when he was asked about these pensions in this House eight months ago, would have given all the information required. I cannot see for a moment what harm it would have done. Eight months ago I asked him about the pension fund and the Chief Minister was very upset about this, he seemed to be implying that I was sabotaging the national interest, that I was the only one who did not understand the harm that it could do and so on and so forth; the end result no information whatever. So I said, "There is a problem looming then" and he said, "No, there is no problem looming. The problem is that you are trying to frighten the old people who have the word of Joe Bossano that there is no problem with the pensions". Of course two months from the time, suddenly, "Is there a problem?" "Well, the problem is not that we are legally going to have to pay up or anything like that. The problem is that all the Spaniards here are going into a rebellion and they are going to make life more miserable for us and that we are in for a hot winter". All these problems in a democracy are supposed to be out in the open and they are supposed to be analysed by the public and we are supposed to advance as a community in our understanding of the problems and not be suddenly lumped in a situation where nobody really understands. If it is 10 people who have come up to me in the street because they know that I am in politics to say, and this has been repeated in the press, "We are all going to be given back all our contributions that we have made to the Social Insurance Fund now because the papers keep repeating it that this is going to be shared out equally and all that". I have always said to these people, "No.....

HON M A FEETHAM:

What has the hon Member told them? Let us find out what the hon Member has actually told them? Let us see if the hon Member knows what he is supposed to have told them.

HON P CUMMING:

Because some people have been looking forward to £15,000 or £20,000 and they are going to invest it and I have said, "Are you willing to have £15,000 instead of your old age pension?" And they have said, "Yes, because I will do this

and I will do that". And I have said, "What will happen to you if you spend it all or if you lose it all and then you have no source of income?" "Well, the one who does not look after it let him die in the street". No responsible Government, even Mr Bossano, is going to allow in this day and age for somebody to be deprived of all sources of income so it is not true, the money will be given out to Spaniards from British contributions but our money will stay, more or less where it is and produce - this is right I hope, I have been telling people that a Socialist Government is not going to leave people.... This is the extent of the misinformation that there is because we simply have not had any details by which to get hold of this problem and see how big it is. Because it could also be that, in fact, for the Spaniards mostly because many of them were young people when they were taken away by Franco from Gibraltar and they went off to Germany and they worked there 10 years and maybe they went five years to England afterwards and then they came back to Spain and worked for another 10 years so they have got pensions to pick up from everywhere and probably in total they are very well off and they come with a little bit of pocket money to Gibraltar and buy a few pounds of sugar and they go off back to Spain. And if they are going to be deprived of that pocket money and they are going to be given a lump sum of compensation of some thousands of pounds, it may well be that they would be delighted with this arrangement and the end result is that there is no problem whatever. In fact, we do not know whether this is a huge problem of relations with Spain becoming very, very severe or whether this is all a storm in a teacup. [HON J C PEREZ: ..... Mr Speaker, there is no problem.] Then there is also the very popular view that the Spanish politicians are posturing and playing up and being opportunistic and taking advantage of the situation. I think that if we are going to expect good relations with Spain and neighbourly relations within the Campo, we have occasionally to look at whatever issue from their point of view, not because we are going to take that point of view but simply to try and understand what it is that they are thinking. It seems to me that if 10,000 of their people are going to be deprived of money that represents £10 million a year to the Campo Area this is a matter that they are obliged, as politicians, to take very seriously and to promote and to put forward. And say, "But Carracao knew about this five years ago" - I think for most politicians five years is like eternity. And it is true, five years ago but it may be that they have a case. Does this case mean that we are not going to wind up the pensions? Of course not. My worry is that this should be seen as a hostile act. That in Spain, Spaniards should be allowed to interpret this winding-up of the fund as a hostile act to the victimised Spanish worker. That is to say, that these labourers were here - and I remember vividly the day that they were told that they had to go and many of them were friends of mine, as they must have been friends of all

hon Members, people that we remember from that era who, on the day that they were told - these were grown men with tears in their eyes, saying that they had to go and that this was the last day that they would see us. They were victims of Franco the dictator with his demagogy and nationalist views; they were sacrificed at that altar and they were innocent victims and they were friends of ours and we must not allow it to be perceived that Franco hit them and now we are going to hit them and they are going to be victims twice over. I believe that all of us would prefer good and improving relations with Spain rather than the opposite and this matter is something so susceptible to be used to stir up passons on both sides and give sort of spirals of hatred two or three turns up. I found it rather alarming on the radio the other day, there was a phone in on this issue that many people were phoning in in a tone of hatred "Of course the pensions must not be paid". I agree that the pensions must not be paid but it is the context in which they are not going to be paid that worries me. It is the colour that is given to it, on that side and on this side and on this side, of course, it is aggravated by a total lack of detailed information by which proper analysis can be made. The paternalistic, even dictatorial view that Joe Bossano has taken on this matter when he says, "Here nobody needs to worry because my word guarantees your pensions and everything is all right". In other words, "Do not bother your head analysing it, looking in, asking for information, leave it all to me and I will do it". That is probably what Franco thought when he removed the labourers from here, that they would be looked after and they would be all right and, of course, they were not. Mr Speaker, the Opposition obviously supports the winding-up of the fund because it seems to be an unfortunate necessity. It would be far better if the fund were able to pay and failing that, it would be better if by a concerted effort of the Chief Minister together with the Campo Mayors, were able to influence the Spanish Government and the British Government to take their case to the EEC so that the EEC would help out with funding and the pensions could continue to be paid because this would help relations with Spain and this would help business and this would help something good for our future to come about more easily. It would help a change in the climate.

HON CHIEF MINISTER:

Mr Speaker, I am grateful to the Leader of the Opposition for what he said. I take full cognizance of the support that he has expressed for the step that needs to be taken and I regret the fact that the last speaker does not seem to belong to the same party or the Opposition or the same House because he is obviously talking about a totally different scenario from what the rest of us are talking. I have no intentions of going to the Common Market with

Senor Carracao or anybody else and asking the Common Market to provide £100 million for the pensioners in the Campo. I wish I could get £100 million for the people of Gibraltar and there is not the remotest possibility of getting that kind of money. We are not talking about pocket money and it is not that he does not know the figures, he has just been told the figures and having just been told the figures, five minutes later he stands up and he says, "Because it is all secret and we do not know how much money it is". He has just been told how much money it is. He has just been told that they paid £0.5 million; £0.25 million the workers, £0.25 million the employers over a 15 year period an average of £78 per worker; that that was enough to buy £1 a week. That is what that bought, £1 a week and that they received back £60 million so far. We are talking about £10 million a year going into the Campo as opposed to £8 million for the Gibraltar pensioners. The cost to them is already 25 per cent higher so we are not saying that we wish the fund were able to pay, no that would be 125 per cent increase on the cost of pensions in Gibraltar. So if he accepts that it is out of this world to imagine that it is possible for the fund to pay or for the Gibraltarians to fund it, then one cannot wish that it were possible if one has just recognised that it is impossible. If people over there are going to be deprived of an income from Gibraltar, it is precisely because the procedure has not been followed, good luck to them that it has not been followed since 1986 but the procedure has not been followed, which he made a passing reference to which is that of aggregating and apportioning pensions from different member States. Surely, he can understand that. He can understand that if a pension in Spain is £50 and one gets £47.80 from Gibraltar and the proper EEC system was being followed, people would have got £2.20 there and £47.80 here and then when they lose the £47.80 they get the £50 there because what they had been getting ought to have been the balance between the two. If they have had their £50 and the £47.80 and they are used to £97.80, of course they do not want to lose the £47.80. We can understand but let us not say, "For the sake of friendship let us all claim that something is happening" which is not happening. Our people, who only get £47.80, if they do not get the £47.80 they get nothing and my responsibility is to make sure that that does not happen to our people. And if the pensioner from Gibraltar lives in Australia and he does not have enough income and he has settled in Australia years ago, he gets..... [HON R MOR: A pound.] He gets £1, yes; we are still sending £1 a week to the people in Australia who were not covered by the EC law. He gets the difference between the £1 and whatever is the minimum income in Australia from the Australian Government and that is how it works in different places. In Spain, the hon Member may not know it, but it is not a secret; everything that I am saying now was public knowledge in 1988. When people are reacting adversely to what the Spanish political leaders in the Campo have said, it is not

surprising, Mr Speaker. I found out here in Question Time in this session of the House from the Leader of the Opposition that Senor Carracao was saying I was kicking him in the shins and I found out from the Leader of the Opposition, not from Senor Carracao. I can give the hon Member, if he wants, a copy of 'Area' of December 1988 when Carracao publicly welcomed the five-year agreement which he certainly knew that they would be getting paid for five more years and if he reads today's paper he will find out that the Junta de Andalucia has said that the pensions will continue. Well, good luck to them. Fine, if they continue they continue and if instead of getting £97 they get £197, fine; and if they come and spend it here even better. But what we cannot do is, for the sake of good relations with our neighbours, which we all want, pretend that things are not what they are and what they are is that they have had an incredibly good deal which nobody ever in any pension fund anywhere in the world has ever had and that is the truth. That the British Government, as far as we are concerned, failed to take our advice on how to protect us from that situation, and if we have been protected from that situation, there would not have been a need to dissolve the fund. Let us make that absolutely clear. There is no question of the demographic changes of our pension fund having had to take us down this route. The reason why we are dissolving the fund today is because that is the price that I agreed to five years ago in order to get them £50 million in five years in their pockets and in the economy of the Campo. That five year payment of £10 million a year, the pensioners in the Campo and the leaders in the Campo owe to Gibraltar, we fought for it for them. What we cannot have is a situation where, fair enough we do not want any medals for it but because we got them five years they cannot say, "Well, because you got me five years instead of 50 years I will now close the frontier". "Well, wait a minute, I did not have to get you five years, we could have dissolved the fund in 1988 and we would have been where we are now". I take the point that the Leader of the Opposition has said about bringing a Bill here to say, "The Social Insurance Fund is dissolved". Unfortunately, it is not as simple as that. It has to be done before the 31st December 1993 because that is what the Memorandum says, signed in 1988 between the UK and ourselves. We are trying to see how we deal with the situation where that happens and yet the accounting year ends on the 31st March 1993. The social insurance cards get exchanged in January and we do not know who has paid up to December 1993 until nine months down the road. So we are still looking to say, "How do you put money into a fund that has been dissolved? What is it we need to do technically?" Part of the discussions that I have had in the UK are, and I have said, "Will it do if we just say, 'Well, right, the fund is put, as it were in suspended animation until it finishes collecting the money that has got to come in'?" Because the payment the UK proposes to make as a final share-out to former Spanish pensioners

and to pensioners who have not yet got there; we are talking about 7,500 already collecting and 5,000 to come, which makes it about three times our number. That payment they are going to determine on the premise of a comparable distribution of the distribution we would be entitled to from the size of the fund on the 31st December. We are not going to know the size of the fund on the 31st December until some time in 1994. What happens then in January 1994? What happens is that we will put transitional interim provisions in to give protection to people until the new occupational scheme comes in which has to be an occupational scheme and which is not laid down by statute because it will not be a State statutory scheme and it has to have labels on it which is, I think, the kind of message that I understood from the Leader of the Opposition that he understood why we need to say things in a certain way. Therefore the one thing we cannot say is what the hon Member said, "Our money will stay more or less where it is". No, that is the kind of lethal statement that may well leave us with no money. So we have to do what is Community proof and therefore we have to be very careful and look at every fullstop and every comma to make sure that everything is Community proof. Frankly, at the end if it were not Community proof we still would not be able to pick up the bill because we have not got the money but it would certainly, I can assure Opposition Members, lead to the kind of difference between ourselves and the UK. We could make the ones we have got now pay into insignificance if they turned round to us and said, "Well, you have not done the thing properly; you have not properly taken care of the mechanisms you could put in place; we are now being sued as a result; we have to find £100 million, I now have to go to the Chancellor of the Exchequer and to the House of Commons to ask for £100 million because you have not got it". You can well imagine what that would do to that particular relationship that Gibraltar and London have. So we are being very, very, very cautious on how we do it. But all I can tell Opposition Members is what I have told people and the feedback that I have got is that people are reassured by it which is that people will not be left high and dry in January 1994. And it does not mean that everything will suddenly stop at midnight when we are all half drunk in our New Year party and at one minute past midnight I will appear with a hat and a hooter saying, "I have now got the pension scheme of 1994". That is not what is going to happen. So the final new system will probably not be there until 1995. But in 1994 we will have put things in place which will ensure that Opposition members do not have to worry about the people who they are paid to worry about, who are the people who voted them here and if they want gratuitously and out of their goodness of their hearts to worry about other people who do not vote for them and who do not put them here, well that is fine. They can do that but that is not the concern of this House. That is a matter of foreign affairs and we are not yet responsible for our foreign affairs, somebody else is.

MR SPEAKER:

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

HON R MOR:

Mr Speaker, there is not much I need to say. Let me say that the total liability of the Spanish pensions was calculated to some £280 million until the year 2026 when by that time it would be assumed that the pre-1969 Spanish worker would have moved on to the sunnier Spain, so to speak.

Question put. On a vote being taken the following hon Members voted in favour:

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

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 the adjourned meeting.

ADJOURNMENT

HON CHIEF MINISTER:

Sir, I have the honour to move that the House do now adjourn to Friday 3rd December 1993 at 9.00 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 1.10 p.m. on Friday 26th November 1993.

The House resumed at 9.10 a.m.

PRESENT:

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

GOVERNMENT:

The Hon J Bossano - Chief Minister
The Hon J E Pilcher - Minister for the Environment and Tourism
The Hon J L Baldachino - Minister for Building and Works
The Hon M A Feetham - Minister for Trade and Industry
The Hon J C Perez - Minister for Government Services
The Hon Miss M I Montegriffo - Minister for Medical Services and Sport
The Hon R Mor - Minister for Social Services
The Hon J L Moss - Minister for Education, Employment and Youth Affairs
The Hon J Blackburn Gittings - Attorney-General
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

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

IN ATTENDANCE:

D Figueras Esq, RD* - Clerk to the Assembly

COMMUNICATIONS FROM THE CHAIR

MR SPEAKER:

Before we start on Bills I would like to make a statement on the question of privileges.

When this House unanimously confirmed me as Speaker I pledged myself as minder of your privileges that I would ensure that no obstacles or impediments whatsoever would impede you in discharging your duties in the House.

With this in mind, without notifying or being asked by any hon Member but after seeking legal advice, I consider it prudent before the last sitting, to designate the precincts of the House of Assembly as I am empowered to do under section 2 of the House of Assembly Ordinance.

Hon Members may have noted comments in the news media arising from my ruling. In the comments it is recalled that hon Members were once "marooned in the House of Assembly by demonstrators for hours or having demonstrators on all sides on entering or leaving the House".

It is precisely to prevent a repetition of such an effrontery, that the precincts have been defined. It follows the practice in Britain where both Houses give directions at the commencement of each session that the Police should keep during sessions of Parliament, the streets leading to the Houses of Parliaments free and open and that no obstruction shall be permitted to hinder the passage thereto of Lords and Members. When "tumultuous assemblages" by people have obstructed the thoroughfares, orders have been given to the authorities to disperse them.

It is fundamental to democracy that the elected representatives are not subjected to any kind of molestation that will dissuade them to discharge the duties they have to their electors without fear or favour.

At the same time it is right and proper for people generally to express their views in public demonstrations in a free society such as ours.

The designation of the precincts in no way deprives citizens of this right. I must make it absolutely clear that the arrangements would apply only on days when the House is sitting or in circumstances where I consider it necessary for it to be implemented. They are free to demonstrate in the area of the pavement on the east side of Main Street about 20 yards from the House of Assembly and on the other three sides of the House of Assembly on the pavement opposite the Piazza.

I am satisfied that the two democratic principles of the privileges of the House of Assembly and its hon Members and the freedom of the people to demonstrate publicly are upheld and that there is nothing whatsoever that trespasses on civil rights as wrongly commented.

BILLS

FIRST AND SECOND READINGS

THE EMPLOYMENT (AMENDMENT) (NO. 2) ORDINANCE 1993

HON J L MOSS:

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

Question put. Agreed to.

SECOND READING

HON J L MOSS:

Sir, I have the honour to move that the Bill be now read a second time. The purpose of this Bill, Mr Speaker, is essentially a tidying up exercise which reflects changes which have already, in practice, been taking place in the field of employment in Gibraltar. Its purpose is clearly to ensure that whilst EEC Directives are respected by the Government's pursuance of the battle against unemployment, that this be done in a way which also gives maximum protection to the Gibraltarian people who live in Gibraltar. The Bill is self explanatory. I do not think that the purpose, certainly, behind the Bill can be considered controversial, I am sure that the entire House will share the Government's concern about the importance of fighting unemployment 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 LT-COL E M BRITTO:

Mr Speaker, I am pleased to be able to concur with the closing comments of the Minister. The Opposition do indeed support the general principles and the intention of the Bill and we will obviously be voting in favour. The only point that I would make in addition to what the Minister has already said is in the context of clause 5 of the Bill. I am surprised that the Minister has not already circulated amendments to the clause as I assume he will do at the Committee Stage because the clause, as it stands, is unfinished and is, in fact, a bit of a nonsense as it reads at the moment. There are bits of the original legislation that have been left out and I understand that the Minister is aware of it but it would have been more helpful to answer

on the Bill if we had been advised of what has been left out on purpose and what will be included or what will be left out completely. The second point is that I would draw the attention of the Minister again to clause 5(b), "Provided that the provisions of this section" bit of the clause. Perhaps the Minister would like to elaborate on the purposes of this particular section of the clause and also to take note of the constructive criticism from the Opposition that it would appear to us that the way that part of the clause reads at the moment might be counter-productive in the sense that it could make the whole of that section non-applicable to Gibraltarians and to all persons who were in lawful employment prior to 1st July, that section of the clause can make the whole of that new section not applicable and therefore can defeat the purpose for which it is intended. To close, Mr Speaker, as I said, the Opposition supports any measure that is designed at improving the employment situation in Gibraltar and as such we will be supporting the Bill.

MR SPEAKER:

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

HON J L MOSS:

Mr Speaker, I am grateful to the hon Member for his support, in principle, of the Bill. He is correct in saying that an amendment is going to be moved at the Committee Stage. I had assumed it had been circulated and if it has not been it is a procedural error, it is not that there was any intent not to provide the information at this stage. The amendment will involve, in fact, particularly changes to section 5. I think they will have the effect of removing certainly the points which the hon Member has expressed reservations about.

Question put. Agreed to.

HON J L MOSS:

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

This was agreed to.

THE CIVIL JURISDICTION AND JUDGEMENTS ORDINANCE 1993

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to make further provision about the jurisdiction of courts and tribunals in Gibraltar and about the recognition and enforcement of judgements given in Gibraltar or elsewhere and to provide for the modification of associated legislation be read a first time.

Question put. Agreed to.

SECOND READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, in 1981 when the Lord Chancellor of England, as he then was, Lord Hailsham, rose to move the Second Reading of this Bill in the House of Lords, he said that he felt that the Bill should be accompanied by a Government health warning and he did not say that because there is anything inherently dangerous in the Bill. But it is so long-winded and so boring that I think he thought he might put all Members of the House of Lords to sleep. I hope I do not do that. He also added that if anybody expected any heart throbbing emotion to come from what he had to say, they should leave the Chamber. Mr Speaker, what I propose to do is to say this and take everybody out of their agony. I will be about three minutes and, in fact, I just want to say what the Bill is about very briefly. It is totally without political flavour and I think it will appeal to every hon Member in the House. The Civil Jurisdiction and Judgements Ordinance mirrors the Bill which Lord Hailsham introduced in 1981. It has been extended by the 1988 Lugano Convention from the decision reached in the Brussels Convention in 1968 and it now deals with the enforcement of judgements in civil and commercial matters including the Protocols annexed to the Convention. The ratification of the Brussels Convention is a treaty obligation which the UK undertook on Gibraltar's behalf and the reason one has to look at the Brussels Convention with the Lugano Convention is that the Brussels Convention dealt with the European Community countries and the Lugano Convention dealt with the EFTA countries, such as Austria, Switzerland, Norway, Sweden, Iceland, etc. So they are now all joined together. The object of the Conventions taken as a whole is to make judgements given anywhere within the European Union and the European Free Trade Association's area fully effective for their enforcement. I think Lord Hailsham said in 1981, and I will use his words, "That respect for law in a society

depends in no small measure on the existence of an effective means of enforcement and if it is shown that parties can evade their obligations as contained in the judgements of our courts, the usefulness of the whole process is greatly diminished". This Bill eliminates one major area of evasion immediately and that is the removal of the judgement debtors assets to a country where the judgement does not run, now it cannot be done. This is achieved by regulating directly the grounds on which the courts of adherent countries may assume jurisdiction and then providing that all such judgements are enforceable. Up until now, if enforcement of a foreign judgement was sought, our courts have had a duty to refuse enforcement unless it could be shown that the original court had assumed jurisdiction on a proper basis. This Bill will therefore dispense with the need for a re-examination of that stage of enforcement and will make enforcement automatic in every other country. This approach also has a second advantage in that it removes the chance to go forum shopping, as it is called, one can no longer look around for what one thinks would be the most favourable jurisdiction to present the case. The ambit of the Bill is purely confined to civil litigation and it will involve alterations of our internal law and parallel alterations in the law affecting relations between ourselves, the United Kingdom and other countries and territories with whom we are in a contracting relationship. It does not deal with criminal law; it does not deal with divorce or custody or bankruptcy or the windingup of insolvent companies but there are some provisions relating to maintenance orders and their enforcement. The Bill determines who may be sued in our courts, particularly in what circumstances a person who does not reside in Gibraltar may nevertheless be sued in these courts. With the exceptions mentioned, it will apply to almost all proceedings brought to the Supreme Court, the Court of First Instance and the Magistrates' Court. In other words, jurisdiction will no longer follow automatically from lawful service - I am shortening this. Lawful service of process will no longer be the automatic determination of who can be sued. I am almost at the end of what I have to say. I have talked about jurisdiction, I now turn briefly to enforcement; broadly speaking, any civil judgement given by a court in proceedings to which these Conventions apply, is to be recognised and enforced in all other contracting countries. A judgement obtained here against a defendant who happens to be domiciled outside the Community or EFTA area to which the jurisdictional rules do not apply, nevertheless, can still try to enforce them in Gibraltar. The Conventions, of course, only provide for reciprocal enforcement in another contracting state. It does not govern the enforcement of judgements obtained within the same contracting state and does not regulate the enforcement of judgements obtained in countries outside the Community or the European Free Trade Area. Lord Hailsham said that he was going to conclude by offering some remarks on the European dimensions of the Bill. He said, as a

practical matter, "It is obviously inspired by the increased commercial and social mobility which followed the creation of the Community and the European Economic Area Agreement with the EFTA countries and the special problems of enforcement following that". This phenomenon is not likely to recede whether as between the contracting states or in any other context. He thought and said in 1981 that these Conventions represent a far-sighted measure. He is right in hoping that the Bill maximises its potential both by giving them effect in every country and, of course, now in Gibraltar, and by using it as a vehicle for rationalisation and other aspects of this branch of the law. As Lord Hailsham said, Mr Speaker, it was a totally non-political Bill with no party flavour; it is boring, it is heavy, it is technical and I hope I have not kept everybody too long. Can I just say finally that the speech in Hansard of the House of Lords in 1981 is really very heavy going and I think it is probably right that I should pay tribute publicly to a young barrister who has recently been assigned to my Chambers, called Mr Raphael Benzaquen, who has very greatly helped me in the distillation of Lord Hailsham's very long speech into the few words that I have had the chance to say today 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 F VASQUEZ:

Mr Speaker, I have heard the Attorney-General's comments. Boring, heavy and technical, this Bill, and the Convention it applies, may be. That does not alter the fact, Mr Speaker, that it is an exceedingly important piece of legislation and the Opposition supports this Bill which implements the Brussels Convention on the jurisdiction and the enforcement of judgements in civil and commercial matters, together with its Protocols and the Accession Conventions as well as the Lugano Convention. Mr Speaker, the enactment into local law of these important conventions dealing with the jurisdiction and recognition of judgements between the contracting States in Europe, represents an important step in our continuing evolution and development as a sophisticated European jurisdiction which will serve to enhance Gibraltar's reputation and efficacy of the significant jurisdiction to the location of commercial activity here. The legal profession in Gibraltar has been calling for the local enactment of this Convention for some time and its passage into our laws is to be welcomed and especially welcomed by the Opposition, Mr Speaker.

MR SPEAKER:

If no other hon Member wishes to speak I will call on the Attorney-General to reply.

HON ATTORNEY-GENERAL:

Mr Speaker, I am grateful to the hon Member for his words of support.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

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

This was agreed to.

THE DOMESTIC VIOLENCE AND MATRIOMONIAL PROCEEDINGS ORDINANCE 1993

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that a Bill for an Ordinance to make provision for matrimonial injunctions, and to provide the police with powers of arrest for the breach of such injunctions in cases of domestic violence be read a first time.

Question put. Agreed to.

SECOND READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the Bill be now read a second time. I do not think that I can usefully add, Mr Speaker, anything to what is contained in the explanatory memorandum to the Bill save for, perhaps, one matter. The object of this Bill is plain; it is to give to the Magistrates' Court or such other court as the Governor may specify, the jurisdiction to provide a temporary injunction excluding from the matrimonial home one party to a marriage where the court is of the view that such exclusion is necessary in the interests of the safety of the other party or a child living with that party. The Bill extends the jurisdiction of the Magistrates' Court to deal not only with husbands and wives, but with persons who live in the same household as husband and wife, common

law wife, co-habitee or whatever name one wants to use. The Bill makes provision for a power of arrest to be attached to an injunction granted under the Bill. And the Bill specifically precludes its operation from affecting the property rights of either party or any other person. Mr Speaker, in the Bill, and this really I am pointing out for the benefit of the hon Members present who are in my profession, in clause 4(1), in the final few words, in case anybody is confused, it says, "the court may, if it is satisfied that the other party has caused actual bodily harm". "Actual bodily harm" in that context, and I refer now to the hon Members of the Bar, is not meant to be 'ABH' as we understand it under section 47 of the Offences Against the Person Act in the UK or I think it is section 94 in our jurisdiction; it means in English exactly what it says 'actually being hurt' as opposed to 'ABH' as we know it. I commend the Bill to the House.

MR SPEAKER:

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

HON F VASQUEZ:

Mr Speaker, the policy of this Bill as, indeed, the policy of the similar provisions that are contained in the Maintenance (Amendment) Ordinance which follows it in the agenda, has the full support of the Opposition. This House must be aware, Mr Speaker, that the unfortunate rise in unemployment and financial hardship in Gibraltar brings with it a sorry human concept of private unhappiness and stress which all too often leads to instances of domestic violence. The last couple of years has seen the formation of a number of help groups, manned and financed by volunteers to help battered wives and children needing refuge away from the matrimonial home. Over the last two years, in particular, Mr Speaker, they have seen themselves overwhelmed with their case loads and it has become increasingly obvious that this House needed to implement some sort of legislation to protect the interests of battered wives and children in these circumstances. This law and the relevant provisions of the Maintenance (Amendment) Ordinance, will bring our law almost into line completely with the UK in providing quick, effective and cheap relief to the victims of domestic violence. What we particularly welcome, is that for the first time it gives common law wives the right to protection and ouster orders; it separates the availability of such ouster orders from any interest in the matrimonial house in question; it separates ouster orders from divorce or separation proceedings and, for the first time, it gives the Magistrates' Court the power to make such ouster orders

which obviously makes them quicker and cheaper and therefore more effective in the circumstances. Having said all that, Mr Speaker, the fact is that the Opposition do have some reservations about a certain amount of duplication which is evident in the two Ordinances and I am going to have to refer to the Ordinance next in the agenda. We have looked at this and we have made suggestions to the law draftsman as to how this might be avoided. Principally, the amendments that we shall be proposing at the Committee Stage are as follows: firstly, the domestic violence jurisdiction be granted to the Supreme Court and not to the Magistrates' Court, as presently drafted, as in fact the Supreme Court also needs this form of jurisdiction. It does have it in some circumstances where already the Supreme Court has jurisdiction in other proceedings, for example, in matrimonial proceedings and in separation. In the context of separation the Supreme Court can intervene and grant this sort of ouster order. Where, in fact, the Supreme Court where it is not already involved in the proceedings it does not have the jurisdiction to make this sort of ouster order and we, in the Opposition, think it should. What we would propose therefore, Mr Speaker, is that the jurisdiction contained in this Ordinance, as drafted, be transferred to the Supreme Court and since the Magistrates' Court, under the Maintenance (Amendment) Ordinance is getting very similar jurisdiction to the one contained in this Ordinance, that the jurisdiction of the Magistrates' Court in the Maintenance (Amendment) Ordinance be extended slightly to include the common law spouses, the co-habitees as the Attorney-General has referred to them. That way the jurisdiction of the Magistrates' Court under the Maintenance Ordinance, once it has been amended, will be exactly similar to the one contained in this Bill. Our suggestion, therefore, is that this jurisdiction contained in the Domestic Violence Bill be kicked upstairs, as it were, to the Supreme Court which clearly needs this part of the jurisdiction. Already, Mr Speaker, the Magistrates' Court is going to have power, under the Maintenance (Amendment) Ordinance which we are about to hear, to make certain orders between common law husbands and wives and it just seems logical, Mr Speaker, if it is intended to extend the jurisdiction of the Magistrates' Court to grant ouster orders between common law husbands and wives, to do that within the Maintenance (Amendment) Ordinance which already has provision for ouster orders rather than have two pools of jurisdiction which are going to create a certain amount of confusion. So, although supporting both the policy and the Bill, Mr Speaker, it will be the intention of the Opposition to suggest various amendments which already have been or are in the process of being put to the law draftsman in this respect.

MR SPEAKER:

If no other hon Member wishes to speak I will call on the Attorney-General to reply.

HON ATTORNEY-GENERAL:

Mr Speaker, I am grateful to the hon Member for his support in connection with this proposed Bill. I know there has been a very large input from various ladies groups and also from the Gibraltar practitioners who specialise in matrimonial law. The law draftsman has been closely in consultation with those groups and the other lawyers to try and work out a formula which, as the hon Member says, meets by and large with the support of the Opposition. The purpose of the Domestic Violence and Matrimonial Proceedings Ordinance was intended to give quick and readily available relief in a Magistrates' Court which sits every day from 10.00 am till 5.00 pm and we thought it would be easier to go straight to a Magistrates' Court which is there all the time, which is not subject to the recesses which the Supreme Court has from time to time during term time and also, as we understood it, the various representatives of the women's lobby were concerned about cost and this is something I am told as opposed to knowing it from my own knowledge, the costs normally are met by the legal aid fund and obviously the Government would have an interest in keeping cost down as well as would the persons who wished to make an application. But I hear what the hon Member says. I give way.

HON F VASQUEZ:

I understand what the Attorney-General is saying. The point is this, that under the Maintenance (Amendment) Ordinance already the Magistrates' Court is being granted the jurisdiction for the first time to make ouster orders. If the Attorney-General refers to sections 16A, 16B and 16C of the Maintenance (Amendment) Bill he will see that the jurisdiction being conferred to the Magistrates' Court under that Bill is almost identical to that contained in the Domestic Violence Bill. That being the case, we fail to see the need for the duplication in the jurisdiction and what we are suggesting is that the jurisdiction presently contained under the Domestic Violence Bill which only goes further than that contained in the Maintenance (Amendment) Ordinance to the extent that it applies to common law husbands and wives, be transferred to the Maintenance (Amendment) Ordinance so that in fact the Magistrates' Court under that Ordinance be granted exactly the same jurisdiction the Government is planning to give it under the Domestic Violence Ordinance, having thereby secured the broad jurisdiction of the Magistrates' Court as envisaged under this Ordinance, under the Maintenance (Amendment) Ordinance, it then would be possible simply to kick this Ordinance upstairs into the Supreme Court and give the Supreme Court a similar jurisdiction which presently it does not have and that is all.

HON ATTORNEY-GENERAL:

Mr Speaker, I hear what the hon Member says and I understand what he says and, of course, I have looked at the new sections 16A, 16B and 16C in the Maintenance (Amendment) Bill. The point really is that under this present Bill which we are considering, it applies to husbands and wives and co-habitees and common law wives; in the Maintenance (Amendment) Ordinance that is referring virtually throughout, I think, except with one very small exception, to persons who are married, husbands and wives. It would mean, we think, amending the whole of the Maintenance Ordinance to include persons who are not man and wife and that is why it has been chosen to do it this way. Frankly, I understand exactly what the hon Member is saying but I cannot see what the problem is to be able to go to the Magistrates' Court, as I have said, which is there every day, virtually, of the year, 9.00 am till 5.00 pm and make an application if married or if living together as husband and wife or co-habitees. I really do not see the point and I commend the Bill to the House.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

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

This was agreed to.

THE MAINTENANCE (AMENDMENT) ORDINANCE 1993

HON ATTORNEY-GENERAL:

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

Question put. Agreed to.

SECOND READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the Bill be now read a second time. This, in our view, Mr Speaker, is fairly straightforward. The object of the Bill is to amend the Maintenance Ordinance to make provision for a party to marriage to make a complaint to the Magistrates' Court under sections 16A, 16B and 16C, I think, and that is an order protecting either the complainant or a child of the family from violence or a threat of violence by the other

party to the marriage and for an order prohibiting that other party from entering the matrimonial home. The Bill also makes provision for there to be attached to the order a power of arrest. The Bill specifies that the granting of an order under the new provisions, shall not affect the estate or interest in the matrimonial home of the person against whom the order is made or against any other person. The Bill further makes provision for a man to have the duty to provide reasonable maintenance for a woman with whom he has been living as man and wife, if he has a duty in respect of the children of that relationship. Maintenance orders can now be registered in the Magistrates' Court. There are provisions to make registration cheaper and easier enforcement of the order. Amendments to sections 4, 12, 20, 38 and 44, as is said in the explanatory memorandum, allow access to the Magistrates' Court where a financial remedy is sought and the defendant has assets in Gibraltar. Additionally the Bill translates penalties under the Maintenance Ordinance into references to penalties on the standard scale, and makes amendments consequential to the abolition of the position of the Director of Labour and Social Security and for probation officer, is substituted a person appointed by the Government for the purposes of the legislation and in relation to the requirement for a certificate confirming an absence from Gibraltar of a person serving in the merchant navy, amends section 15 which I think stops the Captain of the Port being involved. I commend the Bill to the House.

MR SPEAKER:

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

HON F VASQUEZ:

Mr Speaker, really in confirmation of the comments I have already made in reference to the previous Bill, again the Opposition support the policy and the regime established by this Bill. Principally, really there are three main bodies to this. The Bill extends the powers of the Magistrates' Court to make maintenance orders so long as the party has assets here in Gibraltar and that applies even in common law relationships as opposed to legalised matrimonial relationships. Secondly, it enables the Magistrates' Court to enforce the Supreme Court maintenance orders which itself is a very important jurisdiction again, Mr Speaker, because it limits the costs which the person seeking the enforcement of that order has to incur. Once the procedure is in motion the court itself undertakes the recovery of the monies in question. Thirdly, Mr Speaker, this Bill empowers the Magistrates' Court to intervene in situations of domestic violence which I was referring

to only a few minutes ago. Our comments, Mr Speaker, on that aspect of the jurisdiction are as follows. At the moment, as drafted, that jurisdiction (sections 16A, 16B and 16C) only applies to married couples and we in the Opposition, Mr Speaker, are of the view that this power should be extended to common law partners as provided in the Domestic Violence Bill. This would extend the jurisdiction in order to avoid duplication between the two Bills and would release, in our view, beneficially, the Domestic Violence Ordinance to the Supreme Court as it too needs this type of jurisdiction. This, in our view, Mr Speaker, would provide a simpler and more comprehensive division of the jurisdictions of the two courts and avoid confusion in this respect. There is one other point that we will take up in Committee Stage, Mr Speaker, and that is the question of time limits. Ouster orders, under section 16A as presently drafted, do not contain any time limit. This, in fact, is to be controlled by the Domestic Violence Bill which makes orders applicable only for three months. We feel it is important that there are time limits on these sorts of orders. They are not designed to be property adjustment orders, they are merely supposed to enable the courts to intervene in situations of domestic violence and are supposed to confiscate the matrimonial home or the home of the common law spouses from the offending party and we will suggest, therefore, that the similar time limit of three months which is going to be enacted in the Domestic Violence Bill be applied to ouster orders under section 16A. Those are the only comments, Mr Speaker. Certainly the policy and most of the specific provisions of this Bill are welcomed and supported by the Opposition.

MR SPEAKER:

If no other hon Member wishes to speak I will call on the Attorney-General to reply.

HON ATTORNEY-GENERAL:

Mr Speaker, once again we are pleased that the non Member and his colleagues support the Bill mostly and I hear what he has said about the other matters and we have discussed them before.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

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

This was agreed to.

HON P R CARUANA:

Mr Speaker, I wonder if before the House adjourns to Committee Stage I might be allowed to raise a matter under the guise of Point of Order and I hope that Mr Speaker will allow me to raise it under that guise. Really it is an appeal to the Chief Minister. When we considered earlier this morning the Employment (Amendment) (No. 2) Bill 1993, the Opposition Members gave their consent that the Committee Stage be taken today rather than insisting on waiting the usual 24 hours or next day. That we did in a bona fide attempt not to delay the House in the passage of legislation when we know what the legislation is. We have had an opportunity to study it and we do not really need the extra 24 hours or any time to look at it and I think it would be childish, almost, to insist on bringing the House back on another day for no good reason. That said, after we had spoken on the First and Second Readings and after we had given our consent for the Committee Stage to be taken on the same day, we received notice of an amendment which is, firstly, itself very substantial; that the Opposition cannot really have any opportunity to consider its implications and, secondly, that it repeals four pages of another Bill and that we cannot even consider what effect the repeal has either generally or in relation to this legislation. I do not mind saying that I consider that this would have been a reasonable case in which the Opposition could have then asked to be given the extra 24 hours if as responsible legislators, not as partisan politicians, frankly to sit here and legislate on legislation about which one is entirely ignorant, I think, is doing less than a service to this community. Really, I do not know if one can withdraw consent once it has been given but had we had this two minutes sooner than it was given to us, we would never have given that consent. I would ask the Chief Minister if he would consider, in effect, standing this down until later on in this meeting or if this meeting is going to carry on until Monday, until Monday but at least to give us an opportunity to know what the legislative..... [HON M A FEETHAM: We can leave it till the end.] Yes, Mr Speaker, but leaving it to the end, which is the suggestion that I am hearing across the floor unofficially, does not really help because it means that one or two of us have now got to disengage ourselves from the proceedings of this House for the rest of the day and actually study this and it is not really adequate.

HON CHIEF MINISTER:

On the pseudo Point of Order, Mr Speaker, I understand the legitimacy of the point put across by Opposition Members and certainly since we do not know how the rest of the day is going to go, if we are in a situation where we are going to need to come back on Monday anyway then I am prepared not to take the Committee Stage and start on Monday with the Committee Stage. I certainly would not want to

come on Monday just because of this, frankly, so it may well be that we will not take in this House if hon Members, having had a chance to look at it between now and this afternoon, still feel they need longer to deal with it. Let me say that the amendment creates enabling powers but does not actually do anything. Hon Members may not like the Bill doing that. What the amendment does is primarily in respect of work permits. If I draw the attention of hon Members to the new provision for section 20 of the Ordinance they will see that effectively what we are doing is saying, all the kind of areas in which the methodology for granting of work permits could be stipulated, with a caveat that nothing that is done by any regulation can fall foul of Community obligations. Given the technical nature of the Community requirements on the one hand and our attempts to protect local labour on the other, what we cannot have is a situation where every time we introduce some measure somebody says that it is against Community law. We then have to take independent advice. We then have to go back to London. We then get a confused feedback and we may then have to come here and reword the original. To the extent that this amendment does anything different from the other one, is that it is shifting how the work permits system should work from the body of the Ordinance to regulation but saying that those regulations cannot come in unless we have previously been able to clear that they are not in conflict with Community law. If hon Members feel, after having studied that, that they need to spend more time on then I am prepared to, if necessary, leave it until the next meeting.

HON P R CARUANA:

Mr Speaker, really I accept the Chief Minister's comments that the actual new text to section 20 is enabling powers. The new clause 2, in other words, clause 11 of the Bill now repeals more sections than the previous. Before we were just repealing section 14 and now we are repealing sections 14, 21, 22 and 23 and really it is the effect of repealing those sections that we have got to look at to see what their wider impact and the consequences of repealing those three, which I understand is nearly three pages of legislation, has. For example, and I will try and choose my words carefully given that we understand the juggling act that is trying to be performed here, one of the things that we need to consider is whether the effect of repealing the other three sections - and I do not, as I stand on my feet, even know what those three sections say - is whether, in effect, we are subjecting local people to a whole new regime of employment control. Really one cannot decide even if there is a point that needs to be raised until one can consider these points. I would suggest, Mr Speaker, as an attempt to avoid having to come back, if that is what would happen, just for this, that we either adjourn a little bit earlier for lunch today or reconvene

just a little bit later after lunch. In a way that gives me half an hour or three-quarters of an hour to actually look at this and then I will be able to say to the House, "Well, we are happy to proceed nevertheless".

HON CHIEF MINISTER:

I am quite happy with that, Mr Speaker.

MR SPEAKER:

I think I should like to point out that it is vital that the Opposition gets the amendment on time otherwise they cannot make an intelligent contribution to the House. We will carry on now with the Committee Stage.

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 European Communities (Amendment) Bill 1993; the Contracts (Applicable Law) Bill 1993; the Litter Control (Amendment) Bill 1993; the Births and Deaths Registration (Amendment) Bill 1993; the Commissioners for Oaths (Amendment) Bill 1993; the Imports and Exports (Amendment) (No. 2) Bill 1993; the Public Health (Amendment) Bill 1993; the European Economic Interest Grouping Bill 1993; the Social Security (Insurance) (Amendment) (No. 2) Bill 1993; the Employment (Amendment) (No. 2) Bill 1993; the Civil Jurisdiction and Judgements Bill 1993; the Domestic Violence and Matrimonial Proceedings Bill 1993; the Maintenance (Amendment) Bill 1993; the Gibraltar Merchant Shipping (Registration) Bill 1992; and the Gibraltar Merchant Shipping (Safety, etc) Bill 1992.

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

MR CHAIRMAN:

Before we go ahead with the Committee Stage I think it will speed matters if, as we go along, we read more than one clause at a time. If we find that there is no controversy and if any hon Member wishes to raise any point within those clauses he can do it then and I think we will find that we can proceed much faster without in any way reducing the effectiveness of the House.

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

Clause 3

HON F VASQUEZ:

Mr Chairman, this clause is headed "Amendment to European Communities (Amendment) Ordinance 1992". Having looked at the European Communities (Amendment) Ordinance 1992, it seems clear that section 6 of that Ordinance which it is amending was itself an amending section and was amending section 23 of the Interpretation and General Clauses Ordinance. The effect of drafting the Ordinance in the way which it is proposed to this House, Mr Chairman, has the effect that anyone who reads this and says, "Right, I see there is an amendment to the European Communities (Amendment) Ordinance", pages through, if he can find it, to European Communities (Amendment) Ordinance only to find that that refers to an amendment to the Interpretation and General Clauses Ordinance. It is a very indirect way for this Ordinance to be referring to the amendment which is actually being enacted and for that reason, Mr Chairman, the Opposition proposes that clause 3 be amended, and it is simply a matter of drafting, to read, instead of "section 6 of the European Communities (Amendment) Ordinance 1992 is amended", should read "The Interpretation and General Clauses Ordinance is amended in section 23" and then it carries on "by omitting paragraph (g)". So by way of explanation, Mr Chairman, the fact is that section 6 of the European Communities (Amendment) Ordinance 1992 only amended section 23 of the Interpretation and General Clauses Ordinance by adding a new subsection (g). All we need do now, surely, Mr Chairman, is not refer to the European Communities (Amendment) Ordinance but refer to the Interpretation and General Clauses Ordinance which is, in effect, what we are amending. So I would say the proposal is that the Ordinance be amended in that way simply to make it simpler. When somebody reads the Ordinance it is more immediately clear what it is that is being amended, i.e. not the amending Ordinance but the substantive Ordinance which is the Interpretation and General Clauses Ordinance.

MR CHAIRMAN:

Could I have it written down on paper.

HON F VASQUEZ:

Yes, I have got it here in my handwriting, Mr Chairman.

MR CHAIRMAN:

It does not matter, in your handwriting will do.

HON F VASQUEZ:

It is very simple. All I am suggesting is that the words "Section 6 of the European Communities (Amendment) Ordinance 1992" be substituted by the words "Section 23 of the Interpretation and General Clauses Ordinance". I have in front of me both the 1992 Ordinance and the Interpretation and General Clauses Ordinance from which it becomes very clear what I am saying, Mr Chairman.

MR CHAIRMAN:

Is the Attorney-General fully aware of what the amendment is?

HON F VASQUEZ:

By way of clarification, Mr Chairman, the point is only this. The European Communities (Amendment) Ordinance introduced a new sub-section into the Interpretation and General Clauses Ordinance. It is our view that if that new sub-section is going to be amended, it should be amended not by amending the European Communities (Amendment) Ordinance but by amending the Interpretation and General Clauses Ordinance which is the Ordinance in which the provision, being amended now, rests.

MR CHAIRMAN:

Have you got to delete anything at all?

HON F VASQUEZ:

Yes, Mr Chairman. What needs to be deleted, in my submission, firstly is the heading of the section, instead of reading "Amendment to European Communities (Amendment) Ordinance 1992" it should simply read "Consequential amendments". Then the clause should begin, instead of "Section 6 of the European Communities (Amendment) Ordinance 1992", as "Section 23 of the Interpretation and General Clauses Ordinance".

MR CHAIRMAN:

The point is we have to fit it into the Ordinance now and you have to be very specific of where you want to put it.

HON F VASQUEZ:

The proposal is this, Mr Chairman. Delete the words "Section 6 of the European Communities (Amendment) Ordinance 1992" and introduce the words "Section 23 of the Interpretation and General Clauses Ordinance".

HON CHIEF MINISTER:

Mr Chairman, I think the hon Member should move as he has already indicated, delete the words "Amendment to European Communities (Amendment) Ordinance 1992" and substitute "Consequential amendments" and then delete the introductory paragraph on clause 3 beginning with the words "Section 6" and finishing with the words "new paragraph" at the end of the third line and substitute the new words "The Interpretation and General Clauses Ordinance is amended in section 23 by omitting paragraph (g) and substituting therefor the following new paragraph", and that we would accept.

MR CHAIRMAN:

Will you put it down in writing exactly as you want it, as it is going to fit into the Ordinance.

HON F VASQUEZ:

Mr Chairman, the Chief Minister has it before him in writing.

HON CHIEF MINISTER:

We are prepared to take it as written but for the record he has to say, "I move the deletion of the following words and the substitution of the following". We understand what it is the hon Member is trying to achieve, we agree to accept the amendment and then we have got to make sure that the record shows that it has been drafted so that when the law is printed as having beeen passed, we have not left a bit of the old section behind.

MR CHAIRMAN:

You have to write down exactly what you want deleted and what you want to fit in in its place.

HON F VASQUEZ:

Mr Chairman, I accept that. I can certainly undertake to do it.

HON CHIEF MINISTER:

In that same clause, Mr Chairman, I propose the deletion of the word "relates" and the substitution of the word "relating" which is simply a grammatical mistake but I did not give notice of this at the First Reading and the line that we have tended to take is that if we notice a grammatical error of this nature rather than wait for the Committee Stage to amend it, at the Second Reading we ask the House to take it as read, as if it had been correctly printed. On this occasion, in fact, we did not notice it in the First Reading so I am bringing it to the notice of the House now and, if necessary, we will have to have an amendment and vote on it. But what we are talking about is in paragraph (g)(ii) which starts off with "relates to matters", I am advised that the English language would be better reflected if it said "relating to matters".

HON P R CARUANA:

Yes, Mr Chairman, in fact, this is a point that we raised during the debate on the Second Reading of this Bill and it is not just a question of grammar, it simply does not make sense because if we see that little (g) begins "where in any Ordinance - "we therefore forget little (i) and it must make sense reading straight into little (ii), "where in any Ordinance relates to matters in respect of which rights" is nonsensical. We can either amend it the way the Chief Minister suggests or alternatively "where in any Ordinance which relates to matters". It is the same thing but we will certainly take that as a grammatical amendment.

MR CHAIRMAN:

I think, to avoid delays, hon Members should note that when they make an amendment they have to write it down as they want to see it in the Ordinance itself. So let us get this right, who is moving the amendment now? Will the hon Member move it or would he let the Attorney-General move it?

HON F VASQUEZ:

Mr Chairman, I am very happy to listen to the amendment proposed by the Attorney-General.

HON ATTORNEY-GENERAL:

Mr Chairman, it looks now, I am advised, that it should read "Clause 3 be amended - (a) by omitting the marginal note thereto and substituting therefor the words "Amendment to the Interpretation and General Clauses Ordinance", and

(b) by omitting everything before the dash and substituting therefor the words "The Interpretation and General Clauses Ordinance is amended in section 23 by omitting paragraph (g) and substituting therefore the following new paragraph -".

HON F VASQUEZ:

Mr Chairman, that is perfectly acceptable.

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

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

THE CONTRACTS (APPLICABLE LAW) BILL 1993

Clauses 1 to 7 were agreed to and stood part of the Bill.

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

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

THE LITTER CONTROL (AMENDMENT) BILL 1993

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

Clause 2

HON P R CARUANA:

Mr Chairman, in clause 2, the penultimate line, I propose the deletion of the word "could" and addition of an "s" to the word "constitute". Mr Chairman, it is really an amendment on the point that we discussed at the Second Reading. We know what the Government's position on the point is.

MR SPEAKER:

So you want to discuss it again?

HON P R CARUANA:

No, I have got to take the view that we have discussed it already.

HON J E PILCHER:

Mr Chairman, I think as the Leader of the Opposition has said he raised, he said it on the general principles of the Bill and I explained the reasons why we could not support it because it would tend to create problems within that definition and therefore I said on the general principles that we could not support it and therefore we will not support it.

Question put. The following hon Members voted in favour:

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

The following hon Members voted against:

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

The amendment was 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 J Blackburn Gittings
The Hon B Traynor

The following hon Members voted against:

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

Clause 2 stood part of the Bill.

Clauses 3 to 6 were agreed to and stood part of the Bill.

Clause 7

HON P R CARUANA:

Mr Chairman, just for the record and once again so as not to take up more of the House's time on this point. The House knows that we object to the transposition of fine to scales, not because we object to that as a housekeeping exercise, we support that as a housekeeping exercise, but we believe that the Criminal Procedure Ordinance which contains the scales themselves, should be changed by primary legislation and not by regulation. It is not a point that I want to tire the House with every time we come to an Ordinance and I am not going to, even at the Committee Stage, vote against clauses just for that reason because we do not actually oppose the clause. What we oppose is something that takes place in another Ordinance and which we do not have in front of us.

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

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

THE BIRTHS AND DEATHS REGISTRATION BILL 1993

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

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

THE COMMISSIONERS FOR OATHS (AMENDMENT) BILL 1993

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

Clause 7

HON F VASQUEZ:

Mr Chairman, in relation to clause 7, I have a number of points. The first being this, the opening paragraph at present reads - it does not actually deal with the policy at all of the Bill but it is merely a drafting point "The principal Ordinance is amended by inserting after section 6 the following new sections" and new sections 7, 8 and 9 follow. My research, and it may well be that I am wrong, Mr Chairman, but as far as I can judge, there already is a section 7 of the principal Ordinance and the new clause 7 would have to be amended by inserting the words "revoking section 7 and" after the word "by" so it would read "The principal Ordinance is amended by revoking section 7 and inserting after section 6 the following new sections". I may be wrong but certainly my copy of the Commissioners for Oaths Ordinance already has a section 7. I am not aware that it has been repealed. It is the section, Mr Chairman, that creates an offence and imposes a penalty and, as far as I can judge, that creation of the offence and provision of the penalty is now included in the new clause 9, which creates offences. So I think it is necessary to revoke the existing section 7 or we are going to end up with two sections 7 in the Ordinance, Mr Chairman.

HON ATTORNEY-GENERAL:

Mr Chairman, I would be obliged if I could just have a few moments because we are checking this now. But, in fact, I have an amendment anyway. I think there is a spelling mistake in clause 7, as it was and in new section 8. In clause 8(c) delete the word "comes" and insert the word "carries".

HON P R CARUANA:

Yes, that is acceptable.

MR CHAIRMAN:

We will take the first amendment and then we will come to this one.

HON ATTORNEY-GENERAL:

Mr Chairman, that is agreed and we would have to have "by repealing section 7 and" inserted. Mr Chairman, thank you for your indulgence. We have got this written out now.

Question put. Amendment agreed to.

HON F VASQUEZ:

The next point, and I am still really on matters of drafting. The Bill throughout refers to the office of Public Notary. We have Notaries Public. It is a Notary Public not a Public Notary. A Public Notary, I think, is the continental term for the office. In a common law jurisdiction they are referred to as Notary Public and in the plural normally Notaries, we drop the Public in the plural. The proposal is that wherever the words "Public Notary or Public Notaries" appear the words "Notary Public or Notaries Public" be substituted.

HON ATTORNEY-GENERAL:

Mr Chairman, as I understand it, Public Notaries have made representations to legal draftsmen and have suggested that the words "Public Notary" should read "Notary Public". It has been explained that this is following the United Kingdom legislation as a model and upon examination of the United Kingdom legislation, their own oaths taken on appointment and the protocols of appointment, the notaries agreed that in fact it should be Notary Public and the Opposition suggested that it might be that we would wish to change the provisions in respect of Public Notaries. In fact, it should be Public Notaries.

HON F VASQUEZ:

Mr Chairman, it is our understanding that there is no such appointment. That in a common law jurisdiction the office is always referred to as a Notary Public and not a Public Notary. Therefore, we can only make the suggestion. We believe that this Ordinance is actually employing the wrong definitions and that really the term ought to be Notary Public and certainly every notary in Gibraltar calls himself a Notary Public and not a Public Notary.

HON ATTORNEY-GENERAL:

That may be but, in fact, it follows the United Kingdom legislation, they are called Public Notaries.

MR SPEAKER:

So what is the position, what does the Attorney-General feel about it? What is it going to be?

HON ATTORNEY-GENERAL:

Well, I am not one, but I would say this, Mr Chairman, a Public Notary knows who he is, a Notary Public knows who he is but the correct expression is Public Notary.

HON F VASQUEZ:

The proposed amendment is withdrawn.

HON P R CARUANA:

Mr Chairman, during the Second Reading I asked whether the Government could clarify for me whether the intention and the purpose and the effect of clause 7 - I could have raised this point in relation to clause 4 but I omitted to do so - was simply a desire to record and register and there was no suggestion that this clause empowers the appointment of notaries. My recollection is, and I think the Chief Minister confirmed, that it was the former. In other words, that this was just to create a register that Notaries Public and Commissioners for Oaths would continue to be appointed as they are presently appointed. Mr Chairman, I think the record should show that the Chief Minister has nodded his head indicating the affirmative otherwise the nod will not appear in Hansard.

HON CHIEF MINISTER:

Let me nod verbally then. The Opposition Member is correct. What I did say, of course, in addition, was that following the explanations provided by the Hon Mr Vasquez, we would certainly look at the methodology of appointment given what he had told us about the Archbishop of Canterbury so that when we had brought it to this House we were looking at registering and not introducing a new method of selecting people.

HON F VASQUEZ:

Mr Chairman, before I get down to tabling a specific proposed amendment, I would be grateful perhaps if the Chief Minister would then confirm that it would not be his intention at this stage to allow amendments to this Ordinance to allow and to clarify the point that the Registrar, in fact, is in a position to appoint as well

as to register Notaries. Is the Chief Minister saying then that although he is considering it, for the moment he does not want to make specific legislative enactment to the effect that the Registrar may appoint Notaries?

HON CHIEF MINISTER:

That is correct because between the time that the matter was pointed out to us and the Second Reading and the time we have come back, apart from our friendly conversation with the Minister of State with responsibility for Gibraltar in the Foreign Office, we have not really had a great deal of time to consider the consequences of allowing the Registrar to appoint or not appoint people. But I think it is something we need to think about and maybe move in that direction but we have not yet taken a policy decision on it.

HON F VASQUEZ:

Mr Chairman, if you will bear with me, I have prepared various proposed amendments to this end. If I can just confer with the Leader of the Opposition to determine whether in fact we intend to pursue these proposed amendments. No, we are not going to proceed with these proposed amendments.

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

Clause 8

HON P R CARUANA:

Mr Chairman, on clause 8 we have got the Attorney-General's amendment which we agree with and he might, purely as a sort of typing correction, actually like to put the words 'Public Notary' with capital P and capital N. I think it appears in capitals elsewhere in the Bill.

HON ATTORNEY-GENERAL:

The amendment, Mr Chairman, to new clause 8A(2) would be after the words "mistake in" the words "entering information or inserting in" are inserted. I think the hon Member agrees with that.

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

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

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

THE IMPORTS AND EXPORTS (AMENDMENT) (NO. 2) BILL 1993

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

Clause 2

HON H CORBY:

I would like, Mr Chairman, to propose an amendment to section 8(4) and the amendment proposed is to substitute all the words after "under sub-section (2)" by "in writing". As I explained before, this is to take the onus away from the junior Customs Officer to take on his own bat an internal search.

HON ATTORNEY-GENERAL:

Does the hon Member know that the rank of the person authorising this is the rank of Customs Surveyor? That is not a junior rank.

HON H CORBY:

I believe that the Customs Surveyor is not in attendance after 5 pm and thus a junior or any member of the Customs Department will call the Customs Surveyor in order to make an internal search of the person concerned and this is then taken in writing the following day when the Customs Surveyor is present. We think, in the Opposition, that the Customs Surveyor must be present and give written instructions there and then when the search is being undertaken.

HON LT-COL E M BRITTO:

If I can go further, Mr Chairman. What we are trying to avoid is the circumstances where, say, in the early hours of the morning, a person is suspected of having drugs concealed and only suspected, there is a junior officer on duty, he picks up the phone, he calls a senior officer who on the phone gives the authority and then the next day confirms it in writing. We think that the matter is important enough to warrant the physical presence of the Customs Surveyor and assess the situation for himself before making a decision whether an internal search should be carried out.

HON CHIEF MINISTER:

Mr Chairman, we are not prepared to accept this amendment. Frankly, at the end of the day, I think as far as we are concerned, our role in bringing legislation to this House is one where we take political responsibility for policies. We have to have a certain amount of confidence that people are doing their jobs responsibly and we can put whatever we like, what are we going to do then, send somebody to survey the surveyor to make sure that the surveyor is there and not somebody else? Whatever we put in the legislation, if people are not discharging their obligations in a responsible manner, there is no way the members of the Government or the members of the alleged legislatures can be on top of whether public servants are doing what is required of them. This is their initiative, they are concerned about the drugs problem in Gibraltar. They believe that with the present facilities that they are able to make use of under the law as it is at present, they cannot give the protection to our young people and to our country against this menace of drugs that we want them to give. Frankly, at the end of the day if the people in the service come back to the Government and say to the Government, "You want us to do a job, you have to give us the tools to do the job and these are the tools we need". Then what I said at the general principles of the Bill, we are doing what they have asked us to do because we are satisfied that the people who are asking us to do this are people who are genuinely committed and they feel they need this. It may be that it is not word perfect, it may be that it creates a loophole which could allow people to exploit this and attack the civil liberties of an individual. I suppose there is virtually no piece of legislation that we cannot say something similar about. Frankly, it would be wrong of us to say that we are going to tie the hands down of the Customs Surveyor and say, "If somebody comes in with drugs in his body at 2 am, unless they can find you somewhere in Gibraltar, even if they suspect the guy and unless you can go there physically...." What is it then that we want to make it more difficult for the Customs to catch the person than for the person to be able to smuggle the drug? No, that is not what we want. We are all committed here against that fight. One always hears stories of whether it is Customs or whether it is Police, in a small community like ours, having it in for somebody and we know that some of those stories may be true, some may be exaggerated and some may be untrue. All I can say is that we would not be willing to accept an amendment to this, frankly, which might frustrate what we are trying to do in the first place and we are not confident that there is a need to introduce that kind of safeguard that the Opposition Member is looking for. What I can say obviously is that given the concerns that the Opposition have expressed in this House, we will impress upon the Collector of Customs that he should monitor very closely the operation of the new powers that we are giving and

that we would expect to be regularly informed of how it is happening because, of course, if it is happening in a way that it should not happen, the Opposition Members will have the opportunity of raising the matter in the House and saying, "I want to know why on such and such a date somebody was stopped by a junior officer". And if we feel that the experience shows that the powers that have been created have been abused beyond what they were intended, then we are prepared to come back and do something about it.

HON P R CARUANA:

Mr Chairman, let me just ask the Chief Minister whether I correctly heard him to refer to this House as an alleged legislature.

HON CHIEF MINISTER:

Yes.

HON P R CARUANA:

Perhaps he would like to explain that phrase in due course.

HON CHIEF MINISTER:

I can explain it straightaway. All the powers to make subsidiary legislation which the Government has have been granted by this House.

HON P R CARUANA:

Alleged legislature suggests that this House is not really a legislature.

HON CHIEF MINISTER:

No, I did not use the word alleged.

HON P R CARUANA:

That is what I thought I had heard him say. It is already the policy of this Bill to require this right to exercise internal body searches to be exercised by a senior officer, namely, Customs Surveyor. Presumably, because the draftsman, in my opinion quite correctly, considered that something as sensitive as this should not be exercised on the discretion of a junior officer. That is why the law says

that it must be authorised by a senior officer. All that we are saying is that we have got to legislate that policy. It is already the Government's policy and not ours, that this power be exercised by a senior officer. We must legislate that power in a way which ensures or makes it clear that the legislature has done all that it can possibly do to ensure that actually the senior officer is the one who exercises his judgement and not the junior officer because if we are going to allow the junior officer to exercise his judgement, we might as well give the power to the junior officer in the first place. All we are saying is that sub-section (4) already says that the Customs Surveyor has got to give it orally. Giving it orally means that somebody will telephone him and he will not, in fact, address his mind to the fact. One cannot communicate fact on the telephone. Incidentally the Chief Minister is aware that one of the consequences of this amendment is that it is no longer limited to people coming into Gibraltar. [HON CHIEF MINISTER: I know that.] This is a power that can be exercised against us all, not that it would be, it would be an abuse of the exercise against us all in Main Street. Therefore questions of civil liberties do arise and whilst we are all committed to the fight against drugs, I think when we legislate against the fight against drugs we have got to at least ensure that we provide adequate protection of civil liberties which are no less important than the fight against drugs.

HON CHIEF MINISTER:

Mr Chairman, I am not disputing that the protection of civil liberties is perhaps as important, perhaps it is not because, in fact, as far as we are concerned, if there is a conflict between protecting civil liberties and protecting Gibraltar against drugs then protecting Gibraltar against drugs takes a higher priority. If that protection can be achieved without a conflict then that is fine. I do not accept the logic of his argument that if the Surveyor is at home they can phone him up and he can say orally over the phone, "Go ahead and do it" but if he has to do it in writing, well if he has to do it in writing he scribbles it on a piece of paper and puts it in the fax machine and he still does not have to leave his home. So it is irrelevant, from that point of view. What we are saying is we have not put in Customs Surveyor. The hon Member is wrong if he thinks that we, in order to protect civil liberties, told the Customs, "We agree to what you want to do but only at the level of Customs Surveyor". They proposed Customs Surveyor. They said, "We want it to be done by a person with that rank who will have the experience to be able to make that kind of judgement". So they suggested it and therefore what we are saying is we are not prepared to accept, at this point in time in the House, changes which could have the effect, as far as we are concerned, of making it more difficult for them

to do the job so that at the end of the day we go back to them and we say, "Here is the amended Bill" and they say to us, "You have now constrained how it needs to be done to an extent that the guy that wants to get the drug in will now be looking at how, because the Surveyor is not there at 4 am" - and certainly we are not going to be employing more Surveyors - "then everybody will go in at 4 am because of the difficulty of getting the guy at 4 am". I do not even know how it is intended to operate this, frankly it is not my job to know that. All I can tell the House, in trying to reassure the Opposition Members, is that I will make sure the Collector of Customs is conscious of the concerns of the House that this should not lead to an unnecessary infringement of civil liberties because I imagine the civil liberties of the drug trafficker is not going to give any of us sleepless nights. It is the civil liberties of the innocent that we are worried about. In order to be able to reassure hon Members the operation of this should be carefully monitored so that it is seen to be doing what it is intended and not more than that. If we find that it is going wrong then we are prepared to do something about putting it right but I am not prepared to do something about it in anticipation that it might go wrong because the effect of doing that might mean to make it more difficult for the officers to do their job and what we have done is draft it in the way they advised us they needed drafting.

Question put. The following hon Members voted in favour:

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

The following hon Members voted against:

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

The amendment was defeated.

HON H CORBY:

Mr Chairman, in the same clause, I propose the deletion of all the words after "(b)" and the insertion of "informed in writing immediately of the reason for the seizure", and to delete sub-paragraphs (a) and (b) which say that if a person becomes violent or is likely to become violent that no reason is given for it or is incapable of understanding. Once the seizure has taken effect, again information in writing should be given for the reason of the seizure.

HON F VASQUEZ:

Perhaps, Mr Chairman, I think it is important to make it clear. The way the Hon Mr Corby has put it perhaps is not clear because I think what he is suggesting is that sub-paragraphs (a) and (b) be deleted and these words substituted. I think really it needs just a little more than that. The paragraph should read, "the person from whom it is seized shall be informed in writing immediately of the reason for the seizure". I hope that is clear, that is the proposed amendment.

HON ATTORNEY-GENERAL:

Mr Chairman, we discussed this the last time and we thought that it was sensible to add a rider to what is required and, of course, one can see the sense of a person being told in writing but there are circumstances where it is not going to be possible; the person could be unconscious, the person could be too ill, the person could become too violent as is said here and if one deletes (a) and (b) one puts oneself in a position of allowing the defence lawyer to say that this has not been complied with because it was not put in writing and then one has an argument about whether the person was fit enough to be told in writing why. What is the harm?

HON F VASQUEZ:

If the requirement of the section is that the Customs Officers shall inform the individual in writing, all they have to do, whether he speaks only Swahili or whether he is unconscious, all they have to do is hand to him an envelope saying, "Herein are the reasons for the seizure". Then the individual in question can avail himself of any rights available to him and simply by merely handing that envelope to him, the officers would have complied with their legal obligations. From our point of view, Mr Chairman, the mischief of which the Attorney-General fears actually is encapsulated within the section as at presently framed because if the Customs Officers say, "We thought

he was too violent" and the person in question can say, "I was quiet as a lamb, I was not violent at all". Then we really do have difficulties because then one starts having an argument as to whether or not in the circumstances the officers in question should have given him the reasons or not. I can think of no possible situations where a person is too violent to slip an envelope under the door to him, if necessary, or to hand it to him or to say, "Look here it is, if you do not understand; get a lawyer but this is why we are doing it". That is all we are saying. One is actually asking for trouble if one puts in the section that in certain circumstances they have to tell him but in other circumstances they do not because then the argument arises as to whether those circumstances prevailed or not. And one may have a situation where a suspect manages to convince the Magistrate that, in fact, he was not violent and that therefore the officers were in breach of their obligation because they did not give him the reasons when they should have done. Surely, let us avoid all that by just requiring the officers to type out a letter saying, "We seized it because we think you have got the prescribed substances in here and we are going to check them out". In my thinking that is the end of the story.

HON ATTORNEY-GENERAL:

Yes, but the Leader of the Opposition said that this is now being extended to every place in Gibraltar. What is the Customs Officer to do, chase somebody down Main Street with a portable typewriter?

HON P R CARUANA:

The Attorney-General can take his task in this House irresponsibly if he wishes, but the fact of the matter is that if that is what he thinks the law requires then yes, he had better give all the Customs Officers a portable typewriter because unless the person is violent or incapable of understanding they must indeed give him the reasons. In relation to the powers of arrest, for example, how does a policeman arrest a person who is unconscious or who has become violent or who is incapable of understanding what is being said to him? All we are saying is that in those circumstances one still arrests but one has still to follow the procedure. One has still got to go through the motion of saying, "I arrest you..." etc. The law does not exempt from the mechanics of the act of arrest in described circumstances and all we are saying is that if one exempts from the established mechanics of doing this, things which are arguable as to whether or not they have happened, one will have an argument as to whether or not they have happened. We want there to be complete certainty. We want people to know when things have been seized for them and why and not to be told, for example, a month later, "Last

month we seized this from you and now we have discovered that it is a prescribed drug". Mr Chairman, on this point, frankly, I do not see that there ought to be ground for this degree of controversy. We all want to achieve the same thing; we all presumably want to avoid the same things and I do not think that we should be hostile about it simply because the suggestion has come from the Opposition.

HON ATTORNEY-GENERAL:

No, it is not that. If, in fact, one substitutes for "Customs Officer", Mr Chairman, a "Police Officer", he does not have to put in writing to a person he is arresting why he is doing it. There can be circumstances, at the time, when that cannot be done. If it is an armed robbery he cannot be told in writing he is arrested. If he thought I was not sufficiently serious I apologise to him but, in fact, I was being completely serious. What it says is that the person will be told unless he is violent or likely to become violent or is incapable of understanding. I cannot see what the point is.

HON F VASQUEZ:

Mr Chairman, if I can just intrude once again. I just want to deal with the point, a rather spurious point, in my view, that the Attorney-General made a few minutes ago suggesting that our amendment was in effect requiring Customs Officers to be running around town with portable typewriters. We are dealing with a situation where suspects have undergone internal examination. I do not imagine for a minute that it is the intention of the Customs Officer to indulge in internal examinations of suspects in the middle of Main Street. We are dealing with a situation where the suspect is going to be detained either in the Customs premises or in a Police Station undergoing an internal examination - in the designated premises under the Ordinance. We are dealing with a situation where substance has been removed from the suspect and either he is going to be told or he is not going to be told that the substance in question is being retained. In our view the possible mischief here is that if the suspect is not told of the reasons for which the substance in question is being retained, it may give cause in the future to suggestions, for example, that the Customs Officers planted the substance in question, or facts of that nature. We all know that in this sort of case exactly these sort of allegations arise and we have to be very careful that we define the powers of the Customs Officers carefully enough to avoid this sort of defence arising. Therefore it is our submission, and I am putting it to the Attorney-General that if the Customs Officers are required, as a matter

of course, every time they conduct an internal examination and any time they find something which there is cause for suspicion and which leads them to retain the substance in question, they must immediately, as a matter of course, tell the suspect, "We have undertaken this internal examination. We found something we suspect to be drugs and therefore we are keeping it and we are telling you now and if you have got difficulty with this you had better get your lawyer working on it straightaway". If we leave a door open to them, if we leave an avenue for them, not to have to give their reasons to the suspect, the fact is that in court the suspect may say, "I was not being violent. I was being threatened by three Customs Officers, I was not in the least bit violent and yet they did not give me the reasons for taking away the substance and I am telling the court that it was planted on me". This is the sort of defence we are going to get and if we want to avoid that we have got to make absolutely sure that on every occasion the Customs Officers, under the powers given to them by this Ordinance, take substances from suspects, they tell the suspect immediately and in writing why they are doing so. It is our view that by doing so one is going to actually make this Ordinance more effective in tapping these people and that is why.

HON LT-COL E M BRITTO:

Mr Chairman, after having consulted with my hon Colleague, would it make it easier for the Government to accept the amendment if we changed it to read in line with section 8(4) so that it read in section 8(7), "is told the reason for the seizure" deleting everything after "seizure" and inserting "orally and this shall be confirmed in writing as soon as is practicable".

HON CHIEF MINISTER:

Mr Chairman, there are two totally different points that have just been made. The point being made by the Hon Mr Vasquez, which as a layman seems to me to carry some weight, is that if one says that the guy was not told because he was violent and one cannot prove he was violent then he may say one failed to comply with the requirements of the law, that is one point. The point about 'in writing' is not a point that I accept. Let us not forget what we are talking about; somebody is being kept under custody for 96 hours waiting for something to happen. What has to happen in 96 hours will happen and unless there is some Customs Officer with a particular aberration for collecting things that nobody would want to collect, I do not see why they should want to keep anything. Frankly, I can see the point the hon Member has made that if there is a risk that by drawing a distinction between the person having to be told or not having to be told, for example, depending on whether

he is incapable of understanding what is said to him, it seems to me that is it that he is incapable of understanding because of language problems? Who judges whether the person understands enough English to understand what is told to him? If one can say to somebody, "I did not tell him because he does not understand English" and the guy says in court, "What do you mean I do not understand English, I have got a degree in English". It seems to me that there is some merit in the argument put by the hon Member in that if what we are going to do is create the potential for litigation for the defence of somebody who has been found with drugs in their body then we certainly want to avoid that. I really honestly think that the point in writing is not one which is required, unless one could argue that if they do not get it in writing they can deny that they were told at all but presumably that is the same as somebody being charged with something in the presence of others. At some stage presumably something will have to go in writing if they are going to be prosecuted. Here we have the Customs deciding, presumably, to have something examined because they suspect that it contains a prohibited drug which is being smuggled into Gibraltar and if that is what they suspect, the fact that they get told, presumably they get told when they are in custody, whether they get told and then confirmed in writing or not, we are talking about a machinery which does not seem to me to have the same weight of argument as the argument that they should not be told at all and the justification for not telling them at all is that they were violent and what degree of violence or that they were incapable of understanding; well obviously if the guy is unconscious then he can be told and he still will not know that one has told him. But incapable of understanding can mean that they do not understand the language in which they are being told and given the area that we are talking about, we are likely to have people who are not Gibraltarians and who therefore may not be able to understand English and in those circumstances whether they understand it or they do not, they should be told, I would have thought.

HON LT-COL E M BRITTO:

Mr Chairman, I hope the Chief Minister appreciates that my last point about 'in writing as soon as is practicable' did not go against what the Hon Mr Vasquez had said.

HON CHIEF MINISTER:

No, I am saying it is a different point.

HON LT-COL E M BRITTO:

Yes, but it would still delete sub-paragraphs (a) and (b) about not being told or of being incapable of understanding and so on. It would delete that.

MR CHAIRMAN:

Let us be clear. What amendment does the Opposition want to propose?

HON LT-COL E M BRITTO:

Mr Chairman, if the Government will indicate whether they will accept the amended amendment then we will change it, if not we will leave it as it stands.

HON CHIEF MINISTER:

Mr Chairman, we have, I believe, followed exactly the wording of the UK. All I can tell the House is that I am prepared to reconsider this and therefore I will go back and see if we should do something different from what the UK does and what its implications are before I can really commit myself. I have been half convinced by the argument used by the hon Member and therefore I cannot, on the spot, take the amendment but I am prepared, if necessary, to bring to the next meeting of the House a new amending Ordinance to remove those words once I have been advised why it is in the UK and what would be the consequences, if any, of doing something different here.

MR CHAIRMAN:

So if I understand the Chief Minister rightly, he wants to carry on with the Committee Stage of this Bill, get it through and then, if necessary, he will produce amendments to the Bill itself.

HON CHIEF MINISTER:

And I am quite happy, Mr Chairman, if we decide that there are arguments for not coming back and amending it, to put those arguments to the Opposition Members in writing and take their views on it. It is not a matter of policy, as far as I am concerned. We want to do what is best for the officers concerned and for the law enforcement agencies. I am told that the reason why that is there is because we have followed religiously the UK wording. They must have had some reason for having it like that there. I need to find out what those reasons are and I will inform Opposition Members.

HON LT-COL E M BRITTO:

The reason may be, Mr Chairman, they did not have such a vigilant Opposition.

HON CHIEF MINISTER:

It could well be.

HON F VASQUEZ:

Obviously we take comfort in the words of the Chief Minister and we look forward to receiving those reasons and obviously we look forward to a reconsideration of the Ordinance if, in fact, his research leads him to believe that our amendments are in fact acceptable. For the moment, I think, for the record we want to maintain our amendment, obviously it is going to get voted out but I think we want to persevere.

Question put. The following hon Members voted in favour:

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

The following hon Members voted against:

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

The amendment was 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 J Blackburn Gittings
The Hon B Traynor

The following hon Members voted against:

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

Clause 2 stood part of the Bill.

Clause 3

HON H CORBY:

Mr Chairman, on "Amendment to section 9", I propose an amendment to delete the words "not exceeding 96 hours" and the substitution of the words "exceeding 24 hours only if a court order has been obtained". I argued this at the Second Reading of the Bill and I know that the Chief Minister has his word on that one and he is going to vote against. This is comparing with the police arrest in which they only have 24 hours in which to charge a person to be able to hold him for longer periods of time.

MR CHAIRMAN:

Does the Attorney-General understand the amendment clearly?

HON ATTORNEY-GENERAL:

Yes, I do, Mr Chairman. I would oppose that application, 96 hours is the time given for the reasons, without being prurient, that we all understand and, in fact, persons still have their rights. The Leader of the Opposition thinks that they do not I said that they still do have their rights and the amendment to this section is only authorising a person to be detained with the Customs for 96 hours if there are reasonable grounds to suspect that that person has drugs concealed on him. One does not want to be flippant about it, 96 hours is a long time. If I am at the frontier and take out of my pocket what appears to be a tablet, if I swallow it it probably would be thought to be wholly unreasonable for me to be detained for 96 hours if I have taken a single tablet because I could probably say it was a rennie or an aspirin or whatever. If in fact a Customs Surveyor says, "No, you are going to be detained for 96 hours" then I would have the right to say, "Well, would you like to have someone perform an X-ray and then I can go on my way when you decide that in fact I have only taken an aspirin". That gives everybody the protection that the law allows despite what the Leader of the Opposition has

to say about this because if the Customs Surveyor is saying, "I suspect you have taken something much more noxious than an aspirin" then one could apply for habeas corpus, despite what is being said because habeas corpus overlaps judicial review and, in fact, any decision of a person in these circumstances can be judicially reviewed to find out if it was a reasonable decision. If one thinks that is not correct, I can go on and explain it, but one does have rights and if one has a totally perverse Customs Officer who, for whatever reason, says, "You are in for 96 hours", despite what anybody says, one can immediately make an application and have one's application heard. Maybe I should say that under the Police and Criminal Evidence Act of 1984 which gives fairly enormous powers to the authorities particularly, for example, under the Prevention of Terrorism Act where one can be detained for five days and one is kept in very secure accommodation at Marylebone Police Station, it specifically says, "The Police and Criminal Evidence Act 1984, however, specifically preserves the right of a person detained to make an application for a writ of habeas corpus or other prerogatory remedy and in appropriate cases, such a remedy could be sought". So even in the most serious cases where the police are investigating what they think are the most highness crimes, a person's right enshrined since Magna Carter - and that is a long time ago now - is that one is always able to go to a judge. The words were these, and they have been recently supported again since the days of the Star Chamber, "No free man shall be arrested or imprisoned or deceased or outlawed or exiled or in any way destroyed, neither will we set forth against him or send against him except by the lawful judgement of his peers and by the law of the land; to no one will we sell, to no one will we refuse or delay right or justice". The armoury of the courts, habeas corpus, the greatest and oldest of all prerogative writs, is available to the person sitting on the toilet.

HON P R CARUANA:

Mr Chairman, the suggestion that the Attorney-General of Gibraltar considers that the civil liberty of the innocent Gibraltarian is adequately protected against being unfairly and improperly detained for 96 hours by instructing his solicitor, if he can afford one, to make an application to court on a writ of habeas corpus is, frankly, worrying. Because even if the average person in the street knew of his rights to apply for a writ of habeas corpus, had the financial resources to engage a lawyer and did not have to wait the several weeks that it takes to obtain legal aid, the chances of it being done rapidly enough to protect the innocent Gibraltarian from an abuse of this power to detain him for 96 hours, is meaningless in practice. We do not object to the detention of people for 96 hours as part of the fight against drugs and it is equally surprising that in answer to the point made by my hon Colleague, Mr

Corby, the Attorney-General presumably in a further attempt to display his considerable powers of wit, goes on to explain why the 96 hours is necessary, as if it was the 96 hours that we were objecting to. He can have his 96 hours, he can fight against drugs. Having a Magistrate authorise that detention, as he must do to the police in the vast majority of cases, does not deprive or detract from the effectiveness of this provision unless he wants to have this available to him in circumstances in which he knows that a court would not sanction it and that is precisely what I am trying to protect innocent victims of this sludge provision from. I think it is disingenuous for the Attorney-General to answer the point that the power of detention beyond 24 hours should be sanctioned by a Magistrate, to defend himself or to argue against that suggestion by explaining why the 96 hours is necessary. Well, we all now know why the 96 hours is necessary, we all agree that 96 hours is necessary, we are all happy that the power should exist for 96 hours, all we are saying is that the exercise of that power beyond 24 hours ought to be sanctioned by a Magistrate. That takes all of five minutes to obtain in a Magistrates' Court that sits daily and if it does not sit daily, we all know jolly well that the police habitually obtain warrants and orders from Justices of the Peace at all hours of the day or night because the Attorney-General and I, in our professional capacities, both know that that happens all the time. And we just do not see why we cannot, from this House, extend protections of civil liberties to innocent people in a way that does not deprive this legislation of what we all want it to be, namely, effective against those engaged in drug trafficking.

HON ATTORNEY-GENERAL:

We could go on all day, I suppose. Please do not think I am trying to score a point because we do not have the Police and Criminal Evidence Act in Gibraltar. But if one looks at Case's Abbreviated in England one will see that there are powers, not to do with drugs, to detain a person for 72 hours without going to a court anyway, all it requires is a Police Superintendent. I do not really see what the harm is.

HON P R CARUANA:

Well, I find that worrying, Mr Chairman.

HON ATTORNEY-GENERAL:

Well, I have told the hon Member that persons have rights. If he wants to expand the debate to say that a person in Gibraltar does not know his rights, then that would go on to something quite different. Is he really saying that a person in Gibraltar, if he is arrested, would not know

that he is entitled to ask to see a lawyer or to seek advice or to speak to the Station Sergeant and to say, "Why am I here?" and be told?

HON P R CARUANA:

Is that a question to which the Attorney-General wants an answer?

HON ATTORNEY-GENERAL:

No.

HON P R CARUANA:

First of all we are not talking about persons who have been arrested. Secondly, even if the right that he claims people have exists - I am not going to argue with him as to whether they do or they do not because for the purposes of my point it does not matter whether they have them or not - in practice they cannot exercise those rights quickly enough. Even if he is right in saying that a person can apply to the court on a writ of habeas corpus. This is a man who is in a cell in Customs House. Physically his chances of getting before high Court Judge on a writ of habeas corpus sooner than 96 hours, the Attorney-General knows as well as I know, are nil. And yes, I say that the average citizen of this community does not know that he has the right to apply on a writ of habeas corpus for the release by a High Court Judge. That is not a criticism of the citizens of this community because I would make exactly the same remark about the citizens of the United Kingdom.

HON ATTORNEY-GENERAL:

Let me just say this, Mr Chairman, not in support of the judiciary but I can get this absolutely checked for the hon Member. In the last seven days I am aware of my own knowledge that a High Court Judge in Gibraltar has been called out after 9 pm on three occasions, not in connection with this but the availability of lawyers to get to judges is very, very well-known in this jurisdiction. Probably, from the point of view of the judges, too well-known because, in fact, the last time it happened was two nights ago and the judge was back in court at 9.30 pm.

HON P R CARUANA:

Well, if it is that easy to get hold of judges why do we not put the onus of getting to the judge to the Customs Officers rather than to the possible innocent victim of this power? Why are we transferring the burden to him who is least capable of exercising it?

HON ATTORNEY-GENERAL:

If one goes to court every morning of the week it does not matter whether it is Bow Street, Marylebone, Gibraltar Main Street, one will find a million defendants all with solicitors; how does the hon Member think they get them? They get them because they know that they are entitled to ask for a lawyer. And if a person who is detained, use whatever word one wants, on the reasonable suspicion of a Customs Surveyor of being a big time importer of drugs, a stuffer and a swallower, as they are called, does not know about lawyers if one is in trouble then I very much doubt it. By the very nature of their business, trade and calling, they know that lawyers should be available. As far as I know, the top liners in America always retain about one-third of the proceeds for their lawyer when they are in trouble. They know exactly how to get a lawyer.

HON P R CARUANA:

It is red herrings like that, Mr Chairman, that make it obvious that the Attorney-General is either not listening to what I am saying or does not understand the simple point that is made to him. I am not seeking to protect the professional drug runner who knows his rights and has an army of lawyers to assist him, I am talking about the innocent person. I am not talking as he insists on always talking about the professional drug smuggler caught at the border because the Attorney-General has presumably not already forgotten that this section now applies to all of us in the whole of Gibraltar. We are not talking about people who come into Gibraltar bearing drugs. This power is given against every citizen of this community, in every part of Gibraltar at all hours of the day or night. And I say that it is unnecessary to give the Customs Officers the power to detain a Gibraltarian in the Piazza and keep him for 96 hours without a court order when it is easy, as the police have to do, to go the very next morning to the Magistrate and say, "We have arrested this chap overnight. We want to keep him in for 96 hours. Will you authorise it?" Because it seems to me that his apparent and inexplicable unwillingness to take that simple precaution unnecessarily exposes innocent people in this community to abuse of this legislation by some present or future Customs Officer who might be minded to abuse it. If the protection that I am seeking for the people of this community had the effect of depriving this legislation of effect in the fight against drugs, then we could weigh in balance what is more important - the fight against drugs or the protection of innocent victims. As what I am proposing does not have the effect of interfering with the effectiveness of the fight against drugs but does have the effect of protecting the innocent individual, it is not necessary even to put them in the balance because there is nothing to weigh against each other.

HON ATTORNEY-GENERAL:

Well, why does the hon Member think the British legislation, when I mentioned the.....

HON P R CARUANA:

I am not sitting in the Houses of Parliament, Mr Chairman, I am sitting in the House of Assembly of Gibraltar. I am not concerned with the citizens of the United Kingdom.

HON ATTORNEY-GENERAL:

Does he want to make another speech?

HON P R CARUANA:

No, I have finished.

HON ATTORNEY-GENERAL:

Why does he think they have, in fact, 72 hours without going to a court out of the Police and Criminal Evidence Act?

HON P R CARUANA:

This is something that he has produced and I do not know what Ordinance he is talking about.

HON ATTORNEY-GENERAL:

Is he suggesting that it is not correct?

HON P R CARUANA:

I would have to read it to see exactly in what circumstances and with what protections and with what mechanisms and with what rights to the arrested party; whether indeed he is an arrested party or, as we are talking about, he is just a person who is kept in custody. This person is not even arrested.

HON ATTORNEY-GENERAL:

The Police and Criminal Evidence Act in the UK gave more rights to the citizen than they have ever had before, everybody can see that. It was the pain of the Metropolitan Police life when it first came in. But they still would

allow it to keep people for 72 hours. I will get him a copy of the Act and I am not being facetious.

HON P R CARUANA:

My last intervention on this matter, Mr Chairman, because my views are clear and the Attorney-General's views appear to be equally clear. If his last and only argument on my proposed amendment is a reference to some unexplained and certainly I do not know about it, English statute, what he is really saying is that he cannot deal with my arguments on their merits and he is now resorting to that last argument of recourse which is always wheelbarrowed into this House when somebody does not want to deal with an argument on its merits, which is "Well in England they do this in some other situation so why should we not do the same here?" Either the Attorney-General considers that there is merit in what I am saying or he considers that there is no merit in what I am saying and that certainly is a matter entirely for him. Presumably he does not think that my argument ought to be disposed of simply by reference to some English statute which does not even deal with the same areas that we are concerned with here.

HON ATTORNEY-GENERAL:

I have spent all my life in an advisorial system. I do not think that what a person says is without merit. The question here is whether the hon Member has established, as far as the Government is concerned, a sufficiently good argument to say that our proposed amendment is not the proposed amendment which will be good for the ongoing and determined fight against drugs.

MR CHAIRMAN:

Well, I think it is time for me now to put the amendment.

Question put. The following hon Members voted in favour:

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

The following hon Members voted against:

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

The amendment was defeated.

On a vote being taken on clause 3 the following hon Members voted in favour:

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

The following hon Members voted against:

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

Clause 3 stood part of the Bill.

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

THE PUBLIC HEALTH (AMENDMENT) BILL 1993

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

Clause 3

HON F VASQUEZ:

Mr Chairman, as is clear to this House from my intervention at the Second Reading of this Bill, we in the Opposition are opposed to this Bill generally because we are opposed to the policy of section 272A which clause 3 of this Bill is amending. Having said that though, I think it is our duty to make sure that any legislation passing through this House has efficacy; that it actually does what it intends to do. On that score I would merely wish to point out the provisions of new section 272A, sub-clause (6), which reads, "For the purposes of this sub-section "owner" means the person from whom the occupier has let the hereditament". That has to be a drafting error, that surely should read, "For the purposes of this section". A subsection is only that one sub-clause (6). I think it is referring to the whole of section 272A in which various references to "owner" appear, otherwise that statutory provision is meaningless.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

If I could have just a few seconds to consider that particular suggestion, Mr Chairman.

HON F VASQUEZ:

Mr Chairman, if it helps Government Members, I have a copy of section 272A here because it is obviously not in the printed edition of the laws.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I think we can accept the amendment which I think the hon Member is presumably going to propose.

HON F VASQUEZ:

It is a typographical error really, to delete the word "sub".

Question put. Agreed to.

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

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

THE EUROPEAN ECONOMIC INTEREST GROUPING BILL 1993

HON P R CARUANA:

To save time, Mr Chairman, we can call all the clauses. I had raised a point on clause 10 about whether we needed to do anything to prevent the use of restrictive names. It has been indicated to me privately that that might not actually be necessary. It is not altogether clear to me how that works. I do not know if the Chief Minister will agree with me on that.

HON CHIEF MINISTER:

Tne only explanation I have is the same one as the Opposition Member has already been given, that it is already covered.

HON P R CARUANA:

I was hoping that the Chief Minister could give me the actual section but it does not matter.

HON CHIEF MINISTER:

In the Schedule the provisions are in sections that are listed in the first item of that Schedule which are sections 17(1)(c) to (e); (2), (3), (4) and (6). So those areas of the Companies Ordinance which refer to restrictions in the use of name presumably is included in those sections applicable in the case of this Ordinance.

HON P R CARUANA:

In any case, provided that the Government Members and the law draftsman are satisfied that that is the case I am happy. I do not know offhand whether the name provisions are included in that but we could deal with that, if it were not, at a future meeting.

MR CHAIRMAN:

So if the Leader of the Opposition is happy we will go from clauses 1 to 19.

Clauses 1 to 19 were agreed to and stood part of the Bill.

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

Schedule 4

HON CHIEF MINISTER:

In Schedule 4, Mr Chairman, we have got two errors. In item 1 the figure "9" should be replaced by the bracket missing around the letter "e", we have got "9e)" without the bracket between the "9" and the "e", it is just that it is not in the printed version. In item 3 the word that appears as "changes" should in fact be "charges".

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

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

THE SOCIAL SECURITY (INSURANCE) (AMENDMENT) BILL 1993

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

Clause 2

HON P R CARUANA:

Mr Chairman, I think both sides of the House discussed at length the principles of this Bill at the Second Reading. Our only objection to the Bill, which really is an objection to the whole Bill, is that this is going to be done by regulation and not by legislation so really I do not think there is anything that we can add at the Committee Stage.

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

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

THE EMPLOYMENT (AMENDMENT) (NO. 2) BILL 1993

HON CHIEF MINISTER:

Mr Chairman, can I suggest that we skip that one and go on with the rest and then we will take that one after lunch.

HON P R CARUANA:

Mr Chairman, I think I am now in a position to proceed. During the lengthy discussions we had earlier this morning, on I do not remember what, whilst drafting was taking place, I was reading the Bill. I am quite happy to proceed with the Bill.

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

Clause 5

HON P R CARUANA:

Mr Chairman, as I understand it from my own reading and from what the Chief Minister said during the discussion on my point of order earlier, I think the effect of this clause on this amending Bill, is in effect that the repealing of sections 14, 20, 21, 22 and 23 sweeps away all the existing mechanisms in the Ordinance on the regulation of work permits and the issue of work permits and the requirement of work permits, and replaces it with this section 20 which basically gives the Government, by regulation, to establish a new regime.

HON CHIEF MINISTER:

Or the same one. That is to say, what it does is, Mr Chairman, that it makes it possible for something that is included in one of those sections to be replaced by a regulation to deal with the same situation, but maybe in another way, under one of the regulations that come under section 20.

HON P R CARUANA:

Absolutely. We know that there is going to be successive regulations because we cannot be unregulated in this area unless the Government Members take the view that the mechanisms that already exist with the Employment and Training Board and other legislation that exists is sufficient. The only point that I would make is this, that Government Members.....

MR CHAIRMAN:

Could I just draw attention to the Leader of the Opposition that the Minister for Education, Employment and Youth Affairs has a proposed amendment. So I suggest you talk generally about it. I think for the sake of procedure if the Minister first proposes the amendment and then we can carry on.

HON J L MOSS:

Mr Chairman, I move that clause 5 be omitted and replaced by the following new clause:

"Repeal and replacement of section 20.

5. Section 20 of the principal Ordinance is repealed and replaced by the following new section -

"Requirements in respect of work permits.

20. (1) The Director may require in circumstances prescribed by regulations and in relation to workers prescribed by regulations -

(a) notification to him of any employment vacancy before that vacancy may be filled;

(b) that an employer obtain permission from the Director prior to employing any workers (such permission hereinafter called "a permit").

(2) Regulations made for the purposes of sub-section (1) may -

(a) make different provisions in respect of different circumstances and different categories of workers;

(b) prescribe conditions to be met by employers and workers in respect of the filling of a vacancy;

(c) prescribe conditions to be met prior to the Director granting a permit;

(d) prescribe conditions to be met by an employer or a worker whilst the former is employing the latter under a permit;

(e) prescribe the circumstances in which the Director may, in his discretion, refuse to grant a permit;

(f) make provision for the period of validity of a permit and the circumstances in which and the period for which a permit may be renewed;

(g) provide for the circumstances in which the Director may revoke a permit and the procedures to be followed in respect of the intention to revoke a permit and the revocation of the permit;

(h) provide that a failure to comply with the requirements of any regulation, is an offence under this section;

(i) generally make provision in respect of notification and filling of vacancies and matters related to permits:

Provided that no provision shall be made in regulations under this section which is contrary to the requirements of Regulation 1612/68 of the European Community.".

HON P R CARUANA:

Mr Chairman, on a clerical but I think important point, my hon Colleagues in the Opposition have complained that they have had no written notice of this amendment. I think that copies of the letter have not been circulated to all members of the Opposition and I think it is good practice that it should be, although a copy was given to the spokesman on employment.

MR CHAIRMAN:

I hope that the Government will take note of that.

HON P R CARUANA:

As I was saying, Mr Chairman, and I think Hansard will already record what I said prematurely before so I will just carry on. The amendment to section 20, let us call it the new section 20, as now proposed in the amendment, is headed "Requirement in respect of work permits". Mr Chairman, Government Members know that within the bounds of reasonableness, which they now know does not extent to the 1st July law, they have our support for what we euphemistically call 'practical measures' to protect the local in the job market. I also take cognizance of the fact that some of these practical measures have to be Community law proof in the sense that they cannot be discriminatory in a way which destroys their basis. I am not entirely familiar, I have to admit, with the detailed provisions of Regulation 1612/68 of the European Community but.....

HON CHIEF MINISTER:

That is the regulation that grants to Community nationals the right to travel for the purpose of taking up employment. There are other regulations that deal with people wanting to move to study or settle but this one is the one that deals with employment.

HON P R CARUANA:

I am obliged to the Chief Minister. My point is this, the proposed heading of new section 20 reads "Requirement in respect of work permits". The principal Ordinance in which we are is the Employment Ordinance. An amendment that I

would introduce if the position was not crystal clear is whether Government Members believe that section 20, as now proposed, would give them the right to subject people - how can I put it without giving too much away - who do not presently need a work permit would, perhaps, by these new regulations, be put into the net with people that do need a work permit. In other words, does this section enable the Government, by regulation, in effect to require locals to need a work permit before obtaining employment or before one has got to notify a vacancy before one can employ even a local? In other words, does this care that has to be taken to make it Community law proof, extend in effect to extending the sort of provisions that are hitherto been contained in the Employment Ordinance for non-residents? Will it involve in effect extending equivalent or substituted measures of the same kind, namely requiring a work permit, to Gibraltarians and residents of Gibraltar? If the answer to that were no, I would propose an amendment. I do not formally propose it yet, Mr Chairman, it is just so that the Chief Minister knows before he rises the sort of amendment that I would propose. In line 3 where it says "and in relation to workers prescribed by regulations" I would add "and who require a work permit under this Ordinance". So that we understand that the whole enabling regime is limited to regulating all these issues in respect of people who currently need a work permit and not in respect of people such as the Chief Minister and I who presently do not require a work permit and Gibraltarians in general.

HON CHIEF MINISTER:

I am not entirely sure what that would do. Let me say that what the enabling provisions will permit is a definition of who requires a work permit or does not require a work permit without having to introduce such a definition by amending the principal Ordinance. Certainly the definitions we have got at the moment, which have been periodically changed, are still not word perfect and therefore the only thing that we cannot do is produce a definition of who requires a work permit which would lead to a Community national requiring a work permit when a native does not require a work permit because that would be contrary to Regulation 1612/68. But certainly if we have, as we have already, let me say, a requirement that there has to be prior notification of an employment vacancy - and that would be done under this power - that is not limited to the potential candidate having to be somebody that requires a work permit. One cannot say to an employer, "If you are going to employ somebody who requires a work permit, you have to notify the vacancy but if you are going to employ a local, you do not have to notify the vacancy" because until the vacancy is notified we do not know whether it will be granted the work permit because one of the conditions for not granting the work permit is that there

is a local available. The law already allows for conditions to be attached. Let me give Opposition Members an example of the practical on the ground things. We have had a recent request to the Employment and Training Board for somebody to be employed as a mason in a construction company and there are five unemployed Gibraltarian masons who have been sent; none of whom has been found to be suitable. The ETB has then turned down to the employer and said, "Obviously your argument is that although these people have got long experience of working as masons in the constructions industry, they are not the kind of mason you want. So you then commit yourself to taking on a local and training him to be the mason like you say you want and then we will give you the permit for the one that you want to import". Already under the existing law, if somebody is trying to get away with it by saying, "No Gibraltarian mason is good enough to be a mason in my construction company" then we can say, "If you claim that the mason you want to import has got a special skill the condition attached to the permit is that you take, in addition to the person for whom you are getting the permit, a local to train to take over". Those things can be done already in the Ordinance but they are not limited to people who require permits because they can be conditions that relate to people who do not require permits. We have looked, for example, at the processing of the thing with a way to say that if there are certain types of employment where manifestly in the 600 we have got out of work there is no scope, then we ought to have the flexibility in the market to be able to say to somebody, "You will get an answer on your work permit within a matter of hours because we know that what you seek is not available in Gibraltar". We are talking about situations where one is bringing in people to do a specialist job, where we already had a provision for special permits under section 26A. So the range of things that we propose to do are things that are already covered by the existing Ordinance but covered in ways which we have found when it comes to putting them into practice, create problems for the smooth functioning of the ETB in protecting labour and also in responding to the needs of the employers which is also part of the function of the ETB. There is no point in stopping somebody employing somebody if there is nobody local here. It is in our interest, rather than have nobody employed, to have a newcomer employed who makes a contribution in tax and who makes a contribution in social insurance. It is balancing these two things that gives us a headache today and we need to be constantly on the lookout that we do not have, in our primary legislation, wording that is challengeable. Since this is something that we have to satisfy the United Kingdom as well, frankly we have thought the best way of getting them to relax about this paranoia they seem to have over infraction proceedings, is to say to them, "There cannot be infraction proceedings because by definition if it is demonstrable that the Community regulation and the Gibraltar regulation are in conflict

with each other, the Gibraltar regulation falls". The enabling power is qualified so if somebody says, "You have used the enabling power to produce something that is in conflict with Community law" then what has been produced would be ultra vires, we would not need to take it any further than that.

HON P R CARUANA:

Mr Chairman, whilst I recognise that this is an area that requires a little bit of flexibility and room for manoeuvre, I think it is true to say that what we are really standing on is on the threshold of a new package of provisions that are going to be designed over the years and I am just wondering to what extent that cannot be done with a degree of consultation in the House. I know that the Government Members, as a matter of policy, consider that they should have a much wider freedom to use subsidiary legislation than appears to be the case. There is a halfway house and that is that regulations made should be subject to a resolution in the House. That in effect enables the Government to move quickly and to draft quickly and not to have to go through three stages of a legislative process but on the other, does give the House an opportunity to express its view on what will be. Maybe, because one does not know what regulations the Government may or may not produce. Government Members know that we object habitually to these enabling powers. Our objections would be eliminated if at least in those areas which were central law, an important body of law such as pensions, employment law, tax laws, etc the regulations were brought to the House in the form of a resolution so that the House at least could express its view on them. As it presently stands, not because we necessarily disagree with what the Government may wish to do with them in due course, as a matter of principle we would not support this section as it now stands.

Question put. The following hon Members voted in favour:

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

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 5, as amended, stood part of the Bill.

Clauses 6 and 7 were agreed to and stood part of the Bill.

Clauses 8 to 11

HON J L MOSS:

Mr Chairman, there are a number of consequential renumbering to be done as a result of the previous amendment and that just involves sections 8 to 11 being renumbered 6 to 9.

HON P R CARUANA:

I do not think we need to put that to the vote.

Clauses 8 to 11, as amended, were agreed to and stood part of the Bill.

New Clause 9 (old clause 11)

HON J L MOSS:

Mr Chairman, new clause 9 is amended by omitting in both the marginal note and the text the expression "section 14" and substituting therefor the expression "sections 14, 21, 22 and 23".

Clause 11, as amended, was agreed to and stood part of the Bill.

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

THE CIVIL JURISDICTION AND JUDGEMENTS BILL 1993

Clauses 1 to 37 were agreed to and stood part of the Bill.

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

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

THE DOMESTIC VIOLENCE AND MATRIMONIAL PROCEEDINGS BILL 1993

Clauses 1 to 6

HON F VASQUEZ:

Mr Chairman, there are various amendments that the Opposition would seek to introduce to this Ordinance. The first one simply is this.....

MR CHAIRMAN:

To what section are you referring to?

HON F VASQUEZ:

Clause 3.

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

Clause 3

HON CHIEF MINISTER:

Mr Chairman, I would rather, if we are still on time, not to proceed with the Committee Stage and then we can take a look at the amendments of the hon Member rather than have to take a decision now. So we are prepared to leave the Committee Stage to the next meeting and then we will come back and take that and any other amendments.

HON F VASQUEZ:

Mr Chairman, there is no great political weight in this. We are just mainly concerned to make the scheme of the Ordinances to work properly.

HON CHIEF MINISTER:

So are we.

HON F VASQUEZ:

The point also is that, in effect, the Opposition support the policy and are anxious, as we know, to introduce this legislation. Can we have an indication as to when it is expected that the Committee Stage will be taken?

HON CHIEF MINISTER:

At the next meeting of the House.

HON P R CARUANA:

Really what he is asking is for an indication as to when that will happen?

HON CHIEF MINISTER:

Well, we could have it on Christmas Eve.

HON F VASQUEZ:

Or New Year's Eve. Given the importance of making sure that the Ordinances work properly I personally and I think the Opposition would be minded to accept that suggestion.

MR CHAIRMAN:

At the next meeting.

THE MAINTENANCE (AMENDMENT) BILL 1993

HON F VASQUEZ:

I think the same will apply to this.

HON CHIEF MINISTER:

Mr Chairman, I think we will leave that one too and then we can look at the amendments between now and the next meeting.

MR CHAIRMAN:

So you will do the same as with the other Bill. So this is deferred to the next meeting.

HON M A FEETHAM:

Mr Chairman, for the sake of orderly presentation and perhaps expedite the matters to be discussed at this point in time, what I am about to say in the case of the Gibraltar Merchant Shipping Ordinance should be taken as well as far as the Safety Bill is concerned and that is to say that when we presented both of these Bills at First and Second Readings I made an extensive presentation of the policy concerning these two Bills. I also explained in great detail the nature of the Bill and I said at the time that there would be, in our view, considerable amendments that would have to be made at the Committee Stage, which is precisely what we are about to do, for three main reasons. One was that consultation with the United Kingdom continued on the principles of the Bill. There had already been initiated extensive consultation locally with all interested parties and by the very nature of that consultation further amendments would come to light and, of course, because both Bills are substantial pieces of legislation there would be the normal typing errors and printing errors and so on that we would have to deal with. Today, therefore, Mr Chairman, there are in fact substantial amendments that we have to go through. What I can say is, or so I have been informed, that there has been considerable consultation on this matter, particularly with one or two Opposition Members and most of the groundwork has already been thrashed out. It would seem to me, if Opposition Members are happy with the situation, that having already circulated the amendments, that we should proceed on the basis of the amendments as having been read. Undoubtedly, there will be some points raised. I myself on clause 3 of the Safety Bill wish to make a contribution on the policy side. If there is anything that Opposition Members would wish to say at any particular time that I may have to respond to, they should do so at that time. That, I think, would expedite matters otherwise what I am saying is that on this particular Bill there are 62 clauses that need to be addressed; some are a few amendments within each clause so we are talking about substantial groundwork, Mr Chairman. So I propose that we proceed on that basis.

MR SPEAKER:

Would the Opposition agree if we do not read the amendments?

HON P R CARUANA:

Yes, Mr Chairman, you will be relieved to hear that the Opposition does agree. But the Opposition does not agree with the Minister when he says that the amendments have been circulated, they have not. I happen to have a copy

because, as the Minister has said, there has been a wide process of consultation and I think a copy of the letter was at my place when I arrived this morning. But I think it is important, Mr Chairman, that we should keep to the practice which has been that all Members are circulated with a copy of all amendments to all Bills and I think that practice is worth preserving.

MR SPEAKER:

But in the circumstances I suppose we shall have to read the amendments or else how are the other Members going to know about them?

HON P R CARUANA:

Well, Mr Chairman, I suppose that they will take my word for it. Mr Chairman, I think this has been one of the pieces of legislation in which, in a very unofficial sort of way, this House has almost functioned in Committee as larger Parliaments would function in Committee. Admittedly the Committee has comprised of the Leader of the Opposition and the Law Draftsman which is not a conventional composition of a sub-committee of a Parliament. But still the point that I seek to make is that, Mr Chairman, you may recall that on the debate on the Second Reading I had quite a lot to say about these two Bills and really I am gratified and grateful - I think it demonstrates how Oppositions can contribute to the improvement of legislation - that there has been this process of consultation during many, many hours between myself and the Law Draftsman which has resulted in the Government not always agreeing to amend legislation, but that is understandable enough. Many of the comments and observations that I have made in that little committee have been taken on board; are reflected in the amendments which are in this rather bulky letter and that really is the purpose that the Committee Stage of a Parliament should form and it is really a matter of regret to us that because of the composition of this House it is not possible more often and in the case of more Bills, to go into what I would call that sort of constructive process of trying to improve legislation rather than involving the whole House which shows, as we have seen already today, Mr Chairman, how difficult it actually is to propose amendments across the floor of this particular sitting, it is practically impossible. All that said, Mr Chairman, we are willing to take these amendments as read if only to avoid the need for us all to sit here and listen to the Minister while he reads 23 pages of letter. I have been through them; I have been in detail through each of these sections in the Bill; I have a copy of the Bill with the vast majority of amendments to the amendments endorsed on it and the only ones that are not endorsed on it are the ones that I asked for only yesterday and

even those are in the letter, I understand. I am satisfied that the Opposition's input on this legislation has really been as much as we could, in our wildest dreams, have expected to have. There are, nevertheless, three sections upon which I would like to make comments. I say in advance that the Opposition supports this Bill in the sense that we support the re-establishment of a shipping registry in Gibraltar. I suppose I ought to declare a professional interest to that happening but still, I think it is in any event a very useful addition to the stable of products on which Gibraltar's financial services industry can develop. For that reason alone, I think that the legislation is welcome. The product that it now produces is, in our opinion, now a better one than it did when we were considering this at the Second Reading. There are still points that we, if we were in Government, would have done differently and I am going to limit myself to highlighting three such points. But, frankly, I do not think that our views on those three points would justify us withdrawing our support for the legislation as a whole so we will supporting and voting for this Bill at Third Reading. But the sections that I would like to just express some views on, Mr Chairman, are these.

MR SPEAKER:

Can we vote and come to the clauses that you have to refer to. So can the Leader of the Opposition tell me what are the clauses that he is going to start referring to?

HON P R CARUANA:

Mr Chairman, I would be wanting to speak briefly on clauses 3, 5, 7, 38 and 39.

MR SPEAKER:

So now we can call clauses 1 and 2.

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

Clause 3

HON P R CARUANA:

Mr Chairman, I have a conceptual point to make in relation to sub-clause 3(2) which says "The Minister may appoint and remove officers to perform on behalf of the Maritime Administrator such of his functions as the Minister or the Maritime Administrator may direct." The Maritime

Administrator is now, I am happy to say, an officer of the Government. That is to say, he is now an employee of the Government. When we are on the First and Second Readings that was not then the intention. And I just ask myself, and this is the point really which I developed in my mind only last night, whether it is appropriate for a Minister to, in effect, make civil service appointments because this is really what it means. That we have a Minister who is deploying civil servants and I do not think that that is currently the structure of the civil service. Certainly one now knows that Ministers exercise a fair amount of influence on that structure, perhaps moreso than they had done in the past. That is a separate point but this is, I think, the first time that we come across in legislation in this House - I may be wrong and it may not be the first time, it is certainly the first one that I have noticed - where the political Minister gets a direct power to actually deploy civil servants and say "Well, now you go from this department and you go and perform the functions of the Maritime Administrator". It is that because it is not even employing an outside contractor. If it were the Minister's power to delegate it outside the civil service, we would really be in the same realms of privatisation but because he may only appoint officers and officers means employees of the Government, in effect, I think what this means is that the Minister deploys civil servants to discharge the functions on behalf of the Maritime Administrator who is another civil servant. I think that that is quite a change in the relationship between the elected Government and the professional civil service in our political affairs. Sub-clause (3), Mr Chairman, gives the Minister, again by regulation, the power to designate any person to discharge the functions of the Maritime Administrator. Very broadly speaking, Mr Chairman, the Maritime Administrator is the equivalent of the present Registrar of Ships. Government Members know from what I said on the debate on the Second Reading that one of the things that made me nervous about this legislation, although we were going to support it even as it then stood but it has now improved in that respect, was that we could find ourselves with a professional Ship Registry run - I think the intention then was and might well still be for all I know - by a professional American company that runs registries elsewhere and that this was all going to be highly technical and in effect based outside Gibraltar. It is a matter of some regret to me that this sub-clause (3) in effect still leaves the Government with the power by regulation to achieve that because all the Minister would have to do would be by regulation to designate ABC Inc or CDE Ltd to be the Maritime Administrator. Or at least to discharge the functions on behalf of the Maritime Administrator more accurately put which, in effect, would be letting in through that back door the same appointment of a commercial, foreign, alien shipping registrar. So those two sections we would have done differently. I do not suppose that the Government would, at this stage,

countenance amendments to those sub-sections. It is not my intention, Mr Chairman, to propose amendments but because we are generally supportive of the Bill, I do not want the record not to reflect the two or three areas in which really we are supporting the Bill notwithstanding the contents of these two or three particular areas. Mr Chairman, that is all that I wanted to say on that clause 3.

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

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

Clause 5

HON P R CARUANA:

Mr Chairman, it is really just a matter for Hansard but I think one has got to be careful not to say 'as amended' in every clause because they do not all have amendments. So it may be easier for Mr Chairman just to say now that all the clauses are as amended if amended.

On clause 5, Mr Chairman, and I cannot remember how I left this with the law draftsman during our meeting but I remember mentioning that we had just passed a Bill, or we will when we complete the Third Reading of the Notaries Bill, that contains an amendment to the Interpretation and General Clauses Ordinance dealing with this in relation to all public registers. Hon Members will recall that I complained that really it was not consequential at all and that what that amendment did was to create a regime for the rectification of all public registers. I think that it is therefore, Mr Chairman, perhaps inappropriate minutes after we create a general regime applying to all public registers, of which this is one, to now have a section that says something slightly different in relation to this register which is inconsistent with what we have legislated and we now have a conflict. What is the mechanism for amending the shipping register? Is it the Interpretation and General Clauses Ordinance mechanism or is it this mechanism? Given that in both cases the power is to the Government, I would urge and suggest to Government Members that we might delete this clause altogether, although that might give renumbering problems. But certainly this does not read as we will legislate when we pass on the Third Reading the Commissioners for Oaths Bill.

HON M A FEETHAM:

Reflecting on what the hon Member has said, as I understand it, in fact, what we have done is to reflect an amendment to the Interpretation and General Clauses Ordinance and I think that meets the hon Member's requirement, I am not a legal mind.

HON P R CARUANA:

No, nor am I going to lose any sleep over this. I think we can overcome the numbering problems. I think it was in the last meeting of the House that we actually skipped a number in a Bill to avoid having to renumber all the sections that came afterwards. But we have just passed a Bill at Committee Stage which says "Whenever there is a public register it may be rectified in cases (a) and (b)". This is a public register covered by that and therefore we now have a statutory provision that deals with all public registers and it is actually different to this one.

HON M A FEETHAM:

We have taken it out from here.

HON P R CARUANA:

So the Government is taking it out from there, somebody could have said that earlier.

HON M A FEETHAM:

We want to listen to what the hon Member has to say first and then we understand.

HON P R CARUANA:

No, the Minister did not say that. I did not realise it had been included in the letter which I have not read.

HON M A FEETHAM:

That is precisely what I have said we were reflecting in the amendment.

HON P R CARUANA:

I am sorry, that is already in the letter of amendments.

HON M A FEETHAM:

Yes.

HON P R CARUANA:

In that case we can move on, Mr Chairman.

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

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

Clause 7

HON P R CARUANA:

Mr Chairman, just for the sake of the record and so that Government Members can put into context what I would like to say about this and, again, I hope I can be brief about it. Clause 7 defines who is qualified to own a ship registered in the Gibraltar Registry. In the very last line of sub-clause 7(3), on page 228 in the Bill, the last person who is qualified is 'a foreign maritime entity'. A foreign maritime entity is defined in Schedule 2 but basically, for the purposes of the discussion that we are now engaged in, it really means 'any foreign entity with legal personality in its country of constitution and which by its constitution has the power to own and operate a ship'. So really any foreign company, any foreign trust, any foreign partnership, any foreign vehicle with legal personality in its own country is now qualified to own a ship registered in Gibraltar. My concern on that, Mr Chairman, and the question that really I ask out loud is whether really we want to throw open the qualification to the point where really we are eliminating demand for another product of Gibraltar's finance centre which is, of course, the corporate vehicle. The fact of the matter is that 100 per cent - well not quite 100 per cent, some of them might have been English companies - certainly 99 per cent of ships that have ever been registered on the Gibraltar Register were registered in the names of Gibraltar

incorporated companies; some of them were incorporated under English companies which was permissible. It just seems to me that by letting in foreign companies we are really depriving the local finance centre of one product to deliver in the context of shipping and with the company comes the corporate finance for the shipping, the bank finance, the mortgage work; all the security documents and it just seems to me risky, that is all. Really it is not a shipping registry point at all, it is a general finance centre point. It just seems to me risky that we might actually reduce demand for one of our products and one of our financial services at the moment which are companies and trusts who own those companies, and financial documentation to those companies, legal opinion because they want to make sure that the Gibraltar company has corporate ability by, in effect, letting in. Really what this will achieve is that we will go from a position in which 99 per cent of ships are presently registered in Gibraltar companies, to the position, hopefully, if this register is very successful, that probably 70 per cent or 80 per cent of new ships that come on to the register will not be in Gibraltar companies. Therefore Gibraltar's finance centre input will really be limited to the ship registry work and we will be deprived of the corporate work. Mr Chairman, let me just emphasise that, of course, the way foreign companies and foreigners got over this was that they simply made the Gibraltar company a subsidiary of their Swedish or their Norwegian or their Greek company. So they can still plug it in. All we are saying is interpose the Gibraltar company on the register.

HON M A FEETHAM:

Mr Chairman, I accept the arguments which have been put over at this point in time. I think we need a little time to reflect because as I understood it, prior to the meeting of the House, our major growth area has been in yachts but yachts will not be able to be registered under that foreign maritime entity. The other point that was put to me was that, in fact, this would attract business that were perhaps not able to come to Gibraltar before because - as I say, I am not a legal expert - if they are in trust or in some kind of institutionalised position elsewhere, they need to meet that requirement elsewhere. This way, at least, we will not be getting the 100 per cent but we will be getting 'X' per cent that before we were not able to. Having said that, what I want to do is, in fact, to clarify that there is a meeting of minds between what the hon Member is saying and myself so I just want to consult with the Law Draftsman just to make sure that that is the intention of the Bill, as I understand it, and not to lose business.

HON P R CARUANA:

Before the Minister undertakes that; I realise that we are in the realms of speculation here. It may well be that this does not happen, this is why I said that I was worried that we were running the risk of. It may well be that as a result of having this ability that one attracts 500 ships that one would not otherwise have attracted and therefore we are going to lose the 500 ships. My experience is, and I am speaking only from my experience which is not inconsiderable in ship registry work, is that no one has ever declined to register a ship in Gibraltar in the past because they needed to use a Gibraltar company. In fact, most people that use an offshore registry logically also want to use an offshore vehicle. I am not saying that there are no circumstances but I would be surprised that somebody wanted to own a ship in an offshore registry through an onshore corporate vehicle because it rather defeats many of the advantages of doing so. We are running a risk. If we leave it in we are running a risk; if we take it out we are running a risk. My personal judgement is that we are running a greater risk to the finance centre as a whole, not to the shipping registry; to the shipping registry we are running a larger risk by taking it out but to the finance centre as a whole, we are running a bigger risk of loss of corporate work, loss of local input on the ownership side by leaving it in.

HON M A FEETHAM:

Mr Chairman, as the hon Member has said, we are in an area of speculation. I think what we will do is to leave it there and review the position as we see the matter developing, say, in 12 months time. If there is representation based on fact we can always come back and amend it immediately.

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

Clauses 8 to 37

MR SPEAKER:

This is where the problem arises, some of them are amended. Will the House accept if I say clauses 8 to 37 as amended or not amended?

HON P R CARUANA:

As amended if amended.

Clauses 8 to 37, as amended if amended, were agreed to and stood part of the Bill.

Clause 38

HON P R CARUANA:

Mr Chairman, here I will be brief, it is a general point. I support the principle of a separate pleasure yacht register. Clause 38 deals with the creation of a separate register for pleasure yachts as opposed to merchant ships, it is on page 254 of the Bill. Really it is just to record the fact that given all the time that has passed, we could have had primary legislation to create the pleasure yachts registration just as we have primary legislation to create the merchant shipping register and really it is just to save the point that I always make that when things can be done by primary legislation we do not support giving the Government power to do it by regulation. Government Members will note that clause 38 reads, "The Government may, by regulation, make provision for" and then it really goes on to say everything that it needs to say so that the Government can create the pleasure yachts registry all by themselves without further reference to this House. If we can deal with that one, Mr Chairman, because I cannot presently identify why I mentioned clause 39.

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

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

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 38, as amended, stood part of the Bill.

Clause 39

HON P R CARUANA:

Mr Chairman, this really is a very technical point. I am actually towards the end of clause 39 which is page 258. This clause deals with the registration of mortgages against ships done at the ship registry and at the moment Gibraltar's Companies Ordinance requires a mortgage against a ship owned by a Gibraltar company to be registered at the Companies Registry as well. The Companies Ordinance provides, I think it is in section 77 but it does not matter, that certain charges when created by a company registered in Gibraltar will be registered at the Companies Registry and one of the things that needs registration is a mortgage created over a ship owned by a Gibraltar company. The effect of lines three, four and five at the top of page 258 which read "And notwithstanding the provisions of any other Ordinance, no other recording of a mortgage or related instrument shall be required" is, in effect, to amend the Companies Ordinance so that mortgages created by Gibraltar companies in respect of their ships registered in Gibraltar as of now will not require registration as charges under the Companies Ordinance. We regard that as a retrograde step. I think it is unnecessary to the good and effective and marketable functioning of this new product that we are trying to create here. It is a very indirect way of amending the Companies Ordinance. I do not see what constructive it achieves. I know what constructive it destroys and that is that people can no longer by simply visiting the Companies Registry see the charges that affect that company and the liabilities that affect that company in terms of section 77 of the Companies Ordinance because, of course, it will now not be necessary to register a mortgage over a ship. It is a very small point in the context of the Shipping Registration Bill. We do not support those three lines. I am not sure that I can vote to demonstrate that support given that it is basically a proviso at the end of it. I would take that out, I would like to see that taken out, it adds nothing helpful to the shipping registry and in preference we would leave the Companies Ordinance as it presently stands, namely, that mortgages over ships owned by Gibraltar companies should continue to be registered. Mr Chairman, let me just emphasise what an anomaly we are actually creating. Because this Ordinance only deals with ships registered in Gibraltar, if we have a Gibraltar company that owns a ship registered in Jersey or outside of Gibraltar, section 77 of the Companies Ordinance would still be operative and they would have to register that charge at the Companies Registry in Gibraltar. But if a Gibraltar company has a ship registered at the Gibraltar Shipping Registry it does not have to be registered at the Companies Registry. As I say, Mr Chairman, it adds nothing. We would have taken it out, I think it can safely be taken out and should be.

HON CHIEF MINISTER:

Mr Chairman, I am advised that, in fact, the requirement to register the mortgage in the shipping register is already provided in the Ordinance. What this removes is the need to register it in two registers; once in the shipping register and once in the companies register. But obviously if the owner of the ship has a company in another jurisdiction which does not have that requirement and we have that requirement here, then we are making it less attractive to use the Gibraltar company which goes against what the hon Member wanted us to do in the last amendment.

HON P R CARUANA:

I am afraid, Mr Chairman, that the matter is a bit more technical than that. The Shipping Registry is a register of assets, it is not a register of the company that owns the asset, it is really the equivalent of the property register. It is not compulsory to register mortgages at the Shipping Registry, whereas it is compulsory to register charges at the Companies Registry on the basis that the Companies Ordinance says that certain sorts of liabilities of companies ought to be visible from a public register. Furthermore, the registration at the Companies Registry requires many more particulars, of the amount secured, of the description of the document, of the description of the property; many more particulars to be given than does the registry of ships. Really what we are saying is, and this is the case everywhere in England. We are not duplicating the registration because one is the registration against the ship and the other is the registration against the company that owns the ship. One is voluntary and the other is compulsory, there is nothing to require a mortgagee to register his mortgage at the Shipping Registry. It is unlikely, I admit, that they would not but it is not impossible and I have heard of cases in which the mortgage is going to subsist for so short a period of time that the parties have agreed not to present it for registration. The result could be that a mortgage created by a Gibraltar company over a Gibraltar registered ship is registered nowhere and people dealing with that company get no notice whatsoever of it.

Clause 39, as amended, was agreed to and stood part of the Bill.

Clauses 40 to 88, as amended if amended, were agreed to and stood part of the Bill.

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

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

HON M A FEETHAM:

Mr Chairman, do I take it that we will proceed on the basis as stated by me in the previous Bill as far as the procedure is concerned?

HON P R CARUANA:

Yes, but I want to speak only on clause 52.

HON M A FEETHAM:

Mr Chairman, I wish to make a comment on policy under clause 3.

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

Clause 3

HON M A FEETHAM:

Mr Chairman, clause 3 is a complicated provision insisted upon by the Department of Transport in the UK to ensure that Gibraltar honours the undertaking given by the Government that we will employ a suitably qualified surveyor to be, in effect, our Surveyor General or at least that is what they told us it was for. Whilst we did not like the implication that our undertaking could not be relied upon, unless we were bound by statute, we agreed to the provision. We have said before, and I repeat now, it is not our intention to allow ships registered in Gibraltar to operate other than in full compliance with international safety and pollution prevention standards. Whilst we remain content with the amendment, we have become concerned about the intention of the UK towards the survey side of the registry. It would seem that they intend that the Surveyor General's Office should continue to have the same involvement in the operation of the registry as if it was a Category 2 Register. This we find unacceptable. Our intention is that we have set out in amended subclause (3) to manage and operate our own registry to the standards of the red ensign to accept our intentional obligations and our obligations to the United Kingdom. But we do so in our own way with our own people whether they be civil servants or contractors having a first loyalty to Gibraltar and answerable to the Government of Gibraltar who in turn by this Ordinance, are answerable for the conduct of the Shipping Registry to the United Kingdom.

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

Clauses 4 to 51, as amended, if amended, were agreed to and stood part of the Bill.

Clause 52

HON P R CARUANA:

Mr Chairman, the comments that I wanted to make raised exactly the same issues as the Minister for Trade and Industry has raised. Clause 52 deals with the appointment of surveyors and really what I wanted from the Government was clarification of who was going to provide the surveying function under this Bill. From the Opposition our position is quite clear. It will defeat much of the benefit of this Bill to the economy of Gibraltar and to the finance centre of Gibraltar if the surveying of Gibraltar registered ships has to be done by DTI Surveyors in London.

HON M A FEETHAM:

They will never get done.

HON P R CARUANA:

They may or may not get done but really they might as well register in the Port of London for many of the reasons that occur. I am sure Government Members will join me in saying that we are quite happy that our surveyors should be qualified to an equivalent standard as UK surveyors. Indeed, we may wish to recruit UK surveyors and that the standard which those surveyors would be mandated to enforce will be convention standards. But if the secretariat, so to speak, or if the actual surveying is carried out as a function by the Department of Trade and Industry in London it will be perceived - if I can borrow a word from the last general election campaign - by our future customers that they are really dealing with the DTI in London and that they are not dealing with an offshore register altogether or with an open register or with a register operated in an offshore finance centre. Therefore we support the stand taken by the Government although we hope it does not mean that the Ordinance will never actually be placed on the statute book.....

HON M A FEETHAM:

It may well be that.

HON P R CARUANA:

..... but certainly we would support that provided that we agree to engage people of the right qualification and calibre and commit ourselves that they should enforce standards, agreed by the United Kingdom which are convention standards, that they should be people who do that for this registry, for this jurisdiction and that it should not be something which the British Government do for us and on our behalf. Therefore, Mr Chairman, we support the Government; we call upon the British Government, who may read this Hansard in due course, that whilst they are entitled to impose on us a level of standards to apply and whilst they are entitled to ensure that we have the necessary resources to comply with those standards, that they are not entitled to say to us, in effect "We do not trust you actually to do it" - that as a general political point. And as a specific point in relation to this Bill in particular, it will - and I can tell Government Members from experience - seriously and adversely affect the marketability of this register if Swedes and Norwegians and Greeks and shipping owners who have no cultural connection with the United Kingdom at all, consider that they are in the hands of the Department of Trade and Industry in London. Therefore this is an important point if we are to ensure that this Bill can be translated in practice into something beneficial to this economy.

HON CHIEF MINISTER:

Mr Chairman, I will be very brief but let me explain very simply what is the nature of the dispute that we have with the United Kingdom over this matter and I am sure that when hon Members understand it they will realise, frankly, how the United Kingdom in this area appears to be engaged in the same kind of exercise that we have complained with in other areas. We were asked to produce a Gibraltar Survey Agreement between ourselves and the Department of Transport. When this happened in 1992, this was following a circular produced by the Department of Transport under which they informed everybody "There are two categories of registers that have been recognised. Category 1 are those able to maintain internationally agreed standards as defined in the relevant International Conventions and they consist of the Isle of Man, Bermuda and the Cayman Islands. Category 2 are registers not permitted to register passenger ships or any other size of ships over 150 gross tons". That is what left us out of the Category 1 and we were told we had to change our legislation, which we have done now, and we were told we had to have a Survey Agreement. When we asked for what was the Survey Agreement they wanted us to have, we found that the Survey Agreement they wanted us to have to be Category 1 was the Survey Agreement that everybody else had to be Category 2. So we thought there must have been a mistake and they must have sent us the

wrong agreement. They then said, "We are sending you the Category 2 agreement so that it can serve as a model on which to base the Category 1 agreement". We have attempted to use it as a model; for them 'model' seems to mean precisely and exactly a replica of what was there for Category 2. We have now got to the stage that I spoke to Lord Caithness a couple of weeks ago, he insisted that the position was that all we were going to be asked to do was to meet the same standards as the Isle of Man, Bermuda and the Caymans and we then contacted his secretary and said, "Can we please have a copy of the agreement done with these three territories so that we can satisfy ourselves that you are asking us to comply with the same terms?" We were first told yes, we could have it; then we were told we could not have it because they are confidential to the three territores although they are supposed to be identical to what we have to sign. I can tell the House that I have contacted the Prime Minister of Bermuda, the Chief Minister of the Isle of Man and the Chief Minister of the Cayman Islands and they do not seem to be aware that they have got an agreement with the Surveyor General's Organisation. So no wonder the secret. The agreement that the United Kingdom is telling us we have to have to become Category 1 appears to be the agreement that we have to have if we do not become Category 1. That is to say, we have been told if we want to become Category 1 we have to sign an agreement which makes the Surveyor General's Organisation in the Department of Transport, the surveyor of Gibraltar and if we want to stay as Category 2 we have to sign an agreement which makes the Surveyor General's Organisation the surveyor for Gibraltar. The rationale for making the Surveyor General's Organisation for Category 2 is that people who are in Category 2 cannot organise their own registry and we have been bracketed with Tortola and Plymouth and the Pitcairn Islands and Anguila, that is the group we are in. As I understand it, having taken the trouble to go into this at some length from the point of view of what they are asking us and the inconsistencies, is that we have today in our registry a number of ships which are Category 1. What we are being told is, on the one hand, "If you do not sign an agreement with us then you cannot remain, after the 1st January, with those ships on your registry". So we have got really three models not two. We have got the Category 2 which only has 150 tons, the Category 2 with personal to holder ships which require an agreement with them in order to retain the bigger ships. So they have got either to lose the bigger ships or do an agreement with them for the surveys of those ships already there before the 31st of this month but we cannot take any new ones on. And we have got the people who do not make an agreement with them, who can keep what they have and who can take, in competition with others, new ships. We are seeking to be a Category 1 where the three territories that I have mentioned: Bermuda, the Cayman Islands and the Isle of Man are, with our own surveyor in the public

service who would be able to contract Lloyds of London or Den Norse Veritas. What the agreement that they have put to us says is that we have an agreement with the Surveyor General's Organisation in the Department of Transport and the Surveyor General's Organisation can contract Lloyds but not us. That is completely unacceptable and, frankly, I have to say to this House that I feel we have been deliberately lied to by the British Government in an area where they are asking us to comply with the same standards that others are and it is not true. We propose to take this up and therefore I welcome very much the support of the House on this issue because it is an important one. It may not make us all rich but if every single avenue of business is cut off then, frankly.....

Clause 52, as amended, was agreed to and stood part of the Bill.

Clauses 53 to 124, as amended, if amended, were agreed to and stood part of the Bill.

The Schedule, as amended, 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 European Communities (Amendment) Bill 1993, with amendments; The Contracts (Applicable Law) Bill 1993; The Litter Control (Amendment) Bill 1993; The Births and Deaths Registration (Amendment) Bill 1993; The Commissioners for Oaths (Amendment) Bill 1993, with amendments; The Imports and Exports (Amendment) (No. 2) Bill 1993; The Public Health (Amendment) Bill 1993; The European Economic Interest Grouping Bill 1993; The Social Security (Insurance) (Amendment) (No. 2) Bill 1993; The Employment (Amendment) (No. 2) Bill 1993; The Civil Jurisdiction and Judgements Bill 1993; The Gibraltar Merchant Shipping (Registration) Bill 1992, with amendments, and The Gibraltar Merchant Shipping (Safety, etc) Bill 1992, with amendments, had been considered in Committee and agreed to and moved that they be read a third time and passed.

Mr Speaker put the question and on a vote being taken on the Contracts (Applicable Law) Bill, 1993; the Litter Control (Amendment) Bill, 1993; the Births and Deaths Registration (Amendment) Bill, 1993; the European Economic Interest Grouping Bill 1993; the Civil Jurisdiction and Judgements Bill 1993; the Gibraltar Merchant Shipping (Registration) Bill 1993; with amendments, and the Gibraltar Merchant Shipping (Safety etc) Bill, 1993, with amendments, the question was resolved in the affirmative.

On a vote being taken on the European Communities (Amendment Bill, 1993, with amendments; the Commissioners for Oaths (Amendment) Bill, 1993, with amendments; the Imports and Exports (Amendment) (No. 2) Bill, 1993, the Social Security (Insurance) (Amendment) (No. 2) Bill, 1993, and the Employment (Amendment) (No. 2) Bill, 1993, with amendments, the following hon Members voted in favour:

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

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

On a vote being taken on the Public Health (Amendment) Bill 1993, the following hon Members voted in favour:

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

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.

The House recessed at 1.15 p.m.

The House resumed at 3.45 p.m.

PRIVATE MEMBERS' MOTIONS

HON P R CARUANA:

Mr Speaker, I beg to move that -

"This House recognises:

(1) the value of the service that GBC radio and television have provided Gibraltar for many years;

(2) the importance to the community of public service broadcasting and the need for this to continue in the future;

(3) that it is essential that the editorial independence of radio and television broadcasting be maintained and guaranteed,

and calls upon the Government to bring to this House for consideration and public debate in advance of implementation any proposal that would alter the status quo at GBC".

Mr Speaker, before commencing on my motion, I think the subject matter of the motion gives me a reasonable opportunity to once again record the dissatisfaction with the Opposition Members with the system for the production of Hansard of this House's proceedings. My comments should not be interpreted as a criticism of the staff of the House but rather as a criticism of the Government for making inadequate resources available to this House to enable it to function properly and one of the proper functions of any parliament is the ability that it enjoys to produce Hansard. This House last debated GBC in February of this year. That is a full nine months ago. On the next occasion that the House sees fit to discuss GBC, namely, now, Hansard was not available. In fact, it has been made available to me this morning by coincidence but certainly too late for me to make any serious

use of it and I think that given that Hansard is one of the primary tools of any parliamentarian in the conduct of the business of parliament, I for one, and I know that my hon Colleagues in the Opposition share the view, that nine months is simply too long to wait for the Hansard of the proceedings of this House. I would urge the Government to make available additional resources which are really just additional typing resources, to ensure that Hansard is produced more quickly.

This, Mr Speaker, is the third time that this House debates GBC since June 1991. I think the fact that by the time we have finished this motion will have had three motions since June 1991, reflects two things. Firstly, the importance that successive Houses have given GBC as an issue of local affairs and, secondly, the uncertainty that has existed in relation to GBC and its affairs, certainly since 1991. The importance that GBC has as an institution in this community, I think has been recognised successively by all Governments and all Oppositions including the present. Its importance in the political domain is quite obviously its great central role in the giving and commenting of news, in the spreading of news, in the conduct of interviews on matters political, on discussion programmes and on the creation of opinion and prejudices within the community. Not to say, for one moment, that the importance of GBC in terms of its public service broadcasting is limited to the political field, by no means at all. There are other social, cultural, artistic and sporting areas in which GBC, as really half of the serious media in Gibraltar, plays a crucial role in supplying a vital need of the community. In a slightly wider context it plays a vital role in promoting Gibraltar's identity and in the formation of Gibraltar's own cultural personality both in the context of our dispute with Spain, regionally, and the prestige that having that voice gives this community internationally. So, Mr Speaker, not wishing to cover old ground in any detail in this motion and certainly not wishing to cover the ground that we covered in this House in our debate in February which was about the adequacy of the financial resources that the Government was and is making available, I want in this motion really just to cover ground that arises or that flows from the very widely rumoured - I think it is fair now to call them much more than rumour - of an imminent privatisation or contractorisation or franchising of all or part of GBC. Of course, Mr Speaker, the importance that Government Members have historically given to GBC and to the role that it plays within the community is well documented. The Chief Minister when he was then the Leader of the Opposition in 1984, he will recall that in the Ceremonial Opening of the House in that year he made it a point of expressing the Government's commitment to GBC and to the vital role that GBC provided and continues to provide. There are other things that the Chief Minister has recognised and of which I will remind him now. GBC in 1985 was in fact a very cheap facility that this community enjoyed. Government Members, Mr Speaker, should not evaluate whether something is valuable and should not, when deciding the value of something, pay attention only to

what it costs in money. I realise that this is not something that is new to the Government Members because it was inherent in what the Chief Minister was saying in 1984. It reminds me of something that I once heard on the radio whilst I was riding in a cab in London. It has always stayed in me and it now gives me an opportunity to repeat it and that is that those such as economists and accountants who think only in terms of money and money terms, end up knowing the cost of everything but the value of nothing. That, Mr Speaker, is something which has to be borne in mind very much when we are discussing GBC.

Mr Speaker, the importance that GBC has in a lot of fields but also and particularly, which is the one that concerns me most at this moment in time, in the political field is not just a question of the resources that we give it to function. It is also a question of the framework in which it functions, how it functions and what the structure is within which it functions and whereas Opposition Members are on record as saying that we do not object ideologically to the introduction of private capital into GBC, we are equally firmly on record as saying that GBC, given its great position of influence and its great role within the community, not only in news and current affairs but also in political discussions and political opinion forming, must not be allowed to operate in a framework which exposes it to political manipulation in the future or exposes it to the way in which any private operator of GBC may be tempted to conduct its duties as a broadcaster with an eye to their own commercial interests. Of course, one of the commercial interests that a private franchisee of a radio station might have operating in his mind, of course is that he relies on the goodwill of the Government to renew that franchise whenever that franchise might come up for renewal.

Mr Speaker, before I move on I would just like to record the fact that I do not, for one moment, consider or take the view and I recognise, in fact, the opposite, that both sides of this particular House of Assembly have expressed a commitment to GBC, have expressed a commitment to its importance and have signalled and signified in almost identical terms the importance of the functions that GBC provide. Therefore, Mr Speaker, what concerns me particularly in the context of the apparently imminent initiative to franchise or privatise or contractorise, initially I suspect, radio is the opportunity that this House must be given to comment on the nature of any change of status quo at GBC in a way that gives the Members of this House the opportunity as legislators to ensure that all the important factors in the functioning of GBC are safeguarded but especially the function of GBC within the conduct of multi-party political democracy in this community. Mr Speaker, in availing myself of this opportunity to ensure that the House does discuss these issues and really that within the House - although we have already done it outside the House in the form of press communiques - to ensure that this House of Assembly is consulted in matters of public importance.

I take heart in the events in this House in July 1981 upon a Private Member's Motion then introduced before this House by the Chief Minister when he was the Leader of the Opposition. He introduced a motion that read, "This House notes (1) that GBC is considering the introduction of Spanish language feature films supported by Spanish speaking commercialisation; (2) considers that such a step could imply fundamental changes in the role and ethos of GBC; (3) considers that the House of Assembly, as the body representing the interests of taxpayers and licence holders, has a right to express a view on the wisdom of adopting such a policy; (4) therefore calls on the Board of GBC not to introduce such policy until the House has fully debated the matter". Mr Speaker, before making some references with Mr Speaker's indulgence into what transpired at that meeting, I think it is obvious just from the terms of that motion that the sentiments that the current Chief Minister was then from the Opposition was propounding was that GBC being of its nature a matter of public importance ought not to suffer any fundamental changes in its roles and ethos. We must remember that then we were really only talking about whether they should show Spanish feature films and carry advertisements in Spanish, still less..... [HON CHIEF MINISTER: Subsidised by taxpayers.] Well, he says 'subsidised by taxpayers'. I will read, for his benefit, again part (3) of his motion which read, "considers that the House of Assembly, as the body representing the interests of taxpayers and licence holders". Well, we, the representatives of licence holders, have an interest in the functioning of GBC regardless of whether public monies are involved in its subvention because otherwise what did the Chief Minister mean, Mr Speaker, when he added "licence holders to taxpayers"? It would have been just enough to stop at 'taxpayers'. So obviously he then considered that the interests of taxpayers and licence holders separately were the legitimate domain of this House. Mr Speaker, if I can just read from the first paragraph of his speech on that motion, "Mr Speaker, the purpose of the motion is a dual one. That is, it answers on the one hand the policy of the GSLP which has been reflected in previous motions, one in the last House of Assembly which was defeated by the Government, asking the Government to commit itself to a debate in the House before any fundamental changes took place affecting the airport. It is similar to the motion we brought to the House which was supported by the Government asking the Government to commit itself to a debate in the House before the Brussels Agreement was signed, and therefore what the Opposition is saying on this issue, as on other issues which we consider to be of public importance, is that even though at the end of the day the Government may not be able to persuade us to support it on a particular road it wishes to follow or we may not be able to persuade the Government to change its mind and not to proceed, what we believe and we are entitled, if the House of Assembly is going to have any meaning, is at least to have that opportunity given to us, to have an explanation given to the House of Assembly and through the House of Assembly to Gibraltar, for what is being embarked on and to give us an opportunity, as representing

a substantial body of political opinion in Gibraltar, to express any reservation or doubt or concern we may have about it and the reflection of that policy is what brings the motion to the House". I think, Mr Speaker, it is implicit in those words that the Chief Minister was (a) considering that matters affecting GBC of that kind, were of public importance; (b) that he, as a representative of the people within this House, had a legitimate right to be consulted within the House and to have the opportunity to express a view on behalf of the taxpayers and licence holders and presumably the community as a whole, in relation to what Government and/or the Board of GBC were proposing then to do. He then went on to say, "The specifics of the policy is that GBC has been a source of controversy for many years in the House of Assembly because of the cost to the taxpayer and the need of assistance from public funds. It has been highly criticised in the past by Members of the House who are no longer in the House and the GSLP made clear after the election its commitment to GBC and its commitment to retaining GBC as fulfilling a role which we consider to be important to the maintenance and strengthening of the identity of the Gibraltarians and that Gibraltar, as a community, and of having to foot the bill. We think that that is money well spent. Nobody likes paying taxes and no one likes paying out money and everyone, given a choice, wants to have his cake and eat it, would like to have whatever service is available without having to foot the bill. We consider that the service Gibraltar gets from GBC is a service on the cheap. That is, television is a very expensive business and the budget of GBC is minuscule in the context of what television costs and therefore within the constraints of the resources that they have, we think that they do a very good job. If we are now going to find that the primary concern is to reduce the cost of GBC to the Government or to turn it round into a moneymaking asset, then it is just another business and therefore the primary concern and the parameters to which the Board of GBC would have to work to, would be not whether what they are doing is going to be good for Gibraltar as a community but whether it is going to bring more money in or less money". Mr Speaker, he then goes on in similar vein, which I will not read.....[Interruption] Well, I can well understand the hon Member's discomfiture with my reading this because really one presumes that the Chief Minister has not changed his apparent adherence to the principle that this House is entitled to be informed and to debate and to express its view in advance about matters that so profoundly affected GBC and I hope that we are not going to suffer the indignity of being told in a few moments by Government Members that he was entitled or justified in taking that view of a proposal to transmit films in Spanish but that the privatisation or the change of the structure of the Corporation itself and of the whole broadcasting regime in Gibraltar is not as important as that and therefore it does not come in under the category to which the Chief Minister was then referring. Mr Speaker, if we are going to preserve the editorial independence, the journalistic independence of GBC, if we are to protect it from the pressures

of undue political influence which might, at some stage in the future, by this or any future Government or perhaps not by this Government but by some future Government it does not really matter which, it is the integrity of the structure that we are looking at. If we are to protect it from undue political interference of that kind, it is absolutely essential that there be no secretiveness in any proposal. I do not say it is not a legitimate desire on the part of any Government to wish to change the basis upon which broadcasting is organised in this community. I do not say and I do not think anyone can reasonably say, that the Gibraltar Broadcasting Corporation Ordinance is the only legitimate model upon which broadcasting can be conducted in Gibraltar and that it cannot be changed. What I say is that it cannot, should not and must not be changed by a Government of the day in private, secretive consultations and negotiations with one or perhaps a number of interested commercial deals and then to enter into some sort of contract or franchise agreement or whatever. If we are to suffer the same fate as we have done with the electricity, telephones and everything else, we should be told that the agreement cannot be published because it is commercial in confidence. I do not think this Government has the legal right to do that and I would remind the Minister whose responsibility now includes broadcasting under the last list of ministerial portfolios published by the Governor, the fact that he has responsibility in a political sense for broadcasting does not entitle him to ignore the provisions of the Gibraltar Broadcasting Corporation Ordinance under which he has no business or responsibility whatsoever for the day-to-day affairs and for the business affairs of GBC. If he wishes to fray that at the edges and he wishes to get involved in being a catalyst in trying to find an alternative structure within which GBC can operate, he certainly cannot go so far as to sew up a deal without any form of public consultation, without giving this House the opportunity to see whether this goes beyond the old managing agent mechanisms provided for within the Gibraltar Broadcasting Corporation Ordinance and even if it did fall within the realms of the managing agent mechanism, as it used to function in the Thomson days, even that I think could be a sufficient change in the status quo of GBC as it is presently operating, to warrant full information to this House and to give this House the opportunity to comment in advance on the adequacy of the arrangements in the same way as the Chief Minister felt in July 1985.

I suppose it might be a reflection of my lack of familiarity with the broadcasting world, but I have not heard of any place in the civilised, democratic world where private interests are allowed to take a prominent role in public service, or any broadcasting for that matter, in an unregulated environment. Of course, it may well be that the Government fully intend to create a regulatory environment and it may well be that any arrangement that the Government make with Dewmont or any other proposed operator may well contain provisions for some form of regulatory control. But the fact

is that as we speak we do not have that information in front of us and just as we do not have the details of any proposed arrangement, we do not have the details of the framework in which that proposed arrangement is going to take place and we have the right. I claim for this House the right to debate and comment in advance and, as the Chief Minister did in 1985 when he was occupying the seat before me, the right to be given the opportunity as the legitimate representative of taxpayers and licence holders. I claim the legitimate right to express a view on both those aspects of any development in relation to GBC. Developing, just for a few moments, Mr Speaker, the theme of possible framework; what will replace the existing framework of the GBC Ordinance? And if the idea is that the GBC Ordinance and, indeed, the GBC Board should remain in place, how is the Board of GBC going to exercise effective control over what any franchisee or any privatised operator might do? What controls will exist - these are all the sort of things that we would look at if information were made public in advance of any initiative - to ensure that a privatised franchisee does not employ people who would be regarded as unsuitable to play a leading part in broadcasting in Gibraltar? Given that we are actually discussing the only broadcaster, not one of seven or eight television channels or not one of 15 radio stations that can act in the market place as a counterbalancing force against each other. What controls are going to be possible to exercise to ensure that the day after they privatise radio in favour of some private franchisee he does not fill the House up - not this House, his Radio House - with people who are entirely unsuitable to hold the positions in the context of the requirement for political impartiality, for cultural impartiality, for moral impartiality and all the various duties that a public service broadcaster has imposed on it. These are precisely the reasons why we think these things cannot be done secretively and without advance consultation. Not giving an exhaustive list, here are one or two examples as they occur to me. What controls will exist to ensure that a privatised franchisee does not come under the undue influence of a foreign state or of a foreign individual who may adhere or give undue weight to interests which may not coincide with the interests of this community? I think that the acid test really is this. If Government Members want, as we all want, people in the outside world to regard us as a country fit, as I believe we are, to govern ourselves, we have really got to make sure that we conduct our public affairs in a way that is consistent with that. They need to ask themselves - and this really is the acid test - what political process would need to be undertaken if, for example, the British Government got it in its head one day to privatise the BBC and to privatise the BBC or to hand it out as a franchise of BBC radio at the time that the BBC was the only broadcaster in UK. I suppose now they could argue that the ITV company would jolly well make sure that there is political balance and hon Members will know that this was the great complaint in Spain. The reason why the Opposition in Spain was crying out for private channels was so that it could act as a counterbalance to the

only one that existed which they regarded as being hostile to their political interests. What would happen, does the Minister with responsibility for broadcasting think, if the people of the United Kingdom rose from their beds one morning and read, in whatever newspaper they read, that the British Government had handed out the franchise of BBC radio to a company controlled by a Portuguese national and that the House of Commons had not been informed. The House of Commons had not debated it. It would be regarded as something of a sick joke. People would look at their calendars to see if it was the 1st April and whether this might not be some sort of April fool stunt by the newspapers concerned. It is inconceivable that a publicly-owned public service broadcaster currently operating within the straitjacket of a statutory corporation should suffer any degree of privatisation of its functions even if GBC's days and the chain of command somewhere over the top that there should be any degree of franchising of the functions of GBC or any part of GBC without it all coming out in the open first; the proposed terms of the agreement being put on the table for the House, for the Opposition, for the media, for other interested parties to express their views before the Government commits the taxpayer and the licence holder to that as a commercial and binding agreement. I would go so far as to say that to the extent that the Government Members do not adhere to that principle, they are engaging in intolerable, political interference in an area in which any self-respecting community will wish to be seen as being cleaner than clean. It is simply not acceptable in a democracy, for the Government of the day secretively to do as it pleases with the broadcasting mechanisms of that community as if it were a Government department. And whilst on the subject of Government departments, I really do fear, and it is my great fear, that the Minister responsible for broadcasting actually has come to view GBC as his department and that he is free to tinker and to give instructions in relation to GBC as if he was giving instructions in relation to some other department for which he has political responsibility. And I cite from his own words in the debate we had in this House in February, in which he said, "Mr Speaker, the Gibraltar Broadcasting Corporation, because it exists from public funds, is under the same rigid financial constraints as every other department in the Government". The use of the words "other department in the Government " clearly suggests that the Minister in February this year thought that GBC was a Government department otherwise the use of the phrase "other department in the Government" is neither here nor there. In terms of expenditure since 1988 the Government does not differentiate between the kind of financial responsibility that it demands from its heads of department in every other Government department and the kind of savings that it is striving to get from Government departments. It is not going to differentiate between the Gibraltar Broadcasting Corporation which exists out of the public purse. And I say to the Minister, with the greatest

of respect, Mr Speaker, that the political responsibility of this Government, that the right of this Government or any Government to interfere with the affairs of GBC is limited to voting or not voting funds for it in this House. It is entirely the Government's prerogative to vote more or less money for GBC in the budget. Then to either take the political kudos or suffer the political flack from whatever might result in relation to GBC as a result of its political decision to vote it more or less funds. It is not a Government department. It is a statutory corporation with its own Board of Directors for which the Minister has no responsibility and which is none of his business. What has happened, in fact, pursuant to the philosophy reflected in these words, is that he has in fact usurped the functions of the Board of Directors because I as a company were trying to farm out some of my activities, that is something that the Board of Directors of a company would do. If the Gibraltar Broadcasting Corporation wants to franchise out or farm out or privatise some of it activities, that is what it has a Board of Directors for and this is something that the Minister is doing directly with representatives of the interested commercial parties. Well, he might giggle. Mr Speaker, I will give him an example. Information has now reached me from more than one source, neither of which I will identify here, and all of them as good as the horse's mouth, if the Minister will remember the use that we made of that phrase in the last debate.....[Interruption] Well, him but others as well. The Chief Minister is saying, "Well after we do this deal with Dewmont, Mr A and Mr B who are currently both in radio and read news on television, they are not allowed to read news on television anymore". Who is any Minister to ring up GBC and say who can read news and who cannot read news? It is blatant, scandalous, political interference. This is the equivalent of some Minister in the British Government picking up the phone and telling the Director General of the BBC that Mr Michael Lewis must not read the news any more. It is really none of his business, with the greatest of respect, Mr Speaker. And it is symptomatic of this unacceptable extent to which the Government has dealt with the problems of GBC. I put it no more strongly than out of a desire to save money. It is not necessary for me to make any allegations for the purposes of the point that I am making, in the same way as it sought to deal with the privatisation of the water and electricity and things which fall into a different category by the very nature of the difference in the activities and whilst it might be legitimate to deal in crude commercial terms with electricity and telephones and water supply, broadcasting does not fall into that category.

Mr Speaker, I would have thought and the Government Members may wish to take me at my word on this, that this motion is drafted in terms calculated to enjoy the support of the Government because I do not see which of these propositions, if any, the Government would want to quarrel with. Insofar as (1), (2) and (3) are concerned, that is nothing more than has been said in this House by Members on both sides on several occasions. And in respect of "and calls upon the Government

to bring to this House for consideration and public debate in advance of implementation any proposals that would alter the status at GBC" is nothing more than echoing the sentiments, indeed almost the exact words of a motion that the Chief Minister himself brought. So either for the Government to vote against this motion, they do not think that the House should recognise the value of the service at GBC that radio and television have provided Gibraltar for many years notwithstanding what the Chief Minister said, as I have just read in this motion, or they do not think that the importance to the community of public service broadcasting and the need for this to be continued in the future should be recognised, or they do not think that it is essential that the editorial independence of radio and television broadcasting be maintained and guaranteed, or they do not think now - contrary to what they thought in 1985 - that this House ought to have brought to it for consideration and public debate in advance of implementation, any proposal that would alter the status quo at GBC. Mr Speaker, this motion is drafted in terms which are calculated to secure the support of the Government Members in the terms of the motion even though they may not wish to support everything that I have said in the presentation of it. Therefore, Mr Speaker, in closing, I call upon the Government Members to undertake to this House that the status at GBC will not be changed; that there will be no contractorisation, no privatisation, no franchising, no agreements of a commercial nature, no change in the way broadcasting is in fact done in Gibraltar before the detailed proposals for it have been tabled in this House; this House has had an adequate opportunity to discuss it as was the cry that emanated from these benches in 1985 when they occupied it. I commend the motion to the House.

Question proposed in the terms of the Hon P R Caruana's motion.

HON CHIEF MINISTER:

Mr Speaker, the motion would normally have been dealt with by my hon Colleague the Minister for Government Services who is concerned with this matter and will, in fact, be dealing with the substance of the motion. I will limit myself to the lengthy quotations that the Leader of the Opposition has made and I am glad to see that I have got such a conscientious disciple in him. [HON P R CARUANA: The fact that I know my enemy does not mean that I am his disciple.] If the Leader of the Opposition is trying to know his enemy then he should not try to emulate him. I have never wanted to be like my enemies, I have always wanted to be like my friends, Mr Speaker. So I do not see how that corollary can be deduced from the fact that he is saying that everything he is doing is what I have done in the past which presumably means he approved of what I was doing then and he is imitating me today. Therefore I have to say to him the position of the GSLP in 1985 and the position of the GSLP in 1988 when we came into

office and in 1993 has been to give support to GBC and to give it independence. I do not know to what degree it was interfered with before we were in office but certainly since we have been in office it is laughable to suggest that there is any bias on television in favour of the Government politically or in any other sense. There is no attempt to tell them who is fit to interview people or not interview people and not even how often they should interview them and as far as the Leader of the Opposition is concerned if he wants to be interviewed every night then good luck to him, he can be interviewed every night. I can tell the hon Member that certainly in 1985 the predecessor that occupied this position was not as relaxed about my appearances on television as I am about his. Certainly, GBC's independence in terms of its political role has been left for it to sort out for itself without us wanting to get involved. However, we have got a problem of financing GBC which was not there in 1985 because of the collapse of income that has taken place from any other source. We have tried to keep it in line with the budgets we have provided other people. That is the point that the hon Member was making in his last debate on a motion here, that if we say to the people who run the Fire Service and we say to the people who run the Police, "You have got to try and stick to this budget" that is what we say to GBC. We do not say to them, "The budget should be spent in interviewing everybody other than Mr Peter Caruana". We just say, "You can interview him as long as you want provided it does not cost us money". It is not his appearance that we mind, it is the cost of interviewing him that we mind, if we mind anything at all. This year the House was asked by the Government to provide £800,000. The £800,000 were an increase over the figure we had intended to provide of £570,000 and we had said previously that we would keep the budget fixed and the hon Member criticised us for saying we were going to keep it fixed and said we should index link it. We did not index link it, we found that they were so much in the red already that we had to provide £800,000 and it is quite obvious they are not going to last the 12 months with the £800,000 and would be lucky if the people of Gibraltar are only required to provide £1 million this year. The House is entitled, when it is giving somebody £1 million, to question what they put or they do not put on our screens if we are providing £1 million and that is the point that I was making in that motion. That if we in 1985, having obtained 45 per cent of the votes represented 45 per cent of the taxpayers and 45 per cent of the licence holders, we were entitled to say to the Board of GBC via a resolution in the House, not to the Government to the Board of GBC, "We might not want to see Spanish programmes on GBC and pay £0.5 million because after all if what we are going to see on GBC is going to be what we can see already on Spanish television and we are getting that for nothing why should we spend £0.5 million on seeing the same thing on this side of the border". So the position today is that really let me make it absolutely clear, people in GBC have got it absolutely clear, the time is rapidly approaching where if we are not able to bring the cost to

manageable level there will not be a GBC. There will not be radio and there will not be television and we will take the full political responsibility for that decision because we believe that the people who are paying £30 a year now are not conscious of the fact that the real cost is £150 a year per licence holder and at the end of the day it may be that the most democratic way to do it is to send a letter to each person saying, "It costs £150. If you want to have GBC you have to pay £120 more instead of £30" and then we will not have a debate here because the people will be able to vote with their pockets or their feet or whatever way one wants to put it. After all they are putting up the cash, they should say whether they think what they are getting is worth £150 or not because it is their money. We here as individuals are contributing to GBC but we are taking a decision on behalf of other people; a decision that we as a Government have been willing to support because we want GBC to continue and everything we have asked them to do in terms of restructuring has been to help them survive, not to help them close; to close all we had to say was, "We are closing you, end of story". We do not need to franchise anything out to close GBC. We just close GBC and sell the frequency, end of story. That is not a problem if that is what we wanted to do. So the reality of it is that what the Government is telling GBC is, "We cannot carry on like this. We cannot in terms of the priorities on public expenditure have a situation where irrespective of what we provide at the beginning of the year, at the end of the year we have to finish up putting more money on top and given the fact that this is not going to be allowed to continue". We know that they have made enormous efforts. We are not disputing the fact that they have made the effort. People in GBC have slimmed down, they have been spread round, they have shown a great deal of flexibility but at the end of the day it does not alter the fact that we have not got £1 million. So the position of the Government, Mr Speaker, is that we are as committed to the survival of GBC today as we were in Opposition in 1985 and precisely because we are committed and precisely because we care that it should survive, we have been constantly devoting attention to how they could be helped to survive and they could be helped to continue to operate within the cost that we, as a Government, considered in our judgement we could come and include in the budget in 1994 and defend in this House. If we do not come up with an answer then what we will come and say is, "This is the end of the line" and it may be then that people, if they really want it, will have to be willing to pay the £150 per head.

HON J C PEREZ:

Mr Speaker, although the Leader of the Opposition has not had a lot of time to read Hansard as he says, I advised him that he should do as I did and take it home over lunch and have a look at it which I have done. As usual, he seems to read in Hansard only when it says "P R Caruana" and possibly reads what he says with enthusiasm and thinks that that is

the only thing is being said. He forgets that the last time the House debated this in February the motion was amended. The motion was passed by a majority and that that majority instructed the Government to consider that Government and GBC should continue their efforts to arrive at an economically viable operation which could continue to provide local radio and television. That is what this House resolved in February 1993 and that is what I have been attempting to do since then and before that, Mr Speaker. The hon Member tells us that he has worded the motion in a way that he would hope that the Government would support the motion but then accuses me of interfering politically in the running of GBC as if it were a Government department, notwithstanding the explanation that the Chief Minister has given. He accuses me of ringing up GBC and giving instructions - I do not know where he gets his information but I can tell him one thing. If GBC were a Government department the problems that GBC has been having today would not be so acute as they are because there would be a better control of the finances. I have told the hon Member over and over again, and I told him in February and I told him in the debate before February, and I have told him every time he has raised it at Question Time that the only reason why it is taking a very long time to resolve the financial issues of GBC is because Government continues to take an arms length approach to the Corporation precisely to protect and defend the political impartiality of the Corporation. He chooses to ignore that and he chooses to, on hearsay without facts, come to this House, repeat himself all over again and accuse me of trying to interfere with the policies of GBC. Mr Speaker, the opposite is the case. The Leader of the Opposition knows quite well that GBC is guided in the legal frameworks of the GBC Ordinance where the powers on the rights and obligations of the Corporation are vested. He knows quite well that to interfere beyond those legal powers in the GBC Ordinance is political interference in the affairs of GBC. He would like the Opposition to have a right to decide how one employs people in GBC, who one employs at GBC. No, Mr Speaker, that is not the role of any of us as legislators; it is not the role of the Government and it is not the role of the Opposition. In fact, what he has asked for today is a blatant interference politically in GBC which he is asking us to join in doing. I am sorry, Mr Speaker, the role of the legislators in the House of Assembly is to ensure that the public broadcasting of Gibraltar, if it is going to continue, continues within the legalistic framework of the GBC Ordinance and if that Ordinance is changed in any way, as legislators, we will also have in this House a right to have a say in how that legalistic framework is to be changed if it is to be changed. But what he cannot say is that he wants to know how the GBC Board is going to monitor or control or exercise its powers over a possible private contractor which he has said, for the past nine or 12 months. He is claiming that the contractor and the contractorisation and that the deal over GBC is imminent because he is so suspicious by nature that everything that is done for him is secretive because it is political prudent to suggest that everything is secretive

and that he would like it all out in the open. He would not like it all in the open, Mr Speaker, to be constructive about it, he would like it all in the open so that he can manipulate it to the political advantage of his party.

Mr Speaker, he has not asked what the controls that the Board exercises today over the Corporation are or how the Board exercises its controls over the Corporation today. [Interruption] The hon Member has not asked me, he has not asked it in this House. He has not asked any of that. He wants that if there is going to be a franchise which is going to partly solve the financial crisis which the Corporation is in today, that if we go partly to solving the financial crisis by part franchising some of the role of the public service today, he then wants to know everything that he has not necessarily wanted to know about how it is exercised in the context of the Corporation and he suggests that that is the status quo. Well it is not the status quo. The status quo is what there is today and I could have easily supported this motion if what the hon Member was really talking about was maintaining the status quo, there is no doubt that I could support this motion, Mr Speaker, but the hon Member is not talking about that. The hon Member is wanting to exercise more power over what is franchised than over what is within the Corporation notwithstanding the legalistic framework to run GBC is set out in the Ordinance in the same way for the Corporation as it would be for any franchise holder which the Ordinance empowers the Corporation to franchise. I have explained to the hon Member already that the Government is not acting in the matters of GBC without power. The Government and the Minister are acting as a go-between between the Board of GBC and the franchise holder and the Minister is not the one who will be taking the ultimate decision in deciding whether radio goes out to franchise or not. It will the the GBC Board that will take it without those members who might have a direct interest in it ie the employees' representative and the management representative. But the independent members of the Board of GBC, the ones who today exercise their rights and obligations of the Board over the Corporation, will decide whether any part of the function of GBC is to go into a franchise or not and will continue to exercise those rights over the franchise holder in the same way as they are exercising the right over GBC today. And to do anything different than that would be a blatant interference with the impartiality of GBC, politically or otherwise.

Mr Speaker, the hon Member seems to have the notion that because there is a commercial element behind the move to franchise radio which could make it financially viable, that the matters raised by my hon Colleague, the Chief Minister, when he was Leader of the Opposition on the advisability of portraying foreign films or foreign advertising has not been taken into account. The hon Member is wrong. The discussions to date centre in the franchise holder continuing to provide the same public service and the same hours of public service as has been customary of GBC in English and in Spanish and

the same level of public service in respect of news, in respect of culture, in respect of music and in respect of community programmes. What the operator does with the non-customary hours of service to be able to earn a living and to maintain the public service, is the area where the franchise holder may commercialise his activity so as to support financially the public service. In that way he is using the whole of the assets of, say, radio, exploiting it to its fullest so that in that way he is able to earn sufficient income to be able to maintain the public service. But if what we are going to do is have the whole thing commercial so that we lose the public service, then it defeats the purpose of the exercise to raise funds to have a public service. The whole object of the exercise, as the motion in February clearly defined - and the hon Member was in agreement with that although not with the whole of the motion - is that we ought to strive to make the public service that we have today financially viable. So it is not that as a result of maintaining the public service we are going to do away with the public service and make it all commercial, no; it is that we are going to use the assets to their fullest so that we can bring in money from one quarter to maintain the same hours of the public service, the same time in Spanish and in English as the radio has today, the same cultural programmes, the same community programmes because it would defeat the purpose of the exercise if we gave all that up and we went totally commercial. Then we would not have a public service. We would have a totally commercial radio in which case we would rather say, "We shut down GBC completely and whoever wants to open a radio station may do so". But we are not saying that. We are saying, "Whoever wants to operate the radio has to continue to provide a public service as laid down in the GBC Ordinance". Mr Speaker, I would have loved to have been able to support the motion of the hon Member, given his very wide description of what the status quo is for him, which for me means blatant interference. I know that the hon Member does not want the future of GBC to be in limbo for such a long time, he has stated it in the House before and I have told him that, in fact, it is taking a long time precisely because the Government and the Minister cannot interfere in a way which I would like to interfere and if I had done that perhaps the financial position of GBC would not be the same today. But because of the political aspect and because GBC has not only got to be impartial but seen to be impartial, I have refrained from doing that because, Mr Speaker, I respect and uphold everything that the hon Member says he respects and upholds but which accuses me of not doing. Mr Speaker, I agree that the hon Member would not like to see the future of GBC in limbo for so long but for as long as a firm and final decision is not taken.....[HON P R CARUANA: By whom?] By the Board of GBC as I have already informed the hon Member. The political advantage and the political exploitation of a very sensitive issue like this one is being done by the Opposition who continue to raise the matter of GBC over and over again repeating themselves; trying, in my view, to portray a picture of saying, "We are the only ones

who are supporting the public service in Gibraltar, we are supporting an impartial broadcasting service" and suggesting that we are not doing the proper thing by it. Well, Mr Speaker, the only thing that divides us really is that in my view they are reneging on their responsibilities in looking at the money that is voted in this House by not wanting to scrutinise more rigorously the manner in which the money given to GBC is spent. I have said this before. I continue to say it because when the hon Member opened his remarks he said that we ought not to be concerned only with the finance but he does not seem to be concerned in any way with the finance which is the other extreme. I think that it ought to concern us all that already this year, after having voted £800,000, GBC has already had a further advance of £160,000 and if it is going to continue until the end of March it will probably need another £200,000 on top of the £200,000 of licence fees that they have already collected and on top of the advertising income that they continue to collect. The situation is going from bad to worse, it is not improving. And when one tries to put a package together to take measures to solve that problem, which is what I am trying to do with the power of the Board and at the request of the Board and I will have to go back to the Board and the Board will have to take the final decision, Mr Speaker, I am told by the hon Member that there is something imminent going on which he does not know about, which is secretive and I ought to come here to the House to debate it before I do it. Mr Speaker, I am sorry, he is wrong. The only right that he and I have, as legislators in this House, is if there are any changes in the GBC Ordinance where the legalistic framework by which broadcasting is carried out is done differently; where the safeguards in the Ordinance that are there might not be there. But if the GBC Ordinance is intact and the franchise that takes place takes place within the legalistic framework of the GBC Ordinance today, Mr Speaker, then there is nothing to look at from the side of the hon Member or from the Government's side. The only factor that we are looking at, as the Chief Minister said, is that they continue to comply with the GBC Ordinance and that it becomes a financially viable proposition and if radio can become a financially viable proposition in itself and relieve some of the economic burden of the Corporation so that television becomes more viable, then down that route is where we ought to go. If the GBC Board were to say no to the proposal then, Mr Speaker, I would feel free to come to this House and say, "I condemn the position of the GBC Board for doing it" and I would come and I would do it. But I am acting completely at the request of the GBC Board in looking at Dewmont and in looking at other parties that might have put proposals and then I have to go back. And I am intervening indirectly because the hon Member himself in past motions and in questions was urging me to do it when he said it was unthinkable how long it was taking to solve this problem when the Government was so famed for tackling problems quickly. Well, perhaps he was the one who was suggesting that I should intervene but I have not without the power of the Board because that is in the only manner I can do it because it is under the GBC Ordinance that I operate.

Mr Speaker, regrettably I cannot go along with the wording of the motion because of the manner that the hon Member has presented it. And I therefore propose an amendment that reflects more accurately what the position of the House and of the Government is today and reflects more accurately what the role of this House should be in respect of GBC and certainly safeguards what I would call the attempt at political interference of the Leader of the Opposition. Mr Speaker, the amendment is to delete all the words after "This House" and replace them by -

"(1) Once again recognises the important and valuable service that GBC has provided for many years and considers it desirable that this should continue;

(2) Reaffirms its support to the Government and GBC in their continued efforts to arrive at an economically viable operation which will continue to provide local radio and television, such support having been expressed in an amended motion in this House in February 1993;

(3) Is satisfied that the checks and balances contained in the GBC Ordinance allows the Corporation to exercise its rights and obligations, therein contained, in an impartial and independent manner,

and calls upon GBC to ensure that whatever changes take place in providing a public service, these should be done within the existing legislative framework which is subject to change only by amendments in the House of Assembly".

Mr Speaker, if the hon Member is really worried that there should be any changes in the status quo, this should satisfy and ease his mind because it is saying that there is not going to be any change whatsoever in the way broadcasting is done in Gibraltar or in the type of public service that we see in Gibraltar, whether the matter is franchised or is not franchised and whether there is a more commercially minded operator than the present Corporation were to be. It is saying that once again we recognise the important and valuable service to the community because it has been recognised throughout unanimously by this House, by the previous one, by the AACR in Opposition and in Government, by his predecessor Mr Montegriffo, by the GSLP in Opposition and by the GSLP in Government. We are not saying that we do not like what GBC do or that we would not want them to continue to broadcast. We are saying that, in fact, it is desirable that they should continue but following the only problem that the Corporation has which is the demand on the public purse over and above the £560,000 that is due to them which this year could well exceed the £1.2 million once again, Mr Speaker. We are saying "Yes, it is desirable that we should have radio and television. Yes, we realise and accredit a lot to those people who have been there running a service over the years. We would like

that service to continue but we have to be realistic and it can only continue within a financial framework that is sensible and that is within the scope of what the people of Gibraltar can afford". And my efforts are in that field and in that field along and I take exception to the Leader of the Opposition suggesting that I ring up the manager of GBC or anyone to give orders and if he has got any proof of it let him raise it in the House, Mr Speaker. I use the words "checks and balances" because the Leader of the Opposition tends to use the words "checks and balances" on the Government for so long and once he has got the tools to be able to exercise those checks and balances which is the GBC Ordinance, he tends to want to have more than checks and balances. He accuses me of usurping the powers of broadcasting under my ministerial responsibility, but that is what he would like to do with this motion, Mr Speaker, usurp more of the powers of the checks and balances that the power in the Ordinance gives him because he would like to know how people are going to be employed. It is ridiculous, Mr Speaker. He is talking about how do we know whether persons who are employed are partial or impartial. Mr Speaker, how do we know now? What control is exercised today about the people who are employed at GBC because the same controls that are exercised today are going to be exercised tomorrow. What he is saying is that the concept of the independence of the civil service does not exist. The concept of the independence of the civil service is that regardless of the political persuasion of the civil servant he is there employed to give a service to the Government of the day and the same is the case in GBC; regardless of the political persuasion of the individuals that are there, they are there to give a political impartial service and the Government has never interfered and will never interfere with the people who are employed in GBC and the Opposition should not want to interfere either if they really want impartiality. If what they want is political influence themselves over who is employed and who is not employed. The inverse of what the hon Member is accusing me of doing is what the hon Member wants to do. He wants powers which he has no right as Leader of the Opposition or as a Member of the House to have and he wants powers which the Government have not got and should not have. I am afraid that the hon Member has gone over the board on this one, literally as well as the Board of GBC, that is. Mr Speaker, I commend the amendment to the motion and I think it is going to be hard for the Opposition to support the amendment given that I have had no option but to reply to the Leader of the Opposition in the manner I have because of the accusations and the insinuations he has made on me and on my role. I am afraid that unless he substantiates any of those accusations, Mr Speaker, he should certainly withdraw some of the remarks that he has already made but if he does not want to withdraw them I will sleep comfortably tonight, my conscience is clean.

Question proposed in the terms of the amendment moved by the Hon J C Perez.

The House recessed at 5.05 pm.

The House resumed at 5.30 pm.

HON P R CARUANA:

Mr Speaker, I will speak now only to the amendment. Mr Speaker, the Opposition Members will not be voting in favour of this amendment and truly I regret that the Minister saw it necessary to introduce this amendment because it places an onus on them to say what part of my motion they disagree with. Mr Speaker, we will not support the Government's motion for this reason. It says, "This House reaffirms its support to the Government and GBC in their continued efforts to arrive at an economically viable operation". Mr Speaker, economic viability, as I have tried to argue and as the Chief Minister himself forcefully and persuasively argued in 1985, is not the only criteria, is not the only yardstick by which propriety is to be measured. In other words, it is precisely what I am saying in my own motion, that it is not enough to simply find a commercial solution just as the Chief Minister said in 1985 that if the issue was going to become to simply reduce the cost of GBC regardless of the value it had to the community then this was a different ball game and GBC would not be providing the same services. And we will not support a motion that suggests that the Government and GBC are to be congratulated only because they propose carrying on efforts to arrive at an economically viable operation. That operation, as well as being economically viable, must adhere to the principles and structures and systems that is normal to apply to publicly owned broadcasting facilities in a community. And I am not satisfied - and this is the second reason why the Opposition will not be supporting the Minister's motion - "that the checks and balances contained in the GBC Ordinance allows the Corporation to exercises its rights and obligations, therein contained, in an impartial and independent manner" if GBC radio is being carried out by a private contractor on a franchise basis over which the Board of GBC has no day-to-day management control or influence; no ability to control on a day-to-day basis the programming and things of that kind. And if the Minister says to me "But they have an overriding ability to supervise, to make sure that they are being....." that is not proximate enough and I am not satisfied. The answer is that the Board of GBC have practically no chance to exercise checks and balances on Dewmont or some other contractor in whose favour radio is franchised, no chance at all. Therefore, for those two reasons, the Opposition will not support the motion. And it is not enough that this House simply calls on GBC to ensure that any changes take place within the existing legislative framework because just as the Board of GBC, for example, today has no editorial control over the programmes produced, Mr Speaker, by Straits Vision. What control does GBC exercise over the modus operandi or the programming of Straits Vision? None, and it is going to be exactly the same in respect of news. Mr Speaker, the Opposition will be voting against the Government's motion. It is plainly inadequate and it plainly fails to recognise the rights and duties of this House and of GBC; both of them.

HON J C PEREZ:

Mr Speaker, it is clear that there are two different views and two different interpretations of what GBC does, what the function of the Board is and what the legislative framework is there to do. I am going to keep it very short but the Leader of the Opposition has just said that he is not satisfied that the checks and balances that are contained in the GBC Ordinance can be carried out by the Board of GBC without these day-to-day controls. The GBC Board do not have a day-to-day control of the Corporation so they are going to do exactly the same to Dewmont or whoever it is, that they are doing to the Corporation today. That is the status quo. What the hon Member cannot say is that he is not satisfied with the GBC Ordinance but wants to keep the status quo which is the GBC Ordinance. There should be some consistency there. The other minor point I would like to tell him is that I am certainly not asking him and would not expect him to congratulate me or GBC for anything. The motion actually says that it reaffirms it support for the attempts that are being made to find an economically viable solution and when we arrive at that economically viable solution I shall remind him that he is then in a position to be able to congratulate the Government if he so wishes. Thank you, Mr Speaker.

HON P R CARUANA:

In replying first, Mr Speaker, to the remarks of the Chief Minister, who has not spoken on the amendment and therefore I can only be replying to what he said on my motion which is exactly what I am on my feet to do. He said that it was laughable to suggest that there is bias at GBC. Well, I do not know whether it is laughable to suggest that or not. All I can tell the House is that I did not suggest it, I never used the word "bias". I never suggested that there was bias at GBC so I do not know why the Chief Minister saw fit to open his address by saying, "It is laughable to suggest that there is bias". Who has suggested that there is bias? Certainly not me in my address. So the word "bias" in relation to GBC must be impregnated on the Chief Minister's mind, certainly not put there by me in anything that I said. "This House", he said, "is entitled to question what is put on the screen" - here is the attempt to distinguish between the 1985 motion and this motion. He was entitled to question whether GBC could put out a film in Spanish and I am not entitled now apparently to question or to expect that this House should question and be asked to be given the opportunity to debate a privatisation motion. The distinction is a distinction without a difference, Mr Speaker. We are entitled to much more than question what is put on the screen, I would go further. I would say that it is questionable whether we are entitled to question what is put out on the screen except in the context of whether we think we are getting value for the money that we vote at the budget session but presumably the Chief Minister is not suggesting that this House is disqualified, as the Parliament

of this community, from commenting on the proposal to privatise part of a public service which is owned by the people of this community and which is subsidised by Government. If that is what the Chief Minister way saying then I obviously disagree with it and I will deal with more of that in a moment. But the Chief Minister's mathematics is, I hope, uncharacteristically suspect in relation to this. He said, "The people will have to decide whether £150 per licence holder is worth paying". I really do not know where he gets that mathemtics from. Presumably he has made the rather basic mistake of getting the subvention and the number of licence holders and spreading the cost equally of the subvention between the number of licence holders. Well, the subvention does not come from the licence payers, the subvention comes from the taxpayer and there are not 6,000-odd taxpayers, there are roughly equivalent to the amount of the workforce, there are about 14,000 or 15,000 workers in Gibraltar. There are therefore 14,000 taxpayers and therefore the subvention is being shared not by the 6,000 licence holders but by the 14,000 taxpayers which is where the subvention comes from. Therefore it is not £150, it is £55 per taxpayer and if to that £55 per taxpayer - which is what the subvention costs, not the £150 per licence holder which is an irrelevant statistic - it is £55 per taxpayer, if to that we add the £30 that the taxpayer that is also a licence holder pays in total, he pays £55 as a taxpayer through the subvention and £30 as a licence holder through the licence fee, it costs him £85 a year and I challenge the hon Member to argue that £85 a year is too much for the service that GBC provides to its consumers given that it costs the consumer £25 to have his car unclamped once for something that takes one man five minutes to do, he pays £30 to GSSL for unclamping his car and the Government are seriously arguing that £85 - not for one unclamping - for a whole year's worth of public service broadcasting, that that is too much. Well, they can say it; I sincerely hope they continue to say it because no one will believe it except themselves. Then, of course, perhaps the most cardinal of all the "sins" that the Chief Minister committed in his address was that he simply failed to address the issue. I was not questioning whether the finances of GBC did not require something new to happen in relation to GBC. My motion does not say, "and because GBC are performing such a valuable service the Government must continue to pump in endless sums of money and must prop it up whatever it costs even if the taxpayer cannot afford it". That is the case that the Chief Minister was answering, it is not the case that I put. The cast that I put was that when they do decide what they want to do to address the financial problems at GBC, this House has a right to debate it in advance of implementation. That is the case that I was putting in my motion, "and calls upon the Government to bring to this House for consideration and public debate in advance of implementation any proposal that would alter the status quo at GBC" and let the record show that the Chief Minister simply did not address himself to that point in any respect because, frankly, solving the financial problems of GBC is not inconsistent with bringing

the proposal to solving the financial problems of GBC to this House before he implements them. I think people in Gibraltar are now well used to and are no longer convinced or persuaded or even impressed by red herrings thrown in answer to perfectly legitimate questions. People have now learnt that when somebody asks (a) and somebody goes off at a tangent and answers (c) and has omitted to give the answer which is (b), what he has done is failed to answer the issue. That, with the greatest of respect to him, is what the Chief Minister has said. He, who brought a motion to this House in 1987 saying that the simple broadcasting of films in Spanish ought to have been brought to this House before implementing, has said nothing in 1993 in answer to my motion brought from exactly the same chair from which he brought his, that if there is going to be privatisation or franchising of any part of the operation of GBC - let alone the language in which one film might be broadcast now and then - that that should also be brought to this House. Of course, he has not addressed his argument to that issue because really there is no answer that will save the Government from the duplicity of standards that they are implementing from that side of the House to the one that they implemented from this side, at least on this issue of whether this House is entitled to be consulted in advance of the implementation of a privatisation programme at GBC.

I move on to the somewhat more amusing intervention of the Minister for Government Services. Before I forget it because I do not have a note on it, Mr Speaker, the status quo at GBC certainly is that the Board do not control the day-to-day activities. I never said that they did. But the Board's employee does, the managing director of GBC who is an employee of the Board.....[HON J C PEREZ: What about the legislation?] and answers to the Board and answers to the Chairman of the Board. He controls the day-to-day affairs of GBC.

HON J C PEREZ::

Will the hon Member give way?

HON P R CARUANA:

No. When I finish the point I will give way to the Minister. The General Manager of GBC who answers to the Board, who is accountable to the Board and who is required to take the Board's instructions on matters of policy, he supervises the day-to-day. Who is going to supervise the day-to-day operation of a privatised franchisee? What person answerable on a day-to-day basis to the Board is going to do that? So let the Minister not say that I do not know what the status quo is. I know what the status quo is and I know what it would be if there was franchising and it would not be the same thing. I do not understand why neither of the two speakers who have spoke in this debate from the Government benches were able to open their interventions with something that was at least

true. The Chief Minister starts by saying, "It is laughable to suggest that there is bias at GBC" which I had not said and the Hon Mr Perez says, "Mr Caruana only reads from Hansard where it says 'Peter Caruana'". I have read from Hansard several times today and none of them have been Hansard of what Peter Caruana said so I do not know what the Minister for Government Services thinks entitles him to accuse me of only reading from Hansard when it says "Peter Caruana" as if I was some sort of prima donna that only quoted from his own Hansard. The only Hansard that I have quoted from today is what the Chief Minister has said in this House and what he himself, the Minister for Government Services, has said. I have not quoted from Hansard of what I have ever said and therefore, Mr Speaker, I think that if anyone has got to withdraw anything it is him. The imputation that I only quote from my own Hansard, I do not think I have ever quoted from my own Hansard.

HON J C PEREZ:

I have not said that, Mr Speaker. I have never accused him of quoting from his own Hansard, I have accused him of reading everything.....[HON P R CARUANA: What he said, and I have got it here in.....] If he wants to continue with lies and innuendoes.....

MR SPEAKER:

Order, order. If he wants to give way you can.

HON P R CARUANA:

Mr Speaker, I do not think he can say that I want to continue with lies and innuendoes. I think that, at least, must be withdrawn unless we are abandoning the rules of parliamentary language in this House as well. The Minister had said that if I want to continue with lies and innuendoes.

MR SPEAKER:

I think that is harsh and I call upon the Minister to withdraw that and to put it in a more gentlemanly manner.

HON J C PEREZ:

Fine. If the hon Member wants me to withdraw, I shall withdraw but he is always trying to say something that I have not said and it might not necessarily be a black lie but it is certainly a white lie. I have not said that he only quotes Peter Caruana. I know he does not quote Peter Caruana, I have said that he only reads Peter Caruana because he ignores everything everybody else has said in the motion of February which is the motion I was referring to. He would like to say that no, he reads and quotes the Chief Minister and myself and everything else but I have not said that. He is free to continue to distort the things that I have said but let him know that he is doing that and let the people and the House know that he is doing that, Mr Speaker.

HON P R CARUANA:

Mr Speaker, he still accuses me of telling white lies and he must withdraw it.

MR SPEAKER:

I think white lie means harmless.

HON P R CARUANA:

All right, Mr Speaker, I take your ruling. It is the Minister who tells white lies and white of the deepest tone before it becomes another colour. He is the one who tells white lies. [HON J C PEREZ: Whiter than white.] No, as black as they can possibly be without ceasing to be white because I have him here in quotations as saying, verbatim, "Mr Caruana only reads from Hansard where it says Peter Caruana". [Interruption] This is what he said, I have got it here. Well, Hansard will demonstrate what I have said. "Government", he said, "takes an arms length approach to the Corporation". Is he or is he not - he and not the Board of GBC - personally conducting negotiations with Dewmont Securities and its directors? I think it is common knowledge in Gibraltar that that is the case. If he wants to stand up in this House to say, "I have not conducted personal negotiations with Mr Frenkel", I have no way of disproving it but there are plenty of people listening to this programme who will know who tells white lies or lies that might not be so white. When he says that I must withdraw all my allegations, does he deny .....[HON J C PEREZ: He is asking questions?] Well, I will give way. I am asking rhetorical questions but I will definitely give way if he wants to answer any of them. Does he deny, Mr Speaker, that he has expressed the view that post-privatisation, post-franchisation of the radio there are two newscasters, two employees of radio who currently read news on television and that he has said that they cannot

continue to do so? [HON J C PEREZ: Yes, I deny it.] Well, he may deny it but it is common knowledge that this has happened, who has said it? Not him. I think in all fairness to him I should give way to let him answer it.

HON J C PEREZ:

Mr Speaker, I have not said that, I have not even been asked. I know that in the talks and negotiations between Mr Frenkel and Mr Richard Cartwright and the other people in radio, Mr Frenkel has put it as a condition, I have not. I am not involved, it is a negotiation between the staff of GBC and Mr Frenkel. But, of course, his information is, as always, distorted.

HON P R CARUANA:

Let me tell the Minister that my sources of information are the very same ones that after the last time this House debated GBC saw fit to issue a public statement expressing great surprise at what had been said in the House by some Members of the Government. It is exactly the same source, they know.....[HON J C PEREZ: I do not recall that.] No, he does not recall, that is why Hansard exists. They do not have to recall all this. Mr Speaker, I think what the Minister said is that I was asking for blatant interference; that in effect I was blatantly interfering in GBC by bringing this motion asking for the Government to debate in advance. The Government Members cannot bury their heads and forget history. How can the Minister for Government Services suggest that I am blatantly interfering by asking for this House to be given the opportunity to debate in advance of implementation, a proposal that affects GBC when in 1985 the Chief Minister brought an identical motion to this House on something considerably less important, namely, whether GBC should screen a film in Spanish? So the GSLP in 1985 felt that it was legitimate for the House to expect GBC to tell them in advance and for them to debate in advance whether GBC could broadcast a film in Spanish but it is political interference for me now - just because they are in Government and I am in Opposition - to say that the House is entitled to debate an to be informed in advance of a privatisation proposal. The argument of the Chief Minister is frankly infantile and if it is not infantile it is steeped in hypocrisy and duplicity. That I am suspicious by nature? Of course I am suspicious by nature, because there has never been a Leader of the Opposition before - I suspect anywhere in the democratic world - that had to live with a Government that buys themselves and privatises public assets and then says, "Well I am not publishing the agreement because it is confidential". Of course I am suspicious; it is not suspicious it is certain knowledge. It has gone beyond the realms of suspicion. The Government are the secretive ones, he is the one who I say conducts himself secrecy. I am not suspicious of secretiveness.

I know that there is secretiveness and what I am saying is that at least on this issue, given the subject matter, he is not entitled to be secretive and I am entitled to have this information in advance. Trying to justify the refusal to bring this proposal to the House for debating in advance on the basis that they are trying to solve a financial crisis by franchising out. Well good for them. Let them franchise out. Let them solve the financial crisis in that way but why is that inconsistent, Mr Speaker, with bringing the proposal to the House first as if we could choose between bringing it to this House first or solving the financial crisis but we could not have both? Well, again it is a red herring and there is no intelligent person listening to this debate who does not know that it is not a red herring and it is a rather crude attempt to avoid answering a perfectly simple case which is that this issue is sufficiently important for the Parliament of this community to debate as it would be in any other parliament. And that is not good enough now to blackmail us into thinking, "Well if you are not careful, if you do not stop asking too many questions and if we do debate it in advance, by January we might not have GBC at all". Frankly, I cannot imagine.....[HON CHIEF MINISTER: Is that not a new subject?]

MR SPEAKER:

Is the Government objecting to that?

HON CHIEF MINISTER:

No, Mr Speaker, I am just saying that if the hon Member wants to bring a motion of censure here we can have a debate on a motion of censure. He is supposed to be rounding up and introducing no new matter. Notwithstanding the fact that I accept that 90 per cent of it is not new because 90 per cent of it he has already said six times, the 10 per cent that he has not said six times seems to be new like now saying we are blackmailing him.

HON P R CARUANA:

No, Mr Speaker, the purpose of the rounding up is to answer what other people have said, that is the purpose of the rounding up. I do not know what a rounding up means when conducting a trade union negotiation but I know what a rounding up means when conducting an argument because it is my profession, and a rounding up means that as the proposer of the argument, having heard what the opponents have said against one's argument, one gets the opportunity to answer them and that is exactly what I am doing. And he did say, because I have it here in quotes, "We are just trying to solve the financial crisis at GBC with a franchise". I say, "Good for you but how is that inconsistent with what I ask you to do

which is to bring the proposal to the House first?" He also said, Mr Speaker, "The Member wants to exercise more power over what is franchised than what is in the legalistic framework of GBC". Mr Speaker, I want to exercise no power over anything. I am not so naive as to think that any Opposition anywhere, still less an Opposition in Gibraltar, actually wheels any power but what I do know is that a Member of this Legislative Assembly, this Legislative Assembly has a right - and let the Government Members argue, if they wish to, that it does not have a right - to debate in advance something as critical as the privatisation of GBC and by a desire to debate that before it happens, I am not seeking to exercise any power over anything. He says that he is not interfering, that he is only acting as a go-between between the Board and the franchisee. He went on to add that the Board would make the final decision. Mr Speaker, if one believes that one will believe almost anything. Anyone who believes that the Minister for Government Services is little more than the postbox for the Board of GBC in its negotiations with Dewmont Securities is naive to the point of stupidity and anyone who believes it is even worse and I am very confident that no one, Mr Speaker, will believe that. And anyone who believes that the Board of GBC is going to overrule a decision based on a negotiation which the Minister has negotiated personally, when he is holding the sword of Damocles over their heads and signing their paycheques at the end of every month or the staff does not get paid.... [Interruption] No, the staff at GBC, this is what I said. Anyone who thinks that the Board of GBC, knowing the financial precarity of GBC's financial position, is going to reject a commercial arrangement personally negotiated by this go-between, Mr Speaker, frankly will believe almost anything. The reality of the matter, Mr Speaker, I put it to this House for the record, is that the Minister for Government Services, who took the precaution of having broadcasting added to his list of ministerial portfolios by the Governor before he did so, is personally conducting negotiations on behalf of the Government for the franchising of GBC and when he has come to a deal with which he is politically satisfied, he will put it to the Board for rubber stamping. We all know that that is the position. That we are, he said, politically exploiting the GBC issue; this is what he said, Mr Speaker. So would the Minister for Government Services consider he would expect to find by which presumably he means how he would expect responsible Oppositions to behave in mature democracies and how he would have behaved when he was in Opposition. Never mind that they made a fuss about broadcasting films in Spanish. But he thinks that the Opposition should simply remain silent and arms crossed whilst the Government secretly and privately conducts negotiations for the privatisation of Gibraltar's public service broadcasting and that to stick up one's head and say, "Hey, what is going on?" the Parliament of this community should get an opportunity to debate the proposals in advance, he says that that is politically exploiting the GBC issue. No, the political exploitation of the GBC issue is the intolerable situation which exists today, Mr Speaker, where the whole

of GBC from the General Manager down to the charwoman knows that unless the Government gives them additional monies from one month to the next they will not collect their salaries. That is political exploitation of the GBC issue as well as being completely intolerable. That is the sword of Damocles that this Government has held menacingly over the whole of the Gibraltar Broadcasting Corporation and its staff since 1991 and possibly before. One could go on all day, Mr Speaker, arguing what he has said. He said, "The only right that he and I, as legislators, have is if there is a change in the legislative framework of GBC". Ask the Chief Minister, Mr Speaker, whether he thought in 1985 that GBC's proposal to broadcast films in Spanish represented a change in the legislative framework of the GBC Ordinance? This position that they now adopt is simply unsustainable from a party that brought this motion in 1985 and it is an insult to the intelligence of anyone who might be listening to this debate to suggest that a motion saying that GBC should not broadcast films in Spanish amounts to a motion on the legislative framework.... I am sorry, does the Attorney-General want me to give way?

HON ATTORNEY-GENERAL:

Just to say that it was the ninth time he has spoken about films in Spanish.

HON P R CARUANA:

He must learn to speak Spanish then. Mr Speaker, this is a litany of stupidity. That the Opposition wants to usurp powers over employment? That I want political influence over who is employed because I want to debate, as an elected representative of the people of this community, before any privatisation deal? So the BBC can be privatised in England by the Government because if the Labour Opposition try to raise it in the House what they are really wanting to do is to exercise political influence over who is employed by BBC. It is almost a waste of time to take the trouble to answer these ridiculous allegations. That I want powers to which I have no right? I have no right to powers and I want no power but I do have a right as a Member of this House and this House collectively does have a right to detail information and to debate in depth, breadth and detail any fundamental change the way public service broadcasting operates in this community and anybody who suggests the contrary, Mr Speaker, either is not a committed democratic parliamentarian or simply does not understand what parliaments exist for in a democracy.

Question put in the terms of the amendment moved by the Hon J C Perez and on a vote being taken the following hon Members voted in favour:

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

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 Hon M Ramagge was absent from the Chamber.

The amendment was accordingly carried.

Question put in the terms of the original motion moved by the Hon P R Caruana 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 F Vasquez

The following hon Members voted against:

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

The Hon M Ramagge was absent from the Chamber.

The original motion was defeated.

HON P CUMMING:

Mr Speaker, I wish to move the following motion:

"This House -

welcomes the annual Principal Auditor's report;

wishes it to be acted upon where necessary; and

appreciates the constitutional role of the Principal Auditor as one of the necessary checks and balances to the power of the Government".

Mr Speaker, if my homework has been done accurately, this Principal Auditor's report has cost the taxpayer £200,000, so those of us who grit our teeth and stay in the Chamber, would at least become familiar, if we are not so already with the main features of this report, so that the taxpayer's money can be well spent. This motion, Mr Speaker, is phrased rather low key in the hope that the Government may see their way to supporting it. This is not a question merely of castigating the Government or anything like that. The House welcomes this report, the Opposition welcomes the report, not because this is a stick with which to beat the Government or at least not just for that reason. It is also an insight into the workings of the various Government departments which would not be available to us otherwise. Especially welcome because although this mechanism of the annual Principal Auditor's report is flawed and it is flawed by him not having sufficient resources for his job, but especially, it is flawed because of the accounts of the Government's private companies not being made public. Therefore, it does not give us by any means a full picture. So, although it has this basic flaw, nonetheless, it is one of the checks and balances of a democracy that actually, in spite of it being flawed, it does work to a certain extent. The Opposition welcomes this report on those grounds. Appreciating the constitutional role of the Principal Auditor, he cannot be seen as just one other employee of the Government in the same way as the Chief Justice could not be seen as an employee of the Government, yet they serve the State. They work to the Queen and they have a position of independence from the Government. My daughter Catherine is studying accountancy in Cardiff University and when she heard I was going to do some talking about auditing, she send me some of her handouts to prevent me from putting my foot in too deeply. In one of the handouts on financial accounting and auditing entitled the "Macfarlane Report" and it says, "The enduring principles

of auditing....." and it goes through the various ones. I only want to highlight one or two. There in big capital letters it says, "Independence". Auditing is based on a situation of independence. And so it says, "Auditors should be objective, free from influence, independent of the company and its directors. Obviously, we are talking here about auditing in the sense of ordinary companies in the private sector. The auditor, therefore, has to be independent of the company and its directors and if we were to compare Gibraltar to a company, then obviously the Government is the board of directors and the auditor must work independently. Accountability, is another big heading and it says, "Auditors should act in the best interest of shareholders". If we compare Gibraltar then to a private company, the shareholders are the taxpayers and the electorate. Therefore, the Principal Auditor owes his accountability to the taxpayer. The Principal Auditor's report is submitted to the Governor and then the Governor has it laid on the Table in the House, thereby making it public. This is a mechanism then by which the shareholder can see whether or not his money is being properly invested and it is nice to see in the Gazette of a few days ago, that this report can be obtained from the Publications Office at No.6 Convent Place for the price of £3. Anybody who is interested and wants to go along can see the accounts of Gibraltar and the Principal Auditor's report thereon. Flawed, because it does not give the full picture of the private companies and so on. Nonetheless, it is an element of democracy that is still functioning in Gibraltar and therefore something very welcome. Turning then to the report itself, I would like to highlight some of the features that I see as important. I would like to say, Mr Speaker, at this stage that I could not pick the Principal Auditor out of an identity parade. I do not know him, I have not had any communication with him and I say this because at budget time, we made some remarks about the audit and after the lunch break, the Chief Minister made some angry remarks in which he was saying that he was going to get the Governor to have the audit run all over again as though, it seemed to me, purposely misunderstanding what we had been saying because we were not criticising at all the functions of the Principal Auditor. What we were saying was the mess upon which, in many areas, he was reporting and the objections that he had made in some areas. When the Chief Minister came back after lunch-break, he said "I have been on the telephone to the Principal Auditor....." and however independent he is obviously he is aware that the Chief Minister is a man of some importance in the community and therefore it cannot have been very pleasant for him to have had his ear bent. So certainly I do not know him. It may be that during the days of my exile wandering as a lost soul in the corridors of the Secretariat, I may have passed him in the corridor and probably identify him as a civil servant but not as who he is. I would like to comment on the paragraph entitled "Value for Money Audit" and this is the only very mild criticism that I would make of the

Principal Auditor himself, if it can be called a criticism, maybe just a remark on what he has said under the heading of "Value for Money Audit" because he says that although this is out of the scope of this certification..... In other words, when he has looked at all he has got to certify that the accounts are in order. Nonetheless some areas were being determined for this kind of audit. It seems to me a rather coy remark because value for money auditing is extremely well known and a few years back Mrs Thatcher ordered a value for money audit to be carried out in the Health Service with regard to money being invested in the medical consultants and the empires of each one were evaluated by auditors using this value for money principle. As is to be expected the consultants were violently outraged by the temerity of non-medical persons trying to establish whether value for money was being achieved or not and I must say that from my own knowledge of the medical profession I think the results were wonderful because more money was put in to areas that made very big differences to a very large amount of patients. Less money was invested in those rare areas that made little difference to very few people. Orthopaedic surgery was one, many more orthopaedic consultants were created, were trained and were promoted. Many more orthopaedic theatres were set up; hip replacements, transformed the lifes of thousands and thousands of people with that operation. Even in my last year as tutor at the hospital, the final exams for staff nurses sent from UK had as one of the nine questions: "Value for money is a very important concept in the Health Service today, so comment on this in so many hundreds of words and indicate how a staff nurse can contribute to value for money service to patients in the National Health Service". So it seems rather coy that the Principal Auditor should say value for money as though it was something out of this world. I do remember the Chief Minister, at some stage, commenting that the privatisation of part of the audit would help in this respect. This is not something new that I am talking about. It seems to me that if the controlling officers of Gibraltar's finances do not have any value for money function, then they are not carrying out their functions properly. In this Principal Auditor's report, there are many commonsense elements of value for money that he does actually address. Even though he may not glorify with that name, there is some evidence of value for money.

Let us go on then to a most important heading of "Arrears of Revenue". "The escalation of arrears of revenue continues to be a matter of serious concern. The position as at 1st March 1992; the amount due to Government totalled £20.28m, representing an increase of just under £5m over the corresponding figure at the end of the previous financial year." We have here two elements, Mr Speaker, one is the arrears and the other is the escalation of arrears. To illustrate this point, let us take an example from health, a matter in which I have some professional knowledge. Let us imagine that I am two stones overweight and nowadays everybody is very conscious of obesity and its health implications. Let us say that I am two stones overweight,

how significant is this for my health? It may be that it is not significant, because maybe I have been two stones overweight all my life and my body has learned to compensate and to cope and perhaps this is not doing me much harm. Let us say that I am ten stones overweight, then this is going to kill me in a very short time....[Interruption] Please do not take this personally, it has nothing to do with the House. Mr Speaker, if on the other hand, I am gaining weight by one stone per year, this is a very significant finding and the doctor can very easily predict that within seven or eight years I shall be dead. So we have here then the arrears as one question and the escalation of arrears as another. The arrears of £20million in revenues of the Consolidated Fund we could take as say £90million. I know there are other increases here and there but for rough comparison, it seems to me a huge amount: £20million in comparison to the income of the Consolidated Fund. A huge amount. Therefore, this is like the person who is ten stone overweight and who is in a very serious problem. Quite apart from that, we have then the graphic element; the escalation and, Mr Speaker, this is a phenomenon directly related to the GSLP Government because it starts to take off as the GSLP takes office. So, in 1989, the arrears were £8.6million, in 1990 £14.3million, in 1991 £15.4million and in 1992 £20.3million. So we see here then an explosion taking off like a rocket of arrears. So we have then a very severe problem of the amount and an even more severe problem of the graph which is warning us that this is a very severe problem that is continually getting worse and which allows us to predict a sticky end, if drastic action is not taken. We have to ask then, "Why is it that this is happening?". "Why is it that commensurate with the taking office of the GSLP, this element appears?". Referred to in this Principal Auditor's report, is the disbanding of the enforcement element which took place in 1990 and obviously must have some influence in this matter. I think this is a massive blunder which the Government should recognise and go back and put that right; to bring back the enforcement element. The enforcement was disbanded for supposed practical reasons and we have been through this in the House before. It is there on Hansard and I remember vividly those speeches of the Chief Minister in which he talked about how, for example, a pound was spent to save a penny or one hundred pounds was spent to save a penny and this did not make sense and therefore let us do away with all these sections and so on. We might as well say if a policeman is on his beat up the Main Street, how do we evaluate the productivity, the value for money element because what did he do as he walked up? Maybe he did absolutely nothing, but what did he prevent by his presence? So it seems sensible to spend a pound to save a penny in this case. Let us take the famous Dutch boy who, on finding one of the dykes or the dams which protect Holland from the sea, finding a leak stayed overnight with his finger plugging the leak and was a great hero. One might as well have said, "It is only a litre a minute, let us lose it and not put this asset here to stop the leak".

But of course, the leak becomes progressively escalatingly larger until the whole of the country can be destroyed. I think that the disbandment of the enforcement sections was a great mistake, but I do not think that that is the sole reason for this social disease, this problem that the Government will have to face about escalating arrears. There is a problem of the underlying philosophy of the Government which reflects at various levels and has various effects and implications. For example, at the last Question Time very recently, we had a question that I was making about a company that, for sure, had links with the Government. We were not able to establish what those links were and in pressing that, eventually, we managed to, like getting blood from a stone, a tiny bit of information of what that link was. But in that context, I had the temerity, Mr Speaker, of making use of the dreaded "C" word which immediately brought forth an apocalyptic fit on the side of the Chief Minister and provoking yourself, Mr Speaker, to make rulings about imputations and so forth. The Chief Minister said in great anger, "The reason that you make statements about corruption is that because you are the sort of person that would be corrupted, you think that everybody else is". That to me, Mr Speaker, contains a statement of philosophy. There is an underlined philosophy here about one's understanding of human nature. And of course, I would consider myself a person that could possibly be corrupted because I believe that according to the Judeo Christian philosophy, by which many people in Europe form their opinions, that our human nature is a fallen one inherited from Adam and Eve and therefore we, as the Bible says, are prone to evil from our earliest days. Therefore, we need the law and we need regulations so that we can live in community with some kind of order. Whereas there are others who are influenced by atheistic, Marxist philosophy. They were certainly in unions of years back; philosophies associated with the political creeds of anarchy and it seems strange to think that not that many years ago people were putting forward and proposing anarchy as a serious political option. Now we say anarchy is a bad word. But how long ago is it, forty years, that there were political parties of anarchists who wanted this system? Why? Because they believed that everybody is good and everybody will do right in the right social circumstances and unfortunately, this is not so. We need the law and we need regulations and we need to order our society with discipline. It seems to me that the underlying philosophy of many of the members of the GSLP in thinking lightly about the role that the law plays in the life of a community, that this has ramifications and is very quickly taken up by people who very quickly turn to the same attitude and use it against the Government. Laws can be seen as elastic and stretchable and so the attitude spreads like wildfire and then we end up with a situation where, for example, businesses getting into difficulties will not hesitate to, instead of paying in their taxes at the due time, will simply use it for their own purposes and think that this is their personal benevolent fund. Mr Speaker, this £20million of arrears represents a big loss of income. There are many social needs in our

community crying out for money as the Government well know. They know better than I. This money, if it has been recouped, could be invested and be producing income and there are thousand excellent uses for this money. The Principal Auditor makes reference to having to get a move on with the arrears because they become statute barred, I believe at six or seven years. So some of the money owing is owing for six or seven years and may be permanently lost. The Principal Auditor makes reference to the need to regularly write off bad debts so that the picture for trade is a real one and not a fictitious one. So we are here with a serious problem of arrears that if it is not dealt with seriously and energetically is going to get Gibraltar into a lot of trouble.

So let us move on then, Mr Speaker, to a different heading, although obviously we will go into arrears department by department. There is a section here in the Principal Auditor's report headed "Westside 2", and it says that in March 1991, rounding off the figures in order to make it all easier, £5million is paid to Gibraltar Homes Ltd, so that, I assume, Westside 2 can be completed. The understanding is that the Government then is buying all flats that are not sold, so that when they are sold, this money will then be recouped. I assume that the company, Gibraltar Homes, was going bankrupt and in order to ensure that the project is finished for the benefit of people who need subsidised housing, the Government have made that arrangement for them. That will be fine, we want subsidised housing. Housing is to be subsidised with taxpayers money. That is right. The question is that the houses are now sold and only £2million has been recouped, so there is another £3million there. Maybe it has very rightly been spent, but the fact is that it has not been accounted for and it has not been audited. This is taxpayers money. I believe that it should be accounted for to the last penny and audited and that the taxpayer is entitled to know how his money is being used and to have some kind of a guarantee that is going to the right place because as I say, even though we want housing to be subsidised by the Government, we do not want private companies to be subsidised by the Government. They have no call on the taxpayers money to keep their companies going and to be cushioned and protected from the effects of their own inefficient business practises.

We move on then to the section headed "Gibraltar Investment Fund" and the Gibraltar Investment Fund, Mr Speaker, is the letterbox through which Government passes money from their public accounts into the secret accounts of the many private companies that they own. This is the kind of twilight zone, a no-go area. The documentation of which when the GSLP falls from power, I am sure will make very interesting reading, which I look forward to. It seems from the three Principal Auditor reports that Varyl Begg Estate, to mention one, that the man in the street will not take favourably to the fact that places like Varyl Begg

Estate have been sold to a private company. A private company belonging to the Government, created by the Government and owned by the Government and that it is reduced to equity and that its assets are expressed in the Gibraltar Investment Fund. We have asked time after time whether this is used for mortgage purposes and all that. We have been assured that it has not. Why is it done, to look good in the books? I do not know. It can only be seen as suspicious and unfavourable to the man in the street. In the last year's Principal Auditor's report, the sections under Gibraltar Investment Fund, made interesting reading, whereas this year, they are a little bit boring and there is a reason for that, I am sure. Last year, in the Principal Auditor's report, there was a chink opened in that twilight zone of the private companies, through which we could look and see what sort of things are going on in those companies from the financial and auditing point of view. The Principal Auditor made clear in last year's report that he was not able to account fully for all inter-company transactions; that it was not possible to carry out a proper valuation of Gibraltar Investment Fund investments and that accounting practices were poor. So he opened there a little chink for us to see what was going on in those private companies. This year, contrary to all previous practice where he has made an important comment, he has referred back to it in his subsequent report to say that last year, I made this and that comment and this now has been put right or it has not been put right or it has got worse. That has been his practice to refer back and this time he just simply leaves it out altogether and it can only seem to me that he must have been asked that or told that unless he wanted surgical removal of his larynx, he was to shut up about the private companies. Otherwise it does not make sense. It seems to me, Mr Speaker, that if there is one constitutional reform that Gibraltar needs urgently, it is that the Government must declare all their income and all their revenue and all their expenditure and that this should be properly and publicly audited for the benefit of the man in the street. That so much taxpayers money should exist in this twilight zone area that we cannot know what is happening to it, is something abominable in a democratic society. The Principal Auditor mentions that there is the sum of £7.6million of company tax which is now routinely paid in to the Gibraltar Investment Fund and bearing in mind that income tax brings in £40million of Government revenue, to an amateur and to a layman, like myself, it just seems that £7.6million in comparison is a relatively small amount. I speak, of course, entirely as a layman in this matter, but it seems to me that perhaps in the smaller companies, one hears in the street that if one has a company one can put one's personal car, personal house in Spain, personal video, in the company accounts and this is tax deductible. I merely suggest this and ask to be corrected if I am wrong that this amount could be improved by proper monitoring.

Moving on to the Social Insurance Fund, the Principal Auditor says, "No records of contribution arrears are available, but it would appear that the level of such arrears has increased significantly over the past years, so that

recoverable but unpaid in 1990, was £300,000, whereas in 1991, the level is £800,000." So we see that in every aspect of Government revenue, escalation of revenue arrears is taking place.

In the Customs Department, the Principal Auditor reports that the money recouped in revenue and the money subsequently paid into the Treasury, between the two there is an unexplained difference of £86,586, ie difference between what was collected by Customs and what was paid into the Treasury. Undoubtedly, this is accounting errors and so on and so forth. Nonetheless an unexplained difference of this magnitude has to be explained and of course the Principal Auditor has asked for this matter to be taken up and I hope that the Government will see to it that this is exhaustively investigated so that it will be seen to be proper and that no gaps like this of unexplained discrepancies should be allowed to take root and prosper.

In the Education Department, there are also arrears but it is nice to see in this tiny area a little element of commonsense value for money auditing and a small success story. In 1991 for the College of Further Education fees for courses, there were arrears of £11,000, in 1992 there were £19,000 but in 1993 it has gone down to £1,200 and it seems that the Principal Auditor told them that their enforcement capability is very weak and therefore it seems sensible that before they accepted somebody on a course they made sure he paid beforehand. Very simple commonsense. Commonsense is not that common, unfortunately, but this has brought down those arrears from £19,000 to £1,200. One success story in the accounts. Still in the Education Department he says, "I drew attention in last year's report to the fact that improper use was being made of the deposit account operated in the Department of Education". On first reading I thought that this was a petty-fogging, bureaucratic, difficult, obstructionist view, this is nonsense, there is no substance to this issue. But on re-reading and meditating on the subject, it seems to me that this is an example which highlights the apparent tensions between the carrying out of a proper auditing and the Government's philosophy. I understand perfectly that the Financial and Development Secretary, the Accountant General, and all the financial employees of the Government are there to serve the Government and if the Government says "I want a deposit account or a fund set up for this and that purpose", for speedy use or whatever it is, this must be done. Obviously, it is not the financial officials that are going to be ordering the Government, it is the other way round, excluding of course, the Principal Auditor. In the question of this deposit account, the Director of Education has answered to the Principal Auditor, "This Department was instructed to use this deposit account in spite of your adverse remarks on improper use of this account", and obviously the Principal Auditor tells them to do one thing and the Minister tells him to do another thing and he is going to do what the Government says. The

Principal Auditor insists that this is improper use, so what is happening here? It seems that the Department wants a fund whereby it can rapidly turn round some of its revenue to other uses, which I believe in this case, is setting up of new courses for the Employment and Training Board. It is a very good use of money, excellent idea. They need it quickly because these ideas rise up and must strike when the iron is hot. The normal way that the Principal Auditor wants to be used obviously takes longer, although there has been meetings with the Financial and Development Secretary and so on to expedite it through the normal channels and so on, but not the use of the deposit account. The last thing in the story then after two years of this is that now they are continuing with their deposit account and of course the Government is perfectly entitled to set up funds for its use at its convenience, obviously, for its purposes. But now the Director of Education seems to have satisfied the Principal Auditor because the position has been regularised for the 1992/93 accounts. He has put in place internal controls to ensure the propriety of deposit account transactions and the accuracy of the records by way of internal reconciliations and so forth. So reading between the lines, what we have to say is that he was complaining about improper use before and it is not that anybody, and I know most of them, and I am absolutely certain that the impropriety that he is referring is not that anybody is taking money from the deposit account and putting it in his pocket, not at all. But the impropriety is that the checks and safeguards were not in position and therefore it was opening the door to problems for the future and this is why the Government in the past has taken enormous umbrage and breathed fire about impossible libel and so on when we have said that the doors to corruption must not be opened and it is not that anybody is putting....No, not at all. It is just that, if we have an account which is operated without the proper professional financial safeguards, we open the door that sooner or later somebody will have the bright idea of putting their hands in their pockets. I am absolutely certain that nobody in the Education Department is doing this or has even crossed their minds, but with the passage of the years and new people coming along and a laxed attitude in general, human nature being what it is, somebody will eventually help himself to the funds, if there is an easy way of doing it. So it has been regularised now, safeguard, professional safeguard whereby they can be checking and double-checking some of the taxpayers money goes to the right places and is efficiently used. It seems to me that this example shows that the difference in philosophy between the professionals and the Government on this issue. The Government is not terribly keen on professional bureaucracy and have little patience. They want to get on with the job and this and they pooh pooh some of the bureaucratic red tape. I know that they can go too far with this, but the taxpayer has to be sure that his money is being looked after and these financial services are there to protect his money. Therefore, this motion invites the Government to be a little bit more conventional in their ways. Now after six years of

Government, they are very much the establishment. They came originally very anti-establishment but now they are so much part of the establishment that it behoves them to be more conventional and to support more these traditional methods of controlling money.

So let us move then to the Housing Department. House rent arrears have increased during the financial year under review by nearly 12 per cent and stands up roughly to £0.5million. It is curious that in all areas of Government Housing, rent arrears have gone up except in Varyl Begg Estate where arrears have marginally decreased. So why is this? The improvement would appear to be at least in some way attributable to the refurbishment programme and certainly I am aghast when I hear people, even people who come to the GSD surgery with complaints, who say, "I have been there and I have been banging the table and I say I will not pay any more rent until this or the other is fixed". The facility with which people take resort to that line of not paying the rent as a protest because of some grievance or another. The ease with which they are doing it and of course again we refer to the Government's philosophy in this matter about human nature, which is mistaken and the lack of enforcement. So more and more people are taking to this path of simply not paying up. In Varyl Begg Estate, of course, there were many problems with the roofs and rain coming in and all this and I suppose that those people stopped paying the rent. I would suggest that it would be much better for the Housing Department to receive people with complaints and to say to them immediately "Your grievance is so big that for the time being do not pay your rent until we sort it out", to prevent that person sort of becoming an outlaw and doing that for himself. There is a section entitled, under the Housing Department, "Hire of Scaffolding" and in 1992, the Housing Department spent £178,000 on hiring scaffolding and in 1993 spent £262,000 on hiring scaffolding so that the money spent on scaffolding is also escalating. One does not have to be a genius, it seems to me, to be an effective auditor for the Government departments because with a bit of commonsense, one can suss it all out for oneself so there is a considerable idle time element involved in the hiring of scaffolding. So at this enormous expense scaffolding is hired, it is put up and then instead of going on to paint that building, workers move off somewhere else and leave the scaffolding up. They paint somewhere else until it occurs to them to come back and the scaffolding is there being paid for daily; the money accumulating; dead; idle; this is simply scandalous. I think this is absolutely elementary; a waste of public money and mismanagement of public funds. We could put the most junior clerk or the most junior anybody to do auditing and come up with things like this is simply scandalous. So the Principal Auditor asks "Has this hiring of scaffolding been put to tender?". And of course it has not. We go on then to an incident in the Housing Department of theft of 25 x 1 litre barrels of paint plus three of 20 litres which have been stolen from the Housing Department and the Department reports this to the Police. The Police

subsequently find in a shop this paint on sale and obviously the owners of the shop are dealt with. In going to the three different stores of the Housing Department, the Police, looking through their books, do not find any deficit in their accounts for those stores. This again is absolutely scandalous. That the paperwork of the stores are totally incompetent, so that such a big robbery of paint goes undetected, or even worse, is intentionally and maliciously covered. So either there is gross mismanagement in letting this happen so casually or there is a malicious element in the running of the stores in the Housing Department. The Police report concluded, "that the stores accounting system was flawed". It seems to me an understatement of the situation. So to avoid further loss of government property, the Principal Auditor writes to the Housing Manager back and forth and it seems that the Housing Manager despairs of being able to put a can of paint locked up in a store and be sure it is there the next day. It seems that he suggested that it is better to have a central store somewhere away from his department where a few barrels of paint can be safely stored. That seems to be the level of morale in the year on which the Principal Auditor was reporting. It seems then that there is another system whereby if a wall is going to be painted, the person that is going to paint the wall, goes immediately to the shop and buys a can of paint and goes immediately to the wall and paints it, so that presumably the can of paint cannot be stolen. This is outrageous; that the reins of management and of government should be so far lost. We are talking about a philosophy of anarchy. This seems to be well established in the Housing Department. It is unbelievable. The Principal Auditor is there in the Housing Department and he finds that there is a brand new set of computers, six new computers and a whole lot of stuff because they have decided, very wisely, to computerise the rent roll and the collection records. Excellent! But it occurs to him to ask, "What did this computer cost you?". "Well, we are not actually able to tell you." Weeks later, months later, it so happens that it has cost this much from here, so much is pending from over there. I ask the House to listen to this, this is priceless, "There is a recurring annual charge of £2,000 in respect of licence fee for the software". I mean, one would have to say, "Pull the other one, this cannot be so". What kind of shopping is going to be done? If a person is running the budget of his own home, he does not need to know anything about financial accounting or auditing to know that a home cannot even be run on these budgets and this way of doing things. An annual charge of £2,000 is simply not on. The Housing Department scores particularly badly in this report for the Government, which likes so much the hands-on management. The Hon Mr Pilcher has appointed himself in the past, General Manager of the Dockyard. The Minister for Health is in effect the General Manager of the Hospital, and so on. So we have to lay some blame on the Minister for this shambles in the Housing Department. He is a good man, he is big hearted, hard

worker, but a bull got into a china shop and worked very hard and people would have wished that he had not worked so hard. Before leaving the Housing Department, the business here of going to buy a can of paint to paint a wall from the value for money point of view, the Principal Auditor says, "This is not satisfactory because bulk purchases are so much cheaper than going to buy a can at a time at the shop". In the light of all this, a value for money audit was done by Price Waterhouse in the Housing Department. Very wise! This audit revealed inadequacies in control of labour costs. Surprise! Surprise! Inadequacies in time keeping; inadequacies in supervision of labour, inadequacies of job costing. Mr Speaker, the Government have been dealing very harshly with GBC and if it dealt with the Housing Department as harshly as it has dealt with GBC, in this value for money area, the Minister would have been having a very miserable time all this last few years. The recommendations of the private audit by Price Waterhouse on behalf of the Principal Auditor has made several recommendations which the Principal Auditor understands, the Government are going to put into effect and I look forward with great interest to next year's Principal Auditor's report to see these new systems taking effect, so that the position will improve and not continue to deteriorate.

So we move on then from the Housing Department to the Income Tax Department and the arrears of revenue in January 1993 is over £13million. Pay as you earn; employers are simply not paying it in according to the law. They are seeing this as money that they can pay into a sort of business benevolent fund from which they can help themselves to free loans at will to subsidise and to help ease their cash flow problems and so on. And it seems to me totally immoral. I think this is an odious practice and I am sure the Government agrees because this money does not belong, by any manner of means, to those companies. This money belongs either to the man who earned that money or to the Government to whom the tax is owed. So from the moral point of view, it would be far preferable for PAYE to be stopped and instead of paying my tax direct to the Government, I pay it into the bank and I keep it there for two, three or four years and then I keep the interest for myself and then eventually if they hassle me enough pay them or if not I will just keep it for myself. So, for a socialist government to allow this practice to prosper seems to me a very questionable matter. Incidentally, a very interesting comment here from the Principal Auditor is, that in February 1993, the total amount due on PAYE from public sector companies was £350,000. So the Government's own companies are at it too, instead of setting an example for the others to follow. So it spreads and this is something that the Government must urgently put right. But at the very least their own companies should act according to the law and pay up to the Government coffers. The enforcement of tax collections through the Attorney-General's chambers is not working satisfactorily because the chambers are insufficiently

resourced, so we cannot take these people to court, either to make them pay up, it seems, in anything like near enough numbers because of this huge backlog so obviously more resources must be made available so that this job can be done before the problem becomes simply insurmountable. If it can be solved now it should be solved as quickly as possible. The longer it is left, the more difficult it will become, if not impossible. In last year's Principal Auditor's report, he says "That unrealistic declarations of income tax from the self employed are being accepted." He says that since the investigatory capacity was removed in 1990, they are not able to follow it up. This is a problem, of course, which ends up in that very often the self-employed are the people in our community who are better off and therefore the burden of income tax falls more heavily on the less favoured than on the more favoured. I know that the Chief Minister has given this matter his attention because some years back there was a famous speech of his, very much criticised, that ruffled a lot of feathers, where he made very injudicious remarks and improper remarks, not entirely unrelated to the Yacht Club and the soup kitchen, and one must say what became of it. Was that socialist rhetoric of the first month of socialist government, that now as the GSLP has been becoming increasingly Thatcherite in its outlook, it has become less and less important. The Government has lost its taste for doing something about this problem which discriminates against the lower paid, who have to pay up every single penny they owe in tax whereas others are getting away with unrealistic declarations just like that.

Let us move on then to Judicial: Magistrates' and Coroners' Courts. It seems that even here, revenue due from fines is escalating. There is a sum of £70,000 which has increased by £26,000 over the previous year and it seems, Mr Speaker, that if there is an area of the Government's accounts which shows little respect for law, it must be this account, because if the court imposes a fine and simply the person does not pay up his fine, the mechanisms for following up and enforcing are extremely slow and inefficient. By the time it passes from the hands of one to another, it takes six months before the person who did not pay his fine is brought to book. It is a process that is very time consuming and presumably after six months, these may be people who have gone elsewhere and it would be impossible to recoup this money. So out of respect for the law, it would seem that something has to be done and indeed it says here that a review of the present system was called for by the Administrative Secretary and the Financial and Development Secretary and so on and certainly it seems that out of sheer desire for a lawful community, this should be put right as soon as possible. If somebody is fined, there should be a very quick and efficient method of making him pay up because otherwise this is contempt for the law, quite apart from the fact that arrears mount up.

So let us move on then to the Port Department. Revenue also mounting up £127,000 in 1992. The Merchant Shipping Ordinance fees arrears went from £74,000 to the following year £119,000. Escalation as I say, in all departments. The Principal Auditor last year commented on the poor state of the Port Department stores, on the lines of Housing Department and the position remains so, but here we are told that a consultancy exercise currently being undertaken on Government stores generally. This is the reason why nothing has been done. I think that it is a very good idea that something should be done, but not left to the consultancy study. This should be done quickly and put into effect quickly before the situation becomes as bad everywhere as has been described in the Housing Department.

In the Post Office, stamps withdrawn from circulation it says in 1985, have still not been destroyed. Presumably, they are being kept in reserve there until somebody does the favour to the Government of stealing them and disposing of them at some profit. The cash tills, we are told, are not balanced on a daily basis, so that it becomes very difficult to account for cash discrepancies. If the till is not squared daily, obviously it becomes increasingly difficult to find out where and why a discrepancy was caused.

We move on to Public Works, which obviously has stores of big value; stores which may value £0.5million and of course there, once again, the stores are in an impenetrable condition from the point of view of auditing. Stock verification becomes practically impossible; the value of stock in hand becomes, it says, an arithmetical exercise of no value from the point of view of auditing. New issues may not be followed up with a voucher. Vouchers may be lost sight of. Casual system vouchers may not be filled in. No signature; no name; no date. Sometimes they cannot even find vouchers to issue a voucher. So the physical voucher to issue is not available and therefore, obviously, it becomes impossible to keep track of assets that belongs to the taxpayer.

We move on then to the Licensing Department and, again, there are reconciliations not being made; security not being properly carried out; in unpaid licenses follow up action exceedingly laxed.

In the section on rates, there is an interesting set of statistics because in the period of the GSLP Government, the percentage of billing has increased by nearly 30 per cent, which is unpaid and last year £3.5million of arrears of rates have now gone up to £4.8million this year. These figures are curious because in all the years of GSLP government, the rates arrears figure has very roughly doubled, year by year. So we start with £330,000, going up to £644,000, £1million to £2.1million, so in this last four years, we can roughly say, that the rates arrears have gone, doubling year by year. The penalty levied on late payment of rates, it says, may or may not help to recover rates but what is certain is that once the penalty is levied,

there is very little chance of actually recovering that money.

Electricity arrears, it says, stood at £2.5million in 1992. "It is evident that the worsening arrears position continues virtually unchecked, so that at the time of writing this report, it has gone up to £3.03million." This reminds me that a couple of months back, in the surgery of the GSD for constituents who want to bring some complaint, a man came to me with evidence, that seemed to be believable, with regard to hotels. Hotels were simply not paying their electricity charges and their this and their that and - to some extent there had been arrears for many years - once again, it is the mentality which discriminates against the one hotel that does pay up. If the rest do not, this is unfair to the one that does. If I do not pay my rent and everybody else pay their rent eventually they are going to end up paying my rent for me. From my trade union days in the hospital, management started to complain about the rate of absenteeism and certainly, I always took the view and persuaded everybody else to the view that abuse of uncertificated sick leave militated against the people who turned up for duty and did not abuse the system. If half the staff does not turn up, for example, at the hospital on night duty, the ones that are there, are going to have to do the work for the ones that do not turn up. This system whereby, whoever does not feel like paying up is allowed to get away with it, discriminates against the people who do their civic duty and pay up as per the law. The man in the street must have an interest in seeing that everybody pays up because otherwise the ones that pay up subsidise the ones that do not pay up. I found it interesting that there is a little remark here where it says, "Cut-off action of domestic consumers is a matter which has been in abeyance for quite some time now." I remember a constituent again coming to the surgery. I must remember wrongly, I was thinking that her electricity had been cut off, but it maybe that she was just threatened to have it cut off; with a huge bill which she had not been paying for ages and it seems to me that the small domestic consumers, who are building up by not paying for ages huge bills. There may be very good social reasons why they are not paying up. It seems to me that something must be done early before large debts are built up because they have to be protected. People, who for a social reason may not be paying up, may not understand the significance of what they are doing; must be protected from finding themselves in a situation of being heavily burdened with debt, maybe for the rest of their lifes and being totally unable to pay. Through the social workers, one would have thought that early on, when a problem is identified, this should be referred to a social worker who should get round to see whether this is is a case of somebody who needs the law set on them or somebody who needs help. The problem must be identified whilst it is still soluble by helping that person to organise his finances or to be subsidised by the social services whilst the problem is small and not as this lady who came

to me in the surgery with a huge bill that is going to spoil her life for a long time and hang over her head. That ends the comments from the Principal Auditor's report, so that in the final summary, Mr Speaker, I would like to call upon the Government at two levels. One is on the level of practical steps and the other one at the philosophical and attitudinal baggage which they carry. From the practical point of view, it may be that the Government agrees with everything that I ask them for and that I am preaching to the converted. I would ask the Government to take the following practical steps. First of all, to encourage value for money auditing; to take urgent and drastic actions to turn around the problem of escalating arrears before it does serious harm to Gibraltar's economy. To make sure that order is imposed on the administration of Government's stores urgently. To put a stop to the odious practice of companies keeping PAYE deductions indefinitely as a fund for their own use and to ensure effective and realistic evaluation of income tax assessments for the self-employed, so that the tax burden is fairly distributed in our community and to re-establish as soon as possible enforcement staff where necessary. I call upon the Government, Mr Speaker, to reconsider the implications of their own philosophy to elasticity of the law in making public the secret accounts of the private companies that Government owns and to take a more conventional and favourable view of the safeguards provided by professional and bureaucratic regulations related to accounting and financing. Mr Speaker, I commend the motion to the House.

Question proposed in the terms of the Hon P Cumming's motion.

HON CHIEF MINISTER:

Can I just say if any member of the Opposition wishes to speak, I will be the only one answering for the Government.

Mr Speaker, I will be addressing myself principally to the motion and not to the speech because it is a motion that we have before the House. The Government has taken a policy decision as to whether it can support the motion and it cannot. We cannot support the nonsense that the hon Member has been saying but we do not have to support the nonsense in order to support the motion. The fact that he still does not know what the purposes have been of recapitalising property, notwithstanding the fact that I have explained it for God knows how many times in this House. He still does not know it because he still raised the issue again today. It is not something that I am going to address. If he thinks that there is something improper about it he can ask his daughter Catherine who

will be able to tell him that Her Majesty's Government is currently telling local authorities to follow the example that we started in 1988 on the capitalisation of public property. Maybe if he asks his daughter Catherine she will confirm that. The hon Member has said that it was Mrs Thatcher who introduced value for money audit and has asked us to follow her example. That is what he has just done. He said, in the course of his speech that Mrs Thatcher said "Do a value for money audit in the health service" and then he finished saying we should follow that example. That does not mean that everything Mrs Thatcher did was right. It does not mean that everything she did was wrong. It is irrelevant whether it was her idea or somebody else's idea. We look at the value of the idea not at the name of the person that thought it up and if the Hon Mr Cumming comes up with positive suggestions we will not be put off by the fact that it is Cummingite in looking at the possibility of implementing it any more than we would if it was Thatcherite. The answer is of course that just like Mrs Thatcher, who is a politician, not the Principal Auditor of the British Government, took a policy decision on the value for audit, we in the Government took a policy decision on the value for audit. Obviously, the value for audit was not that we were being audited, it was the departments that were being audited. What the Principal Auditor is saying is that it is not his function laid down in the Constitution of Gibraltar or in the Public Finance (Control and Audit) Ordinance to carry out value for money audits. It was something he suggested to us and we as a Government, politically, could have said we did not want it but we said we would try it out. We tried it out in the Housing Department where the Principal Auditor contracted Price Waterhouse who had been previously doing value for money audits in the United Kingdom. It was as a result of the findings of that value for money audit that a number of changes were introduced in working practices which resulted in major industrial unrest. It is not to be unexpected and however hands-on we may be, I can assure the hon Member that my Minister does not go round putting up scaffolding or rushing round with tins of paint. That is not included in the responsibilities that he has as a Minister and therefore the hon Member is wrong if he thinks that the constitutional role of the Principal Auditor is to keep a check on the power of the Government if by the Government he means the eight of us elected by the people of Gibraltar. If that is what he thinks the constitutional role is then he is wrong. That is not the constitutional role. How could it be? The role of the Principal Auditor is to make sure that things happen as we eight have decided. Not the opposite. If we bring to this House a law that says tomorrow somebody has got to sign a piece of paper in triplicate, the Principal Auditor will go along when he does the audit

and say "Has this been done in triplicate?" and if it has not been done in triplicate he questions why not. Someone is not complying with what is laid down. The deposit account was not a political decision, the decision on the deposit account was taken by the Financial and Development Secretary at the time in the Education Department and in a number of other areas to pay people without it being shown in the accounts of the Government as income and expenditure. It happened with people in the College and therefore the hon Member has got totally the wrong end of the stick. The Employment Board was paying the College for running courses and the College was paying the lecturer and instead of the money being shown as revenue and expenditure of the Government, the money went into a deposit account and the lecturer was paid out of the deposit account because the work he was doing was not for the Education Department but for the Training Board. Had the Training Board paid the lecturer directly the Principal Auditor would have had nothing to say on it. I do not know how it has finally been sorted out technically but it was whether technically this should be done and it was happening in areas where, for example, a private developer was saying to the Road Section "I want a private road tarmaced" and the money instead of coming in as sale of Government services was going straight to pay the bonus for the people who were doing the tarmac on a weekend. These things, have been brought to light by the Principal Auditor, which is the useful role that he plays. Sometimes we get to know of a particular oddity somewhere in the system when we read the report. Even after six years in Government. We then take a policy decision and say "Well, look, what is the explanation for this, why is this happening?" And then we say to people, "This must be put right". So as far as we are concerned, we welcome the role of the Principal Auditor. We do not think the Principal Auditor is there to keep an eye on us, if that is what the hon Member thinks, we think the Principal Auditor is there to help us to make sure that the policies on which we have been elected are being carried out and obviously we agree entirely with the hon Member that keeping a worker's PAYE is an odious practice. He does not need to persuade us that something needs to be stopped. I have to say, he was actually reading from the page which shows that the only area where we have made any progress has been in the odious practice of keeping PAYE. If he looks on page 38 he will find that although arrears of tax are shown as having gone up from £10.7 million to £13.1 million, arrears of PAYE have gone down from £5.4 million to £4.1 million. So the non-PAYE has gone up by more than the total on the bottom of £2.5 million. We have actually succeeded in this one year for the first time in something like ten years in bringing some control over the odious practice. At least that

crumb of solace he could have given us, if he has read it. He has not deliberately decided to leave it out. From my point of view I can assure the hon Member that I wish it was zero instead of £4.1 million but it is certainly better that it should be £4.1 million instead of £5.4 million. I think it is particularly encouraging in a year where arrears in every other element of revenue got worse, the arrears of PAYE got better. Let me say that it was also the year that we contracted out the chasing of PAYE and it was also the year that we took a tougher action and put more companies into liquidation for the non-payment of PAYE, which the hon Member knows already because we have had a question about the increase in liquidations and the answer of the increase was supposed to be an indication of how badly we are running the economy of Gibraltar as more people are going bust. I know of no other way of ending the odious practice other than saying to people "Either you pay or I bust you". If the hon Member has some other formula we will certainly look at it. That is the only formula we know. We do not bust people lightly because at the end of the day it does not help anybody. We do not get the money. We got more people out of work, so we believe that it is better to make them accept that we are serious about putting them into liquidation if they do not pay but if they come back with a story saying "I am going through a bad patch, give me more time" then, generally, the time is given. There are persistent offenders where it is difficult to believe that however much time you give them they are going to do it because they are people who have had a record where they have entered one agreement and then not honoured it, then another agreement and they have not honoured, another agreement.....

If we had not as a matter of policy said if people are really going to believe it there must be some cases, the worst cases if we like, where we actually go down the route of saying "If you are not going to pay we are going to put the company into liquidation" because if we never do it to anybody then nobody ever takes us seriously. That is one of the things that has happened and has had an improvement but obviously the areas that were highlighted in the audited accounts and the areas where the hon Member has urged that we should take action are areas where there is not a matter of difference in policy. That is to say, we believe as the hon Member does that something needs to be done to address the question of realistic assessment of the self-employed. The Principal Auditor has been saying this year after year after year. I have already mentioned that we have got somebody coming out from UK to advise the Commissioner of Income Tax and the people in the Income Tax Department how an improvement in that area could be brought about. This person, initially, is being provided

by the United Kingdom Government under technical assistance. I have said we are prepared to finance his work once I start seeing that his work actually starts producing results. Otherwise we are going to be more out of pocket. We will have to see whether that is reflected in an improvement but it is not a matter where there is a political difference. I am assuming that the hon Member speaks on behalf of everybody and that everybody has got his enthusiasm for hounding down the self-employed, the odious practice of PAYE, and the other areas of arrears of revenue that require urgent and drastic action. I can assure him that I am as enthusiastic about the idea as he is.

All I propose to do, really, Mr Speaker, is to confirm that the Government will be supporting the motion but we will be amending the third pargraph of the motion to reflect, as far as we are concerned, what we understand the constitutional role of the Principal Auditor to be which we certainly appreciate and which as I have explained is to make sure that the resources of the Government; the resources of the people, are being used in the most efficient way to ensure that the policies that the Government have determined are being put into effect. My proposal is that we delete in the third paragraph of the hon Member's motion the words after "Principal Auditor" and we substitute "in ensuring that the most cost-effective use of public resources is made in implementing the policies of the Government and in meeting the expenditure approved by this House". I commend the amendment.

What I am saying is we are supporting the motion brought by the Hon Mr Cumming. I have not gone into detail in the substance of what he said but it seems to me that one area where either we are not in agreement or we are potentially dealing with a misunderstanding is in what is meant in paragraph 3 by the necessary check and balance to the power of the Government. I imagine that the hon Member, given the speech that he has made, is not saying that the Principal Auditor is exercising a control over the power of the Housing Manager but over the Housing Minister; that he is not having control over the power of the head of the Department of Education but over the Minister of Education. If that is the case then I am telling him that is not the role of the Principal Auditor and we cannot vote something that proclaims a constitutional role to the Principal Auditor which is not his role in the Constitution of Gibraltar. His role is in fact to do two things - one is to make sure that if we in this House vote money for one thing then the money is used in the head and in the sub-head for which it is voted or alternately that if it is being used for something else it has been used in accordance with the

statutory provision for virement which require the Financial and Development Secretary to authorise he virement from an excess in one subhead to a deficiency in another subhead and the Principal Auditor makes sure that those statutory rules are being complied with. In addition, as a recent development, it has not always been the case, he comments on whether, even if the thing is being done properly according to the rules, it is being done in the most efficient way. I think that is where the hon Member was saying that value for money audit is not a new thing, it has been going on for a very long time. I think it is true that it is now being considered a specialist field where there are prople who specialise in value for money audits and who, therefore, go into an auditing function not simply to check whether this receipt has been signed by the Controlling Officer in the presence of a witness, if that is what the rule says. Rather than looking at the receipt, the value for money auditor forgets about the receipt, he is less concerned about whether everything has been done down to the last full-stop and comma, and says "Is there any sense in doing any of this, does it make sense to be doing this?" and then they come up with recomendations which require policy decisions. The value for money itself was a policy decision taken on the initiative of the Principal Auditor. The Principal Auditor recommended to the Government, not in the report, over and above his statutory duties, that we should try out this value for money audit which was increasingly the way auditing was going in the United Kingdom. We said we would try it out. We tried it out for the first time in the Housing Department. We have certainly discovered a few things we did not know and we certainly created a few headaches we did not expect but nevertheless we hope that the result will be that the people of Gibraltar will get better value than before the value for money audit was done. That is the whole purpose of the value for money audit. As far as we are concerned, this is not a question of the Principal Auditor being there to check the power of the Government. If the Government decides, as a matter of policy, that rather than face an irate workforce it will not implement the recommendations of the value for money audit, that is a political decision for which the Government has to answer but the Principal Auditor cannot say to the Government "You have to do it". I think this is why what I am saying to the hon Member is that the amendment I am proposing is an amendment which, as far as we are concerned, does not detract from his motion because we welcome the report. We wish that it should be acted upon where necessary. We appreciate the important contribution that the Principal Auditor makes in making the public administration more efficient and making sure that money is being spent where this House decides it should be spent, which may mean that they vote against

and we vote in favour but at the end of the day it is when the majority in the House has decided it should be spent on. Therefore, what my amendment seeks to do to the motion is to reflect what we consider to be the role and a role that we support.

Question proposed in the terms of the amendment moved by the Hon the Chief Minister

HON P R CARUANA:

Mr Speaker, I agree with the comments made by the Chief Minister, on reflection. I do not think that the constitutional role of the Principal Auditor is to check and balance to the powers of the Government. I wish there were others but I accept this is not intended to be one of them. The reason why I am going to produce and suggest an amendment to the amendment because it seems to me that what this House is now doing, perhaps for the first time ever, is expressing a view as to what the role of the Principal Auditor is and I think we ought to try and get it as accurately as possible since it will have some authoritative value beyond the scope intended when this motion was first put down. The Chief Minister's amendment to which I am addressing myself to the exclusion of all else, says that he appreciates the constiutional role of the Principal Auditor in ensuring that the most cost-effective use of public resources is made in implementing the policies of the Government and in meeting the expenditure approved by this House. I do not think I am being unduly critical of the verbiage there when I comment that the suggestion is that his role is in ensuring that the most cost-effective use is made of public resources in two things. Firstly, in implementing the policies of the Government and in meeting the expenditure approved by this House, so that the relevance of the meeting the expenditure approved by this House is to ensure that it is cost-effective. I do not think that is what the Chief Minister means and it is certainly not what I would agree with. I think the Principal Auditor has got two roles, one of them is to ensure the most cost-effective use of public resources. Two, is to ensure that public monies are spent only for the purposes approved by this House. In other words, that for monies spent by a Government department to be legally spent it has got to be under one of the votes that we approve in the budget and that has nothing to do with cost-effectiveness. He has got a cost-effective function and he has got a function to see that the controlling officers do not spend money except in manners which is covered by a vote of the budget, subject to the powers of the Financial and Development Secretary on reallocations. To make that clear I would like the Chief Minister's amendment to read as follows: "in ensuring

that the most cost-effective use of public resources is made in implementing the policies of the Government and in ensuring that public monies are spent only for purposes approved by this House". I am uncoupling the appropriation mechanism of the House point from the cost-effectiveness point because I think they are two separate points. If the Chief Minister can think of a better way of expressing the Appropriation Bill point that is the only point I am trying to make.

Question proposed in the terms of the amendment moved by the Hon P R Caruana.

HON CHIEF MINISTER:

I agree with the point that the Leader of the Opposition has made that they are two separate things and certainly it is not the intention of the original wording to say that it is only there to ensure the expenditure approved by the House being cost-effective in relation to the policies of the Government. The advice that he gives the Government as to where we are being cost-effective in our policies is independent of the fact that whether we are being cost-effective or not we still have to satisfy the Principal Auditor and this is what this report is. This is a report of the public accounts of Gibraltar and the comments on the public accounts of Gibraltar to which the original mover has been making reference are all to be found in heads of revenue and expenditure which are presented to the House in the budget. I accept, for the sake of clarity, the amendment the hon Member is putting to separate the first from the second element of my amendment but I would want to make sure that it was reflected as being related to the expenditure approved by this House in the Appropriation Ordinance which is what is approved by this House.

MR SPEAKER:

So you add after "House" "in an appropriation ordinance"? The amendment proposed by the hon the Chief Minister is as follows: Delete all words after "Principal Auditor" in paragraph 3 and substitute by the following: "in ensuring the most cost-effective use of public resources is made in implementing the policies of the Government and in ensuring that public monies are spent only for purposes approved by the House in an Appropriation Ordinance".

Question put on the amendment, as amended, moved by the Hon the Chief Minister. Agreed to.

HON P CUMMING:

Mr Speaker, I must make reference to the remark of the Chief Minister with reference to the 'crumb of solace' I think were the exact words. Regrettably the denial of the crumb of solace has been mutual. I think we have achieved something by being able to find something that is acceptable to both sides. On the question of PAYE deductions, returning arrears slowing down as regards PAYE is true.

The total income tax arrears has risen escalatingly like others but the PAYE has gone down and the Chief Minister has said "You could have given this crumb of solace" and he is right. I could have said it. I did not. On the other hand, in amending this motion a crumb of solace also could have been given from the Government. Let us water it down a bit to make it acceptable to the Government. Less checks the balance to the power of the Government, yes. It sounds as if I am saying if there is a dispute between the Principal Auditor and the Chief Minister, the Principal Auditor should win, no, I agree that is not so. For example, the deposit account in the Education Department, remained as the Government wanted it to, I think that is right. But it is also right that it should be regulated in such a way that it becomes leakproof. I do not think the Government objects to that account becoming leakproof. The purpose of referring to the handout of the university lectures entitled "The enduring principles of auditing"..... I do not know anything about the Macfarlane Report but I suppose that auditors would recognise it and ascribe some authority to it. I had talked about the importance of independence in the auditing function and it may be the constitutional role is not to confront the Chief Minister and win in an argument. That is not the mechanism through which I have seen and welcomed a democractic thing. It is more a question of availability of professionally processed information that the thinking is done for us as it were and we can draw the conclusions. I do not think the Principal Auditor should make any political statements either. What he has got to do is do the technical side for us so that we can draw political conclusions from it. It may be that sometimes there are uncomfortable conclusions for the Government but the Government has shown it is unwilling to welcome adverse remarks, not necessarily anything personal or whatever about them it is just an anomaly that is discovered and put right. We agree on that. There is no problem with that. The Chief Minister could have given a crumb of solace to this side as I gave it to his in advancing, as it were, this democratic element which, as the Chief Minister knows, we have complained about accountability and democracy and so on and this was an aspect of availability of processed information rather than imposition of the Principal Auditor's will. There is a little element of

misunderstanding here in this area, I believe. I will refer very briefly to the busting of companies to which the Chief Minister referred. Obviously, this is a sensitive issue. I cannot help remembering that years back, if my memory is right, when the frontier was shut a very important link to Morocco was the Mons Calpe. The AACR subsidised because it was very important and everytime I went on the Mons Calpe it was chock-a-block but the AACR was subsidising and they said they were doing this as a service to the community. When the IWBP Government came in, I think very early on, that subsidy was stopped and they did not go bust. They fended for themselves. It is a delicate matter because we cannot go round busting companies left, right and centre.

But on the other hand a philosophy of respect for the law in paying their Pay-as-You-Earn punctually will very soon spread if the Government does not take an easy view to this, that it is flexible, that it is elastic, that it is wrong, that they have got to pay up as the law requires for the benfit of all, that they must not rely on that as a benevolent fund for themselves. That is not on and a change in that philosophy will soon also filter out. That is my opinion. I think we have achieved something by being able to cobble a motion that is acceptable to all. Thank you, Mr Speaker.

Question put in the terms of the motion, as amended, proposed by the Hon P Cumming. Agreed to unanimously.

LT COL E M BRITTO:

Mr Speaker, I have the honour to propose a Motion standing in my name which reads: "This House:

1. takes notes of the Immigration Control Ordinance, (Variation to Schedule 1) Rules 1993, introducing the so-called '1st July law';

2. regrets that the laws of Gibraltar should discriminate against British subjects by leaving them with less rights in Gibraltar than the subjects of the other eleven member States of the European Community; and

3. considers that the making of important laws, especially those with possible political consequences for Gibraltar should be debated in the House of Assembly before being passed and not introduced by regulation since that undermines the purpose and constitutional role of the House."

Mr Speaker, few people reading yesterday's Gibraltar Chronicle and specifically the front page article and the

second paragraph of that article would have disagreed with the comments of the writer when he says, amongst other things, that relations between Gibraltar and Britain have reached a critical point. In fact, judging from comments and feedback that I heard yesterday, opinion in several quarters seem to be that relations were at a low ebb and maybe even at an all-time low and that in fact there had been a steady and progressive deterioration over the last few years. If this is so, Mr Speaker, then God help us because in that same issue of the Gibraltar Chronicle, the Chief Minister is reported as saying that in recent years the Government had been a model of behaviour in its relations with the British Government, that they had been carrying out and doing all the modifications to ordinances and laws requested by the British Government and that in fact he is quoted as saying that he is putting effectively the British Government on notice from now on he does not intend to play ball and intends to proceed on a much stronger path of presumably, confrontation and harder line. Similarly, he complains of lack of cooperation from the British Government in areas like the appointment of the Financial Services Commission, shipping registry, building societies, etc. But it is hardly to be wondered that relationships could have deteriorated when not only has the British Government seen the policies of the Gibraltar Government departing from the traditional democracies of Westminster, and adopting a line of adopting primary legislation by regulation without public debate in this House, of adopting a policy of lack of accountability and of deliberately not disclosing the full extent of Government's finances. Even more so in the context of the motion before this House where the implementation of the so-called "1st July law" has been done against the wishes or the advice of the British Government. Such actions, in the opinion of the Opposition can only serve to worsen our relationships with Great Britain. There is, of course, the question whether the whole of the law that we are talking about is indeed legal in an EC context and as such we have the report, again in that same issue of the Chronicle, attributed to the British Citizens' Association, that in a legal opinion given by a European Court judge, a Mr David Warren, the interpretation is that under Article 48 of the Treaty of Rome (Freedom of Movement) he considers that the 1st July law is indeed illegal in an EC context. There is no doubt that will be put to the test by others in other forums. Let us look more closely at the Government's aim in introducing this legislation and, as explained by the Government last summer the aim is simple and indeed laudible. Unemployment is on the increase in Gibraltar and the Government feel that by bringing in this measure they can, hopefully, bring unemployment for Gibraltarians under control and improve the situation. On the face of

it the Opposition would not quarrel with that aim, as expressed. We ourselves have said more than once that we support a policy of finding practical ways within the EC legislation to have priority of jobs for Gibraltarians. The Government may indeed say that this is exactly what the 1st July law sets out to do. But, Mr Speaker, it is not quite as simple as that. One cannot go about solving a major problem, like I recognise unemployment is, by dealing only one aspect in isolation of the repercussions and other aspects involved in the problem in other areas and of the consequential effects that such action of dealing with only one aspect of the problem can bring about. If the 1st July law were one that discriminated against all EC nationals and effectively gave priority to Gibraltarians, the Opposition would have had no difficulty in supporting it. Where the root of the objections of the Opposition lie is the fact that the law discriminates only against British Citizens and gives them less rights than other Community nationals. Let us look in more detail at what that discrimination entails and in a nutshell as from 1st July, Britih citizens have lost the automatic right to residence permits in Gibraltar and, similarly, a British citizen arriving in Gibraltar since that date now needs a work permit to work in Gibraltar. As I have already said, this is the root of our objection, that this discrimination applies only to British citizens and not to members of any of the other eleven Community States. It is ironic, Mr Speaker, that we, Gibraltar, should be discriminating against British citizens when Britain has been our traditional friend, our supporter in the long term over the years and indeed we are putting British citizens at the bottom end of the queue and lumping them with Moroccans and other non-EC nationals in Gibraltar and giving over and above them greater rights to Spaniards, amongst other Community citizens, where Spaniards have, traditionally been the source of most or a great proportion of Gibraltar's problems. In this context, I would appreciate a clear indication from the Government whether they still stand by the declarations made shortly after the implementation of the 1st July law that British citizens working in Gibraltar prior to 1st July would not be affected by this law because my information is that there are difficulties being experienced by people who were working in Gibraltar before 1st July and who are experiencing problems and continue to experience problems. I have a number of documented cases that have been given to me which I will not seek to detail in any amount of detail but I will summarise them as best as I can to give the House information on the sort of thing that appears to be happening.

We have a Mr A who has been in Gibraltar since March 1992 and who was employed prior to 1st July 1993. He lost his

job and is trying to find a new job, because of red tape etc within the Employment and Training Board, he lost the opportunity of finding a new job and subsequently he has been trying to get information from the Employment and Training Board but as far has not succeeded in being given information or being sent for interview for any further employment. Another case, Mr Speaker, a Mr B who has been living in Gibraltar for 21 years. He has a Gibraltarian wife and child. There has been a change of employment, and has been finding that he does not get offers or he is not sent by the Employment and Training Board to possible jobs that he can apply to. The consequence has been that Mr B has now been repatriated to his country of origin, Northern Ireland, and effectively has become separated from his Gibraltarian wife and his family because he has been unable to find employment. In the fields of education, Mr Speaker, we have a Mrs C who had been in Gibraltar prior to 1st July, whose son had been accepted in the Boys' Comprehensive School for the start of the 1992 September term, who returned to UK to sell her home and returned to Gibraltar after 1st July, after an interval of only two weeks and on returning she was then told that her son could no longer be accepted into the school to sit his final 'A' level exams. In the field of medicine, Mr Speaker, we have Mrs D and this is a much sadder case, I would think, who was refused confinement in St Bernard's Hospital two weeks before the due date of the arrival of the baby. The due date given by the hospital itself where she had been attending for treatment during her pregnancy. She had been in Gibraltar since 1990 and had been working since 1991 and she was refused her treatment in the final stages, I am told, because she had stopped working and she was living in Spain and had to transfer herself without the help of an interpreter to La Linea where she was attended in a Spanish hospital and despite having further difficulties with St Bernard's about her medical records not being released without a court order, she eventually had her baby happily delivered in Spain. I illustrate this as some of the sadder aspects of the effects of the law. I am also told that a number of people are being repatriated by the charitable organisations and I have details of one particular one by SSAFA, which is the Soldiers', Sailors', Airmen Families Association, who have repatriated at their own cost and who now say that they will be unable to repatriate anymore. I have a total of four single persons, one family, three couples and I am told that similar action is being taken in repatriating people who are finding themselves without jobs suddenly and without income and having problems by other charitable organisations.

We also bring up in the motion, Mr Speaker, the aspect of important laws being brought on to our statute books

without coming into this House for public debate. This is a particularly flagrant case of that abuse, Mr Speaker, in that in this particular law it seems to us was introduced in a deliberately surreptitious way, almost one suspects, to see whether it would slip through without anybody noticing. A law of such far reaching consequences, of such possible and probable political difficulties for Gibraltar was introduced as a legal notice in the Gazette under the Immigration Control Ordinance and enshrouded in legal jargon in the definitions of a Community national. This has very much the appearance of trying to slip through so that it would not come to the attention of people like members of the Opposition. We, of course, have criticised and censured and I will merely repeat it once more, the practice of doing this without bringing such legislation to this House and we shall continue to criticise and censure the Government whenever they do it as they have done on this occasion and whenever they do it in the future. I will also take exception at this stage, on the attacks that were made on the Opposition at the time that the introduction of this law was highlighted when the Opposition Members who brought the matter up were accused, almost, of being unpatriotic and of being treacherous by daring to publicise something like this and being accused of being the ones who were going to do Gibraltar harm by bringing this out into the open. We totally and utterly refute such accusations whether they come from the Government or whether they come from organisations linked to the Government that attempt in any way to stop members of the Opposition bringing matters up like this in public in the execution of our public duty as elected members of this House. Gibraltar is still a democracy and, hopefully, will continue to be a democracy for many years to come. This Opposition has a job to do and we will not shirk from bringing up matters like this whenever we feel that we have a public duty.

Talking about public opinion, Mr Speaker, we warned, at the time, of the detrimental effects that this legislation could have and would have on the man in the street in UK, on public opinion in UK, and on Members of Parliament. There have been numerous examples of articles in the press which I would also highlight at some stage. Members of the Opposition were being accused of promoting this. This is as far from the truth as one can get and I will only as, an example, quote from the latest issue of the Expat Investor with a headline which says "Fury on the Rock" and a subhead line of "British citizens in Gibraltar are fighting a new decree from local Government that restricts the free movement of workers from UK to the Rock; Peter Jolly reports on the growing anger. Blatant discrimination is how furious UK

workers in Gibraltar are describing amendments to the Immigration Control Ordinance" is how the article beings. Government Members may well laugh. This happens to be the latest that came to hand and I was not going to start researching on other articles but the periodical itself is immaterial. It is the problem that is being highlighted in UK and the consequent bad effects on people like Members of Parliament whom we seek, when Gibraltar needs the help, to influence in bringing the British Government to help us. Indeed, it is extraordinary that at the time when this legislation was introduced the SDGG were at that time and presumably still are, carrying out a letter-writing campaign lobbying support from British MP's. At the same time as they were doing that I think it was my hon friend the Leader of the Opposition who said at the time that we were shooting ourselves in the foot by introducing this law with the consequential bad publicity that it was bound to receive.

Mr Speaker, I stress once again, we cannot attempt to solve a problem by focussing on one small area of it and dealing with it in isolation of the overall domino effects and consequential effects that it can have in other areas. It is inadvisable, to put it mildly, to bring in legislation like this that discriminates against Britain, against the country that has been our only reliable and long-term friend irrespective of what the Chief Minister said earlier on and on whom we have to rely for protection in the long term. In this respect, Mr Speaker, I put it to the Government that this is a bad law, a bad law which, by implication, they admit themselves by their own actions that they have used only once according to the information given to us in Question Time at this meeting of the House. They have used only once since it was implemented and if it has been used only once presumably it is either not needed or there are other measures that have been found which can achieve the same effect without the need of the law. A law, Mr Speaker, that is almost universally unpopular in Gibraltar. A law which attracted, when the Opposition organised a petition earlier on this year, 10,863 signatures and I would say at this stage that this number would have been far greater if those who organised it and were collecting signatures had decided to carry on beyond the point where it was felt that enough was enough and that the point was being made sufficiently. Large sectors of Gibraltar were not covered in the door-to-door campaign and my guesstimate is that between 1,500 and 2,000 extra signatures would have been collected at the rate that they were being collected up to that stage if the door-to-door campaign had been continued.

In conclusion, Mr Speaker, I ask for the rather unlikely course of action judging from its record since 1988, from this Government not to consider it as losing face or to think that the Opposition is scoring points or winning points, but to seriously consider repealing this law now or in the near future rather than awaiting for a full year to prevent doing further damage to the image of Gibraltar in UK and in the EC, to prevent the possibility of others instituting court actions and the consequent bad publicity that that might entail and, as I say, in the interests of Gibraltar as a whole, to seriously consider repealing the law at this stage rather than allowing it to continue on our statute books and with that, Mr Speaker, I commend the motion to the House.

Question proposed in the terms of the motion moved by the Hon Lt Col E M Britto.

HON P R CARUANA:

Mr Speaker, very briefly, just to emphasise the points. The danger of this legislation is not only in the adverse effect it might have on a body of British parliamentarians, members of the Commons and members of the Lords who are not Gibraltar's friends. I know that there is a body of MP's in Britain who are basically on our side and whom upon the Chief Minister having taken the time to explain the exact details of this Bill will say "yes, you have to get on with protecting yourselves against unemployment, we understand....." but as not all 600 or whatever MP's and it is not the Lords and they will not all be so understanding, not of the measure itself, which I repeat is not objectionable if it were of universal application, it is in the element of the fact that in effect it applied only to United Kingdom citizens. Already, and I will not read from the Hansard again of the House of Lords because I did so at Question Time, so I will just refer to it by date. In the Hansard of the House of Lords of 18 October 1993 already questions were being asked of Baroness Chalker expressing surprise that British citizens should be discriminated against in this territory and Baroness Chalker said "That surely cannot be right, I'll look into it". Clearly, the reasons for this are not as universally known as perhaps the Chief Minister would like. Although I attach a great deal of importance to parliamentary opinion, ultimately it is not really the effect on parliamentary opinion that most concerns me because I think that the Chief Minister over a period of time might be able to persuade a sufficiently large number - although I do not think he will ever be able to persuade them all - that the element of anti-British discrimination is not actually anti-British. It is not that we have wanted to discriminate against the British. He may be able to explain to a

number of MP's, although not to all of them, that the singling out of the British only is a quirk of Community rules and what we have been able to do. He will certainly not be able to explain that message to British public opinion. Ultimately, my concern is that if this measure and other measures that Gibraltar may now have to take on its chin of what the Chief Minister has announced of this having to get tougher. So this plus that plus any other things plus any number of other items eventually will chip away at the sympathetic reception that Gibraltar in its predicament receives and enjoys in British public opinion, by which I mean the ordinary man in the street. Ultimately, the British politician, when the going gets tough, let us be clear, will presumably do whatever he thinks he can get away with politically and domestically. I always say, perhaps too cynically, that Gibraltar's very last line of defence is the weight of British public opinion. The day that British public opinion comes to view us as a hostile force and we use British public opinion it creates fertile grounds for politicians to consider the possibilities in the UK which they presently would not dare to consider for reasons that British public opinion would not tolerate it. I fear that as some of these individual complainants start writing to their MP's that this matter is going to get much more high profile treatment in the House of Commons and that MP's who presently perhaps do not even know about it will get to know about it, no one is going to stop to read small print, to read the explanations, what they are going to see is the bland result. I could not help noticing the Minister for Education grimacing when my hon Friend Lt Col Britto was saying that this was a universally unpoular law. I do not know if by that he was suggesting that he did not think it was universally unpopular. I am not going to repeat our experiences on the door-to-door collection but I think the Minister should not delude himself that the persistent and incessant contributions of a handful of professional letter-writers to the letter-writing column of the Gibraltar Chronicle does not represent public opinion. I think that public opinion on this issue is much more actively reflected by the petition that we raised than by the three or four people who persist in linking this law to Gibraltar's unemployment problem as if we did not. We have never accused the Government of doing this capricously. We have never accused the Government of doing this for some ulterior anti-British motive. We have always recognised and linked that the Government have done this in an attempt to grapple with the problem of unemployment - an endeavour in which we support them. The difference between us is that we think that there could be a very high political price to pay at some unknown time in the future when we may need to start calling in markers. It is ironical that the Chief

Minister said recently, I do not remember if it was the cocktail party he gave at the Garrison Library for the Minister of State last week, or perhaps it was on televisiion, where he said that one of the things that we will now start doing is raising our profile with our friends in the British Parliament and with our friends in Britain to try to embarrass the British Government. I really do not believe that this measure is going to assist him an awful lot in that measure. That is the concern, we know that the Government Members are not going to support this motion. We know that they do not share our concerns in relation to the possible effect of this law. Therefore, we would settle for the hope that they will remove this law from the statute book at the very earliest possible opportunity. Having said that we will review it in a year they must not regard it as evidence or as a matter which goes to their virility if they could possibly come to the conclusion in less than a year that the law had served its purpose. I do not think that they ought to wait for a year just because they told me in August, "And we are not looking at this for a year". I think that given the number of cases that are arising, given other mechanisms that might in practice be in operation or found, the sooner this law, for its nuisance value, for its potential mischief value, for its potential bad PR value, whether justified or unjustified it ought to be removed from the statute book as soon as possible and we urge the Government to do that. Just to endorse and finally to enorse the last point of the Hon Col Britto that this law really was introduced in a way which, given its impact, was quite unacceptable. It all turned the 1st July law and its consequences are in effect caused by one word in the Bill. It is the use of "other member States" and it is that word "other" tucked in to a part of the Bill which seems pretty innocuous has this enormous effect as this discrimination which..... I think that a lesser desire to try and creep it through in the hope that the Opposition might not notice it, would have required this to be done a little bit more openly and certainly we would have expected something that was going to have this effect in terms of our potential relations with Britain to have been brought to the House, for public explanations to be given as to the reasons. The Members of this House could have expressed certain views and then Hansard would show exactly why this has been done and the Parliament of Gibraltar would have done it as a parliament and it is to be regretted that on a matter of this importance this House was not brought into operation.

HON F VASQUEZ:

If I may just intervene very shortly in support of the sentiments expressed by my hon Colleagues just to point out that in fact the hon Leader of the Opposition was mistaken in one crucial aspect in his address when he is referring to the small word in the Bill. Would that it was a Bill. It is a regulation passed under a legal notice and this only serves to underline the substance of his submission. Again to add further weight to what my hon Colleagues have said, I just wish to add this one point. The fact is that the effect of the Immigration Control Ordinance amendments and the effect of the 1st July law which must not be overlooked is that British nationals are the only EC nationals that are not allowed to come and work in Gibraltar automatically and conversely the other side of the coin, it is that Gibraltar is the only territory in the EC to which British nationals are not allowed to go and work and whilst appreciating all the reasons that the Government are going to give to the House in support of the measure, one must not overlook the impact that that one fact has on the provisions. I know that the Government are going to compare Gibraltar in relation to the Falklands and with the position of a number of other small territories in a similar situation to ours. The fact is that none of those small territories are part of the European Community and we have that perceptional problem that we have to get across that here we are seeking the political support of Britain whilst telling British nationals that this is the only spot in the EC to which they simply are not allowed to come and work and also telling everyone here in Gibraltar that whereas all the other nationalities of the EC are free to come and live and work in Gibraltar, British nationals are not allowed to. That, in view of the Opposition, is an insurmountable perceptional problem in relation to this Bill. For that reason alone Government should think very carefully before maintaining this enactment: the 1st July law. That is all I wish to say.

HON CHIEF MINISTER:

Mr Speaker, the mover of the motion said that the response they have had to this piece of protective legislation was one which had led to people accusing them of being unpatriotic as if wanting to silence them and that he hoped that democracy would last for a very long time in Gibraltar and that people would be able to say what they feel. Of course, people are entitled to say what they feel. People are entitled to say that this is something which involves us telling UK nationals that they are not welcome and other people are entitled to say

that that is being unpatriotic and shooting us in the foot. Both are permissible under democracy and therefore the fact..... (Interruption) It would be totally wrong to go round saying to people "You must not criticise Col Britto for the fact that he is supporting the expatriates which in the main live outside Gibraltar and in the main do not particularly like Gibraltarians and in the main reflect this in the Chronicle. You must not do that." I hope that democracy will last long enough in Gibraltar to enable people to continue to criticise the Hon Col Britto when they feel that he ought to be criticised. I think that the members of the Opposition have been partly responsible for encouraging these people to form themselves into an association and to make all sorts of demands which the hon Member ought to know better. How can he come to this House and say "We should have done this by legislation, because if we had done it by legislation we would have been able to discuss all the implications". We did not do it by legislation. We introduced a rule which allows work permits to be required from people after 1st July and then he says he has got all these cases which he is going to refer to by the letters of the alphabet. Mr A and Mr B and Mrs C and he starts quoting cases which manifestly have nothing to do with the rule introduced on 1st July. Nothing at all to do with it. There is nothing at all in the requirement of work permits that said "You cannot have a baby if you are pregnant". There is nothing at all in the requirement of a work permit that says "You cannot send you child to be educated." He can go to school whether one is working or one is unemployed because the hon Member surely must be aware of the provisions of the Education Ordinance. The Education Ordinance does not say people who work in Gibraltar are entitled to send their childen to school. It says people who live in Gibraltar and it said that before 1st July 1993 and since 1984 and it was inroduced by the AACR not by my administration, supported by the Hon Col Britto. They introduced it, with our support let me say. We supported that from the Opposition but it was their initiative before the opening of the frontier and before the signing of the Brussels Agreement, there was no reference specificaly to the need to live in Gibraltar. It did not matter. One could not live anywhere else; the frontier was closed. The AACR suddenly realised the danger of having to give free education in Gibraltar to unlimited numbers of Community nationals, which would include those who worked and those who did not work. It would include those who could prefabricate spurious jobs, - not too difficult - give themselves self-employed titles, - not too difficult - and if we did it for UK nationals whom might otherwise have been paying for a UK education because they did not like the free Spanish education to which they were entitled and continue to be entitled, it

might even be an appealing thing for Spanish nationals. If we are doing it for Spanish nationals and UK nationals who may have contributed very little to Gibraltar, what right have we got to say to Moroccan nationals that they should not bring all their children over to be educated here? The AACR, conscious of that danger, brought legislation to this House and we, as a responsible Opposition, conscious of that danger, gave them our full backing. That is the complaint the hon Member has brought to this House today. Nothing to do with the 1st July rule. Nobody has been told in any school in Gibraltar "You cannot have your child in Gibraltar because you have arrived in Gibraltar after 1st July" and I can tell the hon Member that the same cases that he got, A, B, C, D, have already been put to Jeremy Greenstock, to the Deputy Governor, to Ernesto Montado and they have all been answered. He does not need to go through the alphabet, I know the names. I can tell the hon Member that when the representatives of the expatriates went along they made it very clear that as far as they were concerned now that they had got their teeth into this they were not letting go. What we are really talking about is a group of people who live in La Linea. The secretary of the organisation lives in La Linea and she feels that if she has been running a travel agency in Gibraltar for a number of years and she now lives in La Linea because it is cheaper why should she be entitled to everything in Gibraltar? Because under Community law she is not entitled to it in Gibraltar, she is entitled to it in Spain. We have had a situation where somebody that had difficulty in getting a job, the one that lost the job in 1990, Mr C was here before July 1993 and he is a frontier worker and because he is a frontier worker he is not entitled to register as unemployed with the Employment and Training Board. We have got 1000 UK nationals living in La Linea and those 1000 UK nationals living in La Linea before 1st July and after 1st July and irrespective of the law of the 1st July, if we repeal it tomorrow, are not entitled if they become unemployed to be treated as if they lived in Gibraltar. Obviouly there is a danger that people will use addresses. We have found this. We have found that there was a particular building in Prince Edward's Road where we almost thought we would need to send the structural engineer to make sure it could take as many people as they had registered there. When people become difficult it may well be because somebody turned up with an address where already there are levels of density of population in that particular building which makes somebody suspicious and they said "We will better check whether he is really there" and then we go there, we talk to the neighbours, we find out that they do not know this guy from Adam and that he is living in La Linea. I can say that these individuals have gone to see the Deputy

Governor with their complaint and the Deputy Governor has pointed out to them that "This is not Giraltar discriminating against you, you are supposed to get your unemployment benefit in Spain under Community law." They say "Ah, yes, but you know what Spain is like." Alright we know what Spain is like but it happens to be one of the few things where we are actually entitled to benefit from Community law and because Spain is like what everybody knows what it is like it does not mean that we are going to have to pick up the bill. In the majority of cases this is not the case and we recognise that UK nationals may have difficulties with the language, may have difficulties with the medical services, may have difficulties with education, may have difficulties with their rights to register as unemployed and to get unemployment benefit in Spain for a year and a half, because they can only get it here for thirteen weeks the same as all of us. The fact that we recognise those problems does not mean that we are going to pick up the responsibility and people are repatriated because they are distressed British nationals, not since 1st July. They were distressed British nationals before 1st July and certainly we cannot assume the responsibility for everybody that chooses to land on our doorstep. I wish we could. I wish we were so prosperous that we could say that everybody could come here. We did not make any attempt to take this action until we had exhausted every other avenue. This is known publicly. I have explaind it publicly. Opposition Members choose presumably deliberately to ignore this or is it an accident? If the hon Member said, in moving his motion, that we acted against the advice of the United Kingdom, is he saying that he believes the UK expatriates and he does not believe me? Because I have told him that the advice of the United Kingdom was that this could be done. The hon Member said we had done it against the advice of the UK. No, we did not do it against the advice. If the United Kingdom had said "My advice is that you must not do this" then we would have had a problem. The advice of the United Kingdom was that it was a matter for us and I will go again through the history of this so that hon Members maybe will finally get to understand that this is not us going out of our way to upset British public opinion or to upset the British Government. This is us finally getting cheesed-off. That is what is happening and if the hon Member is saying that if the British Government is dissatisfied about our unparliamentary practices I have already explained on innumerable occasions that passing everything to do with Community law by regulation out of which we are being left out, apparently because as I have explained Article 22A of the 1972 Act does not allow them to apply the regulation, this is something the UK do consistently. In any case, if we chose, as a matter of political decision, to do it and they chose to

do something else, who are they to get upset with us? The only people who have got the right to get upset with us are the people that the Opposition can convince in a general election to vote against us. Nobody in London has got the right to tell us here what we do by primary legislation and what we do by subsidiary legislation. The hon Member can bring a motion here and I will say to him "You may consider that the making of this law should have been brought to the House, and I consider otherwise, and I have got the majority." But it would be colonialistic in the extreme for me to say "I do not agree with you but I better do it in case they get upset in London." There is no risk of that, let me assure the hon Member; no risk of that happening.

Mr Speaker, I propose to move a lengthy amendment to the motion which accurately reflects the events and which ends on a note which puts the onus of responsibility where it lies and which I hope, therefore, Opposition Members will support because had the British Government honoured its responsibilities in this area, instead of failing to honour it like they have failed to honour it in a number of other areas, the measure would have been unnecessary. Therefore, we cannot accept that the Opposition say to us their only complaint is that this applies to UK nationals and not to other EC nationals and they do not go on to say that it does not apply to other EC nationals because the British Government has failed to take action to get that to happen because they know that the British Government have failed to take action and they know that I have said so. Mr Speaker, the amendment to the motion that I am proposing is to delete the second and the third paragraph of the hon Member's motion and to replace those two paragraphs by eight new ones.

I therefore propose that the motion be amended by deleting all the words after "the 1st July law" which are paragraphs two and three and substituting the following:

"2. takes note that in 1984 the matter was raised with the EEC Commission to seek derogation from the free movement of workers in view of the constraints of the size of the Gibraltar labour market,

3. takes note that the purpose of the free movement of workers in the EC is not to disrupt the labour market of a territory or put its financial stability at risk,

4. takes note that the UK has responsibility for the external affairs of Gibraltar under Article 227(4) of the Treaty and for the territory's financial stability,

5. takes note that since August 1992 the Government of Gibraltar has been making representations to Her

Majesty's Government pointing out the increased competition for jobs in the declining labour market principally by the influx of newcomers and the ending of the transition for Spain and Portugal,

6. takes note that the advice of Her Majesty's Government was that under Community law restrictions on the free movement of new workers was only possible in the case of UK nationals seeking employment in Gibraltar,

7. takes note that the Government of Gibraltar accepted the political responsibility" and we still do "for introducing restrictions on the free movement of workers in the case of UK nationals arriving after 1st July,

8. takes note that these restrictions are for a trial period of up to one year, and are designed to protect UK nationals already in Gibraltar prior to 1st July as much as other local residents," a point raised by the Hon and Gallant Col Britto.

"9. shares the concern of the Government of Gibraltar in wanting to protect Gibraltarians and other long-term residents from competition for limited job opportunities from newly arrived outsiders.

10. calls on Her Majesty's Government to pursue the matter with the EC or to provide alternative solutions to deal with the disruption of the local labour market created by increased competition for jobs brought about by the uncontrolled arrival of new job-seekers."

Mr Speaker, I can say that I can speak with some authority on this subject because the matter was raised in 1983 with Baroness Young during the AACR term of office. In 1984, as Leader of the Opposition, I pointed out to Sir David Hannay that we were already attracting new UK workers living in La Linea and that whereas with a closed frontier the size of Gibraltar put a limit to how many people could arrive, with an open frontier we faced a new situation. When we made the case, the British Government's position was that the Community would not be willing to give us a derogation but that the seven-year transition period protected us. As a result of representations made to the Commission there was a response in 1984 by Mr Ivor Richards, on behalf of the Commission, transmitted to us here by the Foreign and Commonwealth Office, which said that although the Commission had rejected our arguments they were prepared to look at the situation of Gibraltar if a problem arose when it arose, and that a Community solution would be found and that they felt that the transition period protected us for seven years and that we could raise it at the end of the transition period. In August 1992, I

wrote to the British Government making reference to the undertaking we had had in 1984 saying "The transition period has now ended, we have had six months of no controls and we are finding a major problem and there is clear evidence now of increasing unemployment amongst residents and an increasing proportion of frontier workers which by the end of 1992 had reached, Mr Speaker, one third of the private sector. I put all these statistics to London and the response from London was the one that I had given "We do not feel that a strong enough case to take to the EC". Let me say, that we were also told at the time - obviously their memory is not as good as mine - that the Accession Treaty for Spain and Portugal had attached a joint declaration on the free movement of workers of which I have a copy here for the information of Opposition Members and that we would be able to make use of the joint declaration if we had a problem at the end of the transition period. We have got this in writing: black upon white. The joint declaration on the free movement of workers said "The enlargement of the Community could give rise to certain difficulties for the social situation in one or more Member States, as regards the application of the provisions relating to the free movement of workers. The Member States declare that they reserve the right, should difficulties of that nature arise, to bring the matter before the institutions of the Community in order to obtain a solution to this problem in accordance with the Treaties established in the Community and the provisions adopted in application thereof." Here we have a situation where, in 1984, we get told by the UK "Do not worry. You are being unnecessarily cautious, if and when the time comes we will look after you" and we all accepted that. In 1992 we said to them that we were worried, and what we were worried about. Worries that I, personally, put to them 10 years ago are the same ones that I am expressing today in this House. This is not something I invented on 1st July 1993. I am on record saying "This can happen to us and what guarantees have you got to protect us if it happens?" The answer was "You do not need to worry because the Commission is aware of this, we made the necessary representations, you must trust the British Government, they know best and there is this joint declaration which is not time limited. Even after the seven-year transition period this declaration will allow the UK to protect Gibraltar." Mr Speaker, if in July 1992, we had representations from the unemployed, if the unemployed write to His Excellency the Governor in August 1992 and he replies to them "I am very sympathetic but I am sorry there is nothing I can do, or the British Government can do because uemployment is a defined domestic matter." This is how it starts and I get given a copy of that letter and I wrote back and said "I accept my responsibility. It is a defined domestic matter but I

am constrained by what I can do in a defined domestic matter because Community obligations override what I can do and you are responsible under Community obligations for my external affairs and you are committed to raise the matter with your Community partners if I have got a problem." I wait a year for them to do something about it. A year when they fail to honour what was promised to us in 1984 to stop us making problems prior to Spanish entry because the problem in 1984 was that it was the run-up to the negotiations that the Brussels Agreement was round the corner and that the last thing the British Government wanted was Gibraltar saying "We must not allow Spain to come in unless we have got a guarantee that we will protect the Gibraltar labour market." We asked for a quota to be applied irrespective of nationalities so that the numbers of frontier workers could be kept to a manageable level. A unanimous proposal from both sides, proposed by us but the Government under the AACR supported it and it went as our joint position.

That is the history of this. This is not as being anti-British. If the people that are in the BCA, as they now call themselves, chose to present it in that way let us not give any encouragement to that view. Let us be also ready to defend our home patch and say "These people may feel aggrieved, they may feel resentful, they may have this perception, or they may have the other perception" but the true facts are documented and because they are documented that gives me an advantage over everybody else in that when Lord Archer asked Baroness Chalker the question that he did in the House of Lords, Lord Archer got a dossier spelling out what I am telling Opposition Members and when he got the dossier he wrote back saying "Thank you very much for all the detailed information you have given me. I fully understand why you needed to take this measure and you can continue to count on my support." Now we have got one more supporter out of this, not one less, as a result of the 1st July law. What I am putting to the Opposition, frankly, is I would prefer, notwithstanding the fact that they disagree with the manner in which we have gone about introducing the rule, which I respect their view but I do not share, notwithstanding that difference which is a genuine political difference which we are entitled to have, we should nevertheless come together on maintaining that the need to do something about it has been exclusively and entirely motivated by the failure of the UK to act on our behalf and do something different and that we should continue to provide that opportunity to the UK to do something different and this is why my motion, as amended, proposed to end not on a negative note but by reinforcing the line that the Government has already taken in asking the United Kingdom to take the matter up with the EC and to come up with something different to

the 1st July rule. What they cannot do, and what I would not accept as the head of the Government, is that they say "You cannot do this, and you cannot do that," but tell us what we can do which is the same scenario whether we were talking about problems in the labour market, whether we are talking about the shipping registry, whether we are talking about building societies, the point that I wish to make to hon Members is this is not something that started on 2nd July. I am telling the House that what happened on 1st July is the consequence of a series of failed attempts on the part of the Government of Gibraltar to get the United Kingdom to act which they do not have to do because they like us. They do not have to do it because of goodwill. They do not have to do it because of British public opinion. They have to do it because it is their responsibility. That is why they have to do it. It is not that they are doing us a favour, it is that they are charged with that responsibility because they do not want us to have direct representations in the European Community. They do not want it because it is going to upset Spain. Fine! But if they do not want me to be there, they do not even want me to vote for one tenth of one member, then they have to make sure that they are batting for my corner in my name. The point that I have been making in recent public statements is that I feel the United Kingdom is in fact reneging on its obligations because its obligation is to defend us even if it gives them a headache and when the power that has responsibility for us says "Since I do not like having headaches I am not going to defend this guy", this is like a father failing to look after a child. The father may want to come home and say "I want to put my feet up" but instead of putting his feet up he has got to feed the child. We are saying to the United Kingdom "What you cannot say to us is, we cannot do any of the things that we would like to do to solve our problems. You are there telling us 'this will work and that will not work, this will pass Community law and that will not pass Community law'". At the end of the day the problem does not disappear. I am prepared to say to the UK "You tell me what to do" but they do not tell us what to do. They do not tell us how to overcome the problem and they have not gone even now, Mr Speaker, months after we raised it with them, they have still not gone to the Commission. I can tell the House that in 1984 they were not keen to go at all and I think, with the benefit of hindsight, the exercise of pressing them to put the matter officially was worthy at the time to us, it appears a waste of time because we got nothing. With the benefit of hindsight at least what we have is on the record, a promise to do something about it if and when a problem arose and that is the promise that we are today entitled to cash in. So far we have been unsuccessful in cashing in. A cheque dating from 1984 which we have been

trying to cash since August 1992 and here we are in December 1993 no nearer cashing it. What I am saying is, Mr Speaker, I hope that being able to go back on the attack as it were after this motion, I hope will produce a more positive response than we have been able to produce until now and I hope that they will be able to come up with some solutions in January and that we are able then to say "Because other things are going to be done, we do not need to continue operating the permit system" but I can tell Opposition Members that limited though its usefulness may be, until I have something better to put in its place, my inclination would be to keep at least that control limited though it is. I commend the motion, as amended, to the House.

Question proposed in the terms of the amendment moved by the Hon the Chief Minister.

HON P R CARUANA:

Mr Speaker, I have to say that I have no difficulty really with the terms of this amendment at all. My only complaint about it is that as an alternative to my motion and in an attempt to get something that we can both produce together for the sake of unanimity, it simply fails to take note of the Opposition's position. I do not expect the Government to subscribe to a motion or to any additional paragraphs that accept the Opposition's view but I am going to suggest to the Chief Minister orally, initially, to see if it sounds alright to him, subject to going into it in writing, whether there are not three amendments that he would accept to his amendment which would really be little more than taking note of the Opposition's position. The first one would be instead of deleting the existing paragraph 2. of the motion altogether, would he accept the following paragraph 2:-

"regrets that it should have become necessary in the opinion of the Government, to discriminate against British subjects, by leaving them with less rights in Gibraltar than the subjects of the other eleven Member States of the European Community."

That is point number one. It regrets that it should have become necessary in their view, but this is their view, presumably they regret that it has become necessary and presumably the position of the Government Members is one that it has become necessary and two that it is regrettable that this has become necessary. There is no doubt as to what the factual effect of this is. The effect is albeit unintended but it is to discriminate against British nationals.

The second proposal is in paragraph 7. of the Chief Minister's amendment and I would like him to agree to add after "1st July" the words "and takes note of the Opposition's concern about the effect of this measure in other matters of importance to Gibraltar." I am not asking him to share the concern. I am not asking him to recognise that the concerns are justifiable. I am simply asking him to note that that is our concern. The House takes note of the Opposition's concern about the effects of this measure and similarly in respect of paragraph 3 of the existing motion. I am quite keen that his paragraph 10 should stay as the last paragraph and I do not want to propose anything at the end, introducing something immediately before 10 that would read something similar "takes note of the Opposition's view that important laws especially those of possible political consequence....."

Mr Speaker, those are the three requests that I will put to the Chief Minister. My difficulty, Mr Speaker, is that whilst I agree with the amendment, it really makes no recognition at all of the fact that it is a different motion and that the position of the Opposition has been that there is an issue which is this concern and which I simply ask the House to note what it is without accepting the concern itself which is not mentioned in the motion at all as if we had no rational reason for having originally taken a different view, because this really is a separate motion.

HON CHIEF MINISTER:

Mr Speaker, the Government can only accept one of the three points made by the Opposition Member and that is that just like the motion takes note of the fact that we have accepted the political responsibility for introducing the restriction on the free movement, then equally the House should take note of the concern of the Opposition for this measure. Frankly, if we are saying we are introducing restrictions on the free movement of workers in the case of UK nationals, it follows that we are treating UK nationals arriving after 1st July differently from other nationals arriving after 1st July. Whether that is discriminatory or not depends on whether one thinks they are being deprived of something they are entitled to and the UK view is that they are not entitled to free movement. If two people have got the same right and we acknowledge the right of one and we deny it to the other, that is discrimination. But it is not discrimination, for example, that we do not give social assistance to foreigners because under Community law we are not required to give social assistance to foreigners. The foreigner may feel it is discrimination because he is getting inferior treatment. The British nationals are

getting inferior treatment in Gibraltar because the British Government view is that that is all they are entitled to. We do not accept that what we have done is introduce a law to discriminte against them and certainly although we are aware of the view of the Opposition as regards the use of subsidiary legislation we do not even note it. The reality of it is that I think we have two choices. Either Opposition members vote against my amendment and in any case I am prepared to accept what they have put, not in exchange for anything, but because I think it makes sense because the motion in that particular paragraph exclusively makes reference to the political position of the Government and no reference to that of the Opposition whereas for example two paragraphs further down by putting "shares the concern of the Government of Gibraltar in wanting to protect Gibraltarians" we are recognising that they want to protect Gibraltarians as much as we do.

HON P R CARUANA:

Would the Chief Minister be able to take a different view if instead of this amendment of regret that it should become necessary to discriminate, where I have put "and takes note of the Opposition's concern about the effect of this measure in other matters of importance to Gibraltar and regrets that it should have been necessary to introduce the measure." Really, all I am trying to introduce into the motion is an element of regret that it should have been necessary to do this in order for these reasons so that it should not appear.....

HON CHIEF MINISTER:

The only way that I can regret that it was necessary is by regretting the negligence of the British Government and I am not sure I want to do that. But as far as I am concerned that is what makes it necessary and therefore, Mr Speaker, I am not apologising for the measure. I am explaining why we have been put into that situation and it may not be the intention of the hon Member, by putting the word "regret" there to give a semblance of any recognition that the Government had acted wrongly in any way. People are entitled to think we did the wrong thing and when we exercise judgement we may make mistakes of judgement. I am not disputing that but if we had to decide today we would do the same thing so how can I regret doing it if I am saying to the House today I would repeat the action.

I feel, whether the hon Member intends it or not, that the perception subsequently will not necessarily be the one that he is seeking to create and therefore I think we can meet him on the point that he has made which I accept

the validity of because at the end of the day he feels he cannot support the amendment which is being treated by you anyway, Mr Speaker, as two separate motions, it seems to me that if they are treated as separate motions there is nothing to stop them voting in favour of both. We may vote in favour of one and against the other but they can vote in favour of both.

HON P R CARUANA:

Mr Speaker, notwithstanding that I have only managed to negotiate one of the three things that they asked for, we would support a second motion in terms of the Chief Minister's amendment, the one point that I have successfully negotiated with him and then we shall vote separately on our own motion.

HON F VASQUEZ:

Mr Speaker, if I may be allowed a short intervention in support of the third amendment that the Leader of the Opposition was trying to introduce into the Chief Minister's motion and that is the one trying to rope in the third element of the Hon and Gallant Mr Britto's motion that is decrying the necessity to introduce this law by subsidary legislation. It really has been very instructional to listen to the Chief Minister's exposition of the history and the background giving rise to this measure. This is the first time that the House has actually considered, debated and aired these issues since the 1st July law was passed. Everything that has happened this evening only confirms the importance of the very factor which Col Britto's motion is trying to introduce. That is the fact that a lot of the heat, a lot of the dissension, a lot of that confrontation, could be taken out of local politicals if this Government adopted the policy of bringing forward its legisltion to this House and explaining the reasons behind it. The fact is that on 1st July, a law was introduced and the Gibraltarian population for the first time realised that it had British workers demonstrating up Main Street. That all of a sudden British wokers were not allowed to come and work in Gibraltar and that Britain was supposed to be our friend and they simply did not understand it, in the way that the Opposition did not understand it. If the Chief Minister had convened a meeting of this House, an emergency meeting if necessary, to introduce what fundamentally was quite a serious piece of legislation which, whatever he says, has had an effect on the relation between this community and Britain. It could very well be that he could have walked out of this House with the support of the entire House. One simply does not know. One is confronted with a law that is sprung surreptitiously through a legal notice and suddenly

everyone in the community is up in arms. We are having people making submisions to us and we simply do not understand some of the issues that he has aired and for that reason, Mr Speaker, I do urge the Government to consider the terms of that third part of Col Britto's motion. I think it is most unlikely that he will but would the Government please recognise that sometimes that confrontation that arises in local politics is unfortunately an unnecessary sympton of what we consider Government's often unncessary resort to secrecy or to cutting corners. Especially in relation to this issue, a great deal of the heat might have been taken out if they simply adopted the policy of bringing these measures to the House of Assembly and explaining, not only to the House, but to the whole of the community why these measures were necessary in their view. That is the point.

HON CHIEF MINISTER:

I have accepted the amendment to paragraph 7. of the motion by adding, after the words "of 1st July" and after removing the full stop "and takes note of the Opposition's concerns about the effects of the measures in other matters of importance to Gibraltar". That obviously covers all the other matters which concerns them in this measure. That is the wording that we have accepted in recognising that they have made some valid points which clearly we have taken note of.

HON P R CARUANA:

The Opposition will vote in favour of the motion in those terms.

HON CHIEF MINISTER:

The position is now quite clear. I do not feel I need put any new arguments.

Question put in the terms of the amendment, as amended, moved by the Hon the Chief Minister. Agreed to unanimously.

MR SPEAKER:

We now go back to the original motion. If no hon Member wishes to speak I will call on the mover to reply.

HON LT COL E M BRITTO:

Mr Speaker, conscious of the lateness of the hour I shall not reply in detail to the twenty four pages of notes I made on the Chief Minister's contribution, but shall wind

up as quickly as I can. There were one or two minor points of difference but I think the Hansard will show that the points were made about the cases that I reported were not quite as interpreted by the Chief Minister. I will not bother to clarify. I certainly was not intending to defend the cases of the expatriates as such, specially those who may live outside Gibraltar, but the presentation was intended as one of the defence of Gibraltar's interests in the broad sense in relations with Great Britain. I certainly was not suggesting that the Government should accept responsibility for repatriation of needy cases but merely illustrating that as a consequence of the law such cases were arising and I certainly was not suggesting that the Government should accept what amounts to colonial dictates from London but simply illustrating, again, the results of such actions as the 1st July law as having a deteriorating effect on relations with Great Britain. I will simply conclude by saying that I am glad to see that we have been able to vote unanimously on the motion that is, at the end, contructive and hope that it will help Gibraltar's case and the Government's case in dealing with Great Britain but at the same time regretting that we have not been able to include, as presumably the Government intend to vote against my original motion, an element of regret that the Government can support that it has been necessary, due to circumstances which the Chief Minister has gone into, to introduce laws that in fact discrimiate. The point made by my hon Colleague certainly, I would stress once again the fact that if such legislation in the future were brought to the House and information given, in many cases the Government would be surprised to find how easy it would be for the Opposition to support measures that in some cases we do not support in view of the lack of sufficient information.

Question put in the terms of the original motion. 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 F Vasquez

The following hon Members voted against:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon R Mor
The Hon J L Moss
The Hon J C Perez

The Hon J E Pilcher
The Hon J Blackburn Gittings
The Hon B Traynor

The Hon Miss M I Montegriffo, the Hon L H Francis and the Hon M Ramagge were absent from the Chamber.

The original motion was accordingly defeated.

HON CHIEF MINISTER:

Before I move the adjournment to the House, since we are now in December and the festivities are round the corner, and we have managed to finish on a note where we are all supporting the same thrust to get the UK Government to act on this, I can make use of the occasion to wish Members of the Opposition, yourself, the Clerk and the rest of the staff the season's greetings.

HON P R CARUANA:

If the Chief Minister will give way, those seasonal greetings are, of course, reciprocated. It is to be regretted, of course, that the Chief Minister has managed to contrive an agenda for the House that has made us late for the first of the season's Christmas festivities.

MR SPEAKER:

I endorse this wonderful spirit of goodwill.

ADJOURNMENT

The hon the Chief Minister moved the adjournment of the House sine die.

Question put. Agreed to.

The adjournment of the House sine die was taken at 9.30pm on Friday 3rd December, 1993.