

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

9TH FEBRUARY, 1996

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Eleventh Meeting of the First Session of the Seventh House of Assembly held in the House of Assembly on Friday the 9th February 1996.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Col 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 Employment and Training
The Hon M A Feetham - Minister for Trade and Industry
The Hon J C Perez - Minister for Government Services
The Hon R Mor - Minister for Social Services
The Hon J L Moss - Minister for Education, Culture and Youth Affairs
The Hon Miss K M Dawson - 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 M Ramagge

The Hon P Cumming

ABSENT:

The Hon Miss M I Montegriffo - Minister for Medical Services and Sport

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 30th November 1995, having been circulated to all Hon Members were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

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

1. Draft Estimates of Revenue and Expenditure for 1996/97.
2. Audited accounts of Gibraltar Community Care Limited for the years ended 30 June 1992 and 30 June 1993.
3. Report of the Registrar of Building Societies for the year ended 31st December 1994.

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 1.05 pm.

The House resumed at 3.10 pm.

Answers to questions continued.

BILLS

FIRST AND SECOND READINGS

THE COMPANIES (AMENDMENT) ORDINANCE 1996

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Companies 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. The Bill brings in an amendment to section 295A of the principal Ordinance. We actually introduced the provisions in the Companies Ordinance allowing re-domiciliation from other jurisdictions into Gibraltar following representations from people in the company management and allied sectors of the finance industry as a facility that competing jurisdictions had and which we should provide for in our own system. Very recently there has been a development where it has been brought to our attention that the introduction of a special 5 per cent tax in the neighbouring country on properties owned

by Gibraltar companies had created a position where from the beginning of January this year a further amendment to Spanish law on the application of the special tax had had the effect on the one hand of reducing it from 5 to 3 per cent but on the other hand it had eliminated the possibility of applying for exemption. The original tax was based on the ability to avoid it if one could satisfy the authorities that the beneficial owners of the properties were not Spanish residents who were using Gibraltar in order to have a company as a front to evade the Spanish tax. So therefore although the tax was brought down from 5 to 3 per cent by removing the outlet of an exemption it meant that the remaining business because in fact the bulk of the business went the first time round because there were undoubtedly a lot of people who could not demonstrate the grounds for the exemption. It was as a result of that that the registration of new companies in 1992 and 1993 took a very sharp drop from something like 7,000 down to 4,000. What we have been told now is that the change that came in this January means that given that there is now no possibility of an exemption, the remaining business we have got here which could affect quite a number of company managers, some more than others depending on to what degree they specialised in this kind of business, could have an effect of creating in the first instance an exodus which could only happen by the company in Gibraltar having to be put into liquidation and the property transferred to its shareholders. Under the provisions that came in in January on the other side this would then trigger off, instead of three per cent a 10 per cent tax charge on the underlying shareholders in the company and therefore we have had representations that this will have (a) an effect of penalising the people who stayed with us and (b) act as a deterrent to the use of Gibraltar by potential investors wanting to have Gibraltar companies as vehicles because they would see a risk that tomorrow, out of the blue some other change might happen and they would suddenly be locked into a position which would make them liable for taxes they had not anticipated on the other side. It has been put to us that by making the provision of re-demociliation possible in both directions, that is that people should re-domicile outwards as well as inwards, clearly we only did it inwards in the first instance because what we wanted was that they should come to us rather than they should go somewhere else but that by making it possible in both directions, it should enable the companies that are trapped in that situation to avoid the cost of liquidating the company in Gibraltar to enable them to keep the Gibraltar company but re-domicile it in Spain and therefore retain some work here for people in the legal profession, the accountancy and in the company managers. Given the fact that it was brought to our

notice that people would not hang around that they would vote with their feet if we are not able to act very quickly to close this loophole we have brought this legislation which I hope will do the trick but which frankly all I can tell the House is that that is the rationale for it.

I commend the Bill to the House.

HON F VASQUEZ:

Yes, Mr Speaker, the Opposition will in fact be supporting this amendment to the Companies Ordinance. It is a relatively modern concept of company law that companies can re-domicile from jurisdiction to jurisdiction. Most respectable jurisdictions have actually incorporated this in their statutory company law and there is absolutely no reason why Gibraltar should not be the same and therefore for that reason we will be supporting it. One minor point that needs explaining to the rationale for the introduction of this law is to help those companies that are registered in Gibraltar owning properties in Spain, in fact, this is not necessary to avoid that problem because in fact a number of Gibraltarian companies have already moved their management and control to Spain and by doing so have managed to secure the confirmation of the Spanish tax authorities that that is no longer considered an offshore company even though it is a Gibraltar company because it is managed and controlled in Spain by residents of Spain who hold company meetings in Spain that for Spanish tax purposes is treated as a Spanish company and is no longer subject to that unfair tax which has been imposed on property owning companies. That apart, the fact is that there is no reason at all why Gibraltar companies should not re-domicile and we will be supporting it with one comment. There are a couple of instances where we consider that the drafting of the Bill is deficient and I should be dealing with those in Committee Stage, but generally in terms of the issues and the philosophy of the Bill the Opposition is in agreement.

HON CHIEF MINISTER:

The only thing I can say is that anything that technically improves what it is intended to do we will be happy to take on board.

Question put, Agreed to.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE TRAFFIC (AMENDMENT) ORDINANCE 1996

HON J C PEREZ:

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

Question put. Agreed to.

SECOND READING

HON J C PEREZ:

I have the honour to move that the Bill be now read a second time.

The rule by which a bus was taken off the service after 12 years was introduced in 1988 by this Government shortly after we came in because of the state that the buses were in and the lack of investment that had taken place over the years. After having consulted with the police and the Traffic Commission on the matter we thought that the best way to deal with the matter, given that a lot of ex MOD buses were being put on the road to give a public service, was that one. Since then a substantial investment was made in the buses. There have been investments in two categories of buses. One which is not of a very expensive type which is not expected to have a long lease of life and others like the double deckers which are expected to have a much longer lease of life. Indeed, the information we have is that double deckers in London are sometimes operational for at least 50 or 60 years. Therefore, the legislation that we passed in 1988 was not adequate to meet the situation of today. We had representations from the bus operators. We had negotiations with them and we eventually agreed that we would be prepared to remove the rule by which buses had to be removed from the public service after 12 years, if they agreed that notwithstanding the fact that any police officer can at any time send a bus to have an MOT test that they would agree to forcibly conduct two MOT tests a year after the bus had been on the road for 12 years. They have agreed to do that and the authorities concerned and myself believe that that is an adequate way of ensuring that the buses on route are kept in an adequate condition for the public service. That is the reason for the removal of the Bill and it ought to be read in conjunction with regulations which are to be published shortly which are to include the exigency that buses over the age of 12 years should be MOT tested every six months instead of annually. This does not take away

the power of a traffic officer to stop a bus if it sees that it is in a bad state and send it to be tested on the spot at the time.

I commend the Bill to the House.

HON P R CARUANA:

The Opposition will abstain on this Bill pending sight of the regulations that the Minister has alluded to. We are not satisfied that removing an age restriction is conducive to an improvement in the quality of public transport in Gibraltar. Certainly there might be a case of raising it from 12 upwards but certainly to remove an age restriction altogether and leaving it to the discretion of public transport inspectors is not necessarily going to guarantee an improvement not just in the safety of vehicles which I suppose can be identified by an MOT test but indeed of the general appearance of vehicles which will not be enhanced the older that they get. I think that if we are trying to attract upmarket tourism to Gibraltar we have got to have public service vehicles which are not only safe but also new and give that impression of being new vehicles and in a good visual condition not just in a safe mechanical condition. It may well be that read in conjunction with the regulations which we have not yet seen and if the new regulations are applied strictly in practice then it may well be that some of the concerns that we hold will not materialise which is why we do not oppose the legislation but on the basis of the information that we have in front of us at the moment we do not feel able to positively support, therefore we will abstain.

HON COL E M BRITTO:

May I suggest to the Minister that when the regulations are being drafted, indeed if they have not already been done, if they have been done let it be included in them that when the buses are tested that apart from testing the actual engine, brakes, wheels, the usual mechanical things that are tested on such vehicles that attention be paid to the outside of the vehicles and specifically the roof of the vehicles. My understanding is that in some cases and specifically in some of the vehicles plying the route along Europa Road and towards the lighthouse that it is not only the houses at Westside that suffer from serious water ingress but that some of the buses on that route have been known, when it is raining heavily, to carry passengers sitting in the seats holding open umbrellas to keep off the water coming in in large amounts through the ceiling of the bus.

HON J C PEREZ:

The hon Members certainly do not seem to be aware that the legislation for public service vehicles already exists in order that the MOT tests take into account the state of the vehicles inside and outside other than the mechanical and technical faults. Definitely if there is a leak on any of the buses it is something that can be reported immediately and has to be put right immediately but knowing the hon Col Britto who has probably been the one using it, he chose to open the umbrella instead. The regulations are going to come out. There already exists regulations saying that all public service vehicles need to pass an MOT test every year. That MOT test is specified in the regulations and it is quite comprehensive and the only thing the regulation is going to say is that after a vehicle is 12 years old it shall have two MOT tests, one every six months. Let me tell the House that what is abnormal is the 12 year rule. What is the standard practice in every European country is an annual MOT test with the possibility of a traffic officer sending any vehicle at any given time to the MOT test in order to ensure that the standards are really adhered to in case there is any laxity on the part of the enforcing agencies we are going to insist that they have two MOT tests a year in order to ensure it. But the situation, let me tell the House, has changed from one where because the business as a business is not a very good one and has not got a very big turnover the old operators of which one of the members of the House was an owner were not in a position to re-invest because at the time I think the bus fare was something like 15 pence. Yes, we are talking about Mr Francis, who was a member of the Hon Mr Caruana's party. They were insisting that the price of the bus in order to maintain standards should be increased and when the 12 year rule was indeed introduced it was introduced with an acceptance of an increase and since then the buses have increased twice and there has been a re-investment in the service and there have been new routes opened which are more lucrative and are getting more money into the business and therefore more is now being invested into the business which was not the case before so. Therefore the improvement in the service of the buses today is different to what it was when this administration introduced that rule in 1988. I take the point of hon Members but I thought I would inform them of the situation as at present. Thank you Mr Speaker.

Question put. The House voted.

For the Ayes:

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 Miss K M Dawson
The Hon B Traynor
The Hon P Cumming

Abstentions:

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

The Bill was read a second time.

HON J C PEREZ:

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

Question put. Agreed to.

THE PENSIONS (WIDOWS AND ORPHANS) (AMENDMENT) ORDINANCE, 1996

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that a Bill for an Ordinance to amend the Pensions (Widows and Orphans) Ordinance be read a first time.

Question put. Agreed to.

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that the Bill be now read a second time. This amendment is a highly technical amendment and not of general application. It applies only to what is properly known in the Government service as the WOPS scheme.

There is a comparable scheme in the United Kingdom called the WCPS and also something called WOOPS in the United Kingdom which refers to worn out and obsolete plant and stores. I sometimes think of myself as a worn out and obsolete plant and store.

Section 13 of the Widows and Orphans Pensions Ordinance has a sub-section (5) which is to be amended and the background to this is simply that when traditionally one had to contribute to the Widows and Orphans Pensions Scheme and this became compulsory once one was married whereas most of the other public service schemes in Gibraltar are non-contributory. But, of course, if when one left the service one was not married the contributions, which were 1.5 per cent of salary, were returned within interest at 3.5 per cent. However, subsequent to that particular part of the scheme being introduced which I think was introduced at the outset or a very long time ago in Gibraltar as it was in the UK with the reforms to pensions generally in the 1980's people who were already contributing to the WOPS, were given the permission to the compulsory nature of the contributions being taken away and they were allowed to decide themselves whether they wanted to contribute or not. So those who were already in the scheme were asked to elect; to say whether they wanted to stay in the scheme or whether they wanted to withdraw their contributions and they were given at the time, when this amendment was made, till 1990 to make up their minds. For various reasons which I will not go into, some people by the end of 1990 had not made up their minds so it really extends to the date of 1996 and that should cover virtually everybody who might have wanted to exercise his particular option (withdrawal of contributions) and had not yet had an opportunity. I am sorry if I have taken so long to explain this particular measure but I commend the Bill to the House.

HON P R CARUANA:

The Opposition is happy to support this Bill. Indeed, we are informed that the trade unions and the GTA have been pressing Government without success for some time to re-open this opt out period and that it is now being done at this point in time for reasons best known to the Government but still we are happy to support it now.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I do not think there is anything I can say in reply to that.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Question put. Agreed to.

THE INCOME TAX (AMENDMENT) ORDINANCE, 1996

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Question put. Agreed to.

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that the Bill be now read a second time. This particular Bill falls into two parts and the first one is the amendment of section 41 of the Income Tax Ordinance to lower the rate of the bottom of the range of the qualifying tax from 2 per cent which is at present the minimum, it ranges from 2 to 35 per cent or whatever the rate of corporation tax shall be, lower than to in effect zero. But in practical terms 1 per cent because it has been brought to the notice of the Government that we may be losing business to other jurisdictions who have a minimum qualifying rate of 1 per cent. The opportunity is being taken to remit at not less than 2 per cent with a view to making ourselves more competitive with those other jurisdictions. The second part of the amending Ordinance is self-explanatory by adding to the additional wording in the section 87 which enables the Government to make regulations adding the words shown in the text in clause 3 which, of course, brings in the question of recovery of amounts due and I think the description there is self-explanatory.

I commend the Bill to the House.

HON P R CARUANA:

The Opposition cannot support this Bill for reasons that I will now explain. We have no objection in principle to the first section but we think that the Bill does not have the effect that the Financial and Development Secretary intended to have. There is the removal of one reference to "at not less than 2 per cent of £1 and" but there are other references to the same formula elsewhere in section 41(4) unless of course I am looking at an old

version of it which I do not think is the case but I think if the Financial and Development Secretary wants to have the effect that he suggests I think the amendment that he needs to bring to section 41(4) of the Ordinance extends beyond those that the Bill actually covers and he may wish the opportunity for him and I to speak during the tea adjournment so that he can look into whether I am right or mistaken. But certainly I do not think it has the effect that the Financial and Development Secretary intends and as to the more important section of the Bill, that is the amendment to section 87, let us be clear, the Financial and Development Secretary does not explain this. The effect of that Bill is to give the Government the power to make regulations to make directors and shareholders of a company liable for unpaid PAYE. This follows no doubt a recent court case in which it was found that directors could not be made personally liable for unpaid PAYE. I believe that the law should make as tough as possible the regime that faces company directors who want to and without any justifiable reason fail to collect and forward workers' PAYE contributions. There might even be cases, I am willing to recognise, which justify breaking the basic principle of company law which is that shareholders are never responsible for the debts of the company. In certain cases of which I can think of one or two I think it might even be justified given the importance of this issue. It might even be justified, departing from the standard principle of company law, that a shareholder can never be responsible as opposed to a director there are circumstances in which a director can be responsible for a company's debts. Certainly for the Government to seek the support of the Opposition to do this by regulation when we do not know the details of what they intend to do is not acceptable to us. If they had brought substantive provisions to this House such as we could evaluate and see whether they fell within the parameters of the extension of liability to shareholders that we are willing to support then we might be able to support but certainly we are not willing to support a provision that simply gives the Government the power to publish in the Gazette regulations and decide what the regime should be of shareholder liability. There are some shareholders who have no part in the management of a company, who are sleeping shareholders, who may not even live in Gibraltar. There are other shareholders who may fall into a different category, who may be managing or shareholders involved in management and they may fall into a different category depending on what their reasons are. Therefore the power that the Government seek is in our judgement simply too wide by way of making regulations and this issue is such an important one as should be dealt within our judgement by principal legislation debated in this House and not be regulation.

For that reason at least that part of the Opposition that I lead, will be voting against this Bill.

HON CHIEF MINISTER:

I think we must not lose sight of the fact that however wide reaching the power, we are talking about money from employees which does not belong to the shareholders and does not belong to the company and does not belong to the director. It belongs to the employee or to the state and here we have somebody that the law effectively creates as a tax gatherer pocketing the taxes that he gathers. That is what this wide powers are about and therefore I do not think there can be any excuse of whether there are silent shareholders or not silent shareholders because at the end of the day if the company has assets then this does not come into play at all. This comes into play in a situation where we have moved against the company and the company by the time the system has caught up with it has disappeared over the horizon and left nothing behind. It is a minority of instances, but frankly I think it is important that we act against that minority. That is conducive to ensuring that the majority that are now collecting and handing in on a regular basis the PAYE of their employees. We have now got a situation, as I informed the House recently, where in fact by six months after the end of the tax year we have got virtually 97 per cent of the PAYE that is collected handed in and that actually compares quite favourably with UK and with other places. There is evidence to show that there tends to be a regular incidence of individuals who re-appear as shareholders and directors with newly-incorporated companies having disappeared from the old one.

HON P R CARUANA:

Would the Chief Minister give way?

We do not disagree that this is something that ought to be dealt with by legislation. I do not say that the legal regime should be such to make it easier rather than harder for people to do this and get away with it. I have no difficulty with the notion of a law that tightens up against that practice rather than facilitate it. What I am saying is that I think this House is the one that should debate the actual measures rather than simply say to the Government "We give you powers by regulation to put into place measures to make tax payable by the shareholders". We are not disagreeing on the principles. I am just saying that this is something that ought to be done by primary legislation and not by regulation in the Gazette. That is where we differ, nowhere else.

HON CHIEF MINISTER:

But I think the point surely is that when we discuss the measures, what we are discussing as politicians in the House is really the principle and the policy because the measures that are going to be introduced by regulation are the measures that the Commissioner of Income Tax will advise us are the most effective things to do. One of the things about the regulation is that if we find that we are advised that something will work and then we find it does not work we can put it right much quicker than we can with having to come to the House. The reality of it is that the provisions have been there in the principal Ordinance perhaps not extending it as far as shareholders for a very long time and they have not been found to be effective because as the hon Member often tells us the code of honour of the legal profession means that they are bound to accept clients even if they do not disagree with what their clients are getting up to, if that is pocketing PAYE, and there are of course lawyers who, bound by that code of honour, are clever enough to outwit our Income Tax Department and get their clients free and what we are trying to do is close the door. I give way.

HON P R CARUANA:

We do not outwit the Income Tax Department. We outwit the drafters of the legislation, which is why we want to have a hand in its drafting and not leaving it to them to reduce the chances that lawyers will be able to outwit them in the future.

HON CHIEF MINISTER:

Well, I am grateful for the hon Member's offer of assistance so that we are one step ahead of the lawyers and of course if I feel that he can do a better job of advising me when the regulations come to be done than the Commissioner of Income Tax I will bear that in mind and contact him.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I do not want to make any comment on the recent exchange between the Chief Minister and the Leader of the Opposition, but on the first point made by the Leader of the Opposition on section 41 if he thinks the Law Draftsman has missed something out or missed something I would be very grateful to take his further advice on this over the tea interval.

MR SPEAKER:

I do not know whether that will be possible because tea has been laid down for five o'clock and it is now half past four. So perhaps I do not know whether it is possible to make that arrangement.

Question put. The House voted.

For the Ayes:

The Hon J Bossano
The Hon J E Pilcher
The Hon J Baldachino
The Hon M A Feetham
The Hon J C Perez
The Hon R Mor
The Hon J L Moss
The Hon Miss K M Dawson
The Hon B Traynor

The Hon P Cumming

For the Noes:

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

The Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Question put.

HON P R CARUANA:

One of the reasons why the Opposition has got to consent to a Bill going through all its stages in one day is precisely so that if a problem of this nature arises there is an opportunity to confer. If I say yes, if Mr Speaker does not advance by half an hour the tea break then we shall have to deal with this problem across the floor during the Committee Stage itself.

MR SPEAKER:

Unless we can recess for five minutes. If you can sort it out this way but the Chief Minister.....?

HON P R CARUANA:

Can I suggest that the House proceed to the Committee Stage of the other three Bills and in the three minutes that that will take I can confer outside with the Financial and Development Secretary?

MR SPEAKER:

Except that the Financial and Development Secretary will be required here for another Bill before this one.

Agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that the House resolve itself into Committee to consider the following Bills clause by clause:

1. The Companies (Amendment) Bill, 1996;
2. The Traffic (Amendment) Bill, 1996;
3. The Pensions (Widows and Orphans) (Amendment) Bill, 1996;
4. The Income Tax (Amendment) Bill, 1996.

THE COMPANIES (AMENDMENT) BILL, 1996

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

Clause 3

HON F VASQUEZ:

A very small point in relation to clause 3. I have just realised there appear to be two (a) and two (b). In the second (b) as drafted the Bill reads "in sub-section (2) by inserting before the word "regulation" the words "in respect of a company incorporated outside Gibraltar in a relevant State" and in fact that would make the reading of section 295A(2) of the principal Ordinance meaningless. My suggestion, and I have discussed it with

the Chief Minister, is that those words "in respect of a company incorporated outside Gibraltar in a relevant State" should appear after the word "regulation".

MR CHAIRMAN:

We have got to have this carefully in writing.

HON F VASQUEZ:

Yes, it is very straightforward. The second sub-section (b) be amended by substituting the word "before" and replacing it with the word "after".

HON CHIEF MINISTER:

In sub-clause 4 the hon Member has drawn my attention to a lack of clarity in the reference where it says "In this Part "relevant State" means a state having regulation of companies compatible with provisions of this Part and regulations made under this section and prescribed by the Governor" and it is possible grammatically to interpret the words "prescribed by the Governor" as referring either to the words "regulations" in the preceding line or the words "State" two lines above.

I have made enquiries and the answer is it is intended to refer to the word "State" and therefore for the avoidance of any doubt I am moving an amendment which will insert the words "which State is" between the words "and" and "prescribed" in the third line thereof. The clause would then read "In this Part "relevant State" means a state having regulation of companies compatible with the provisions of this Part and regulations made under this section and which State is prescribed by the Governor for the purposes of this Part".

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 TRAFFIC (AMENDMENT) BILL 199

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

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

THE PENSIONS (WIDOWS AND ORPHANS) (AMENDMENT) BILL, 1996

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

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

THE INCOME TAX (AMENDMENT) BILL, 1996

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

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

THIRD READING

HON ATTORNEY-GENERAL:

Mr Speaker I have the honour to report that:

1. The Companies (Amendment) Bill, 1996, with amendment;
2. The Traffic (Amendment) Bill, 1996, without amendment;
3. The Pensions (Widows and Orphans) (Amendment) Bill, 1996, without amendment; and
4. The Income Tax (Amendment) Bill, 1996, without amendment

have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Question put.

(1) The Companies (Amendment) Bill 1996 and the Pensions (Widows and Orphans) (Amendment) Bill 1996 were agreed to and passed.

(2) The Traffic (Amendment) Bill 1996.

For the Ayes:

The Hon J Bossano
The Hon J E Pilcher
The Hon J L Baldachino
The Hon M A Feetham
The Hon J C Perez
The Hon R Mor
The Hon J L Moss
The Hon Miss K M Dawson
The Hon B Traynor

The Hon P Cumming

Abstained:

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

The Hon F Vasquez
The Hon H Corby
The Hon M Ramagge

The Bill was read a third time and passed.

(3) The Income Tax (Amendment) Bill 1996

For the Ayes:

The Hon J Bossano
The Hon J E Pilcher
The Hon J L Baldachino
The Hon M A Feetham
The Hon J C Perez
The Hon R Mor
The Hon J L Moss
The Hon Miss K M Dawson
The Hon B Traynor

The Hon P Cumming

For the Noes:

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

The Bill was read a third time and passed.

The House recessed at 4.40pm.

The House resumed at 5.05pm.

PRIVATE MEMBERS' MOTIONS

HON P CUMMING:

Mr Speaker, I beg to move the following motion:

"The House believes that, in refusing to answer the questions asked by the Hon Peter Cumming, the Government have incurred a further democratic deficit".

I would like to re-trace briefly the steps by which we came to this situation in which the Government refuse to answer my questions. I stood for election on the platform of advocating participation in the Brussels process. It had always seemed clear to me that the objective of the Brussels process was to arrive at a negotiated settlement. To me it was pure logic and common sense that a negotiated settlement required mutual

concessions. What I did not have in my mind was the picture of the format that an acceptable settlement, acceptable to me that is, could have. About a year after the last election, Andorra was declared independent and gained a seat at the United Nations and this clicked in my mind as the kind of format of a settlement that could be acceptable. To me the Andorra solution represented an evolution of thought and not a change of position. It may be that when I came to the GSD I misunderstood the GSD's position or it may be that they misunderstood my position. The fact is that 18 months after the last election, the GSD remained silent on the question of participation in the Brussels process and it seemed to me that the ideological battle was being lost by neglect, that we were not being sufficiently salesmen for the good side of participation in the Brussels process. We must remember that at the time of the last elections, an opinion poll showed 5 per cent of the public in favour of attending the Brussels process. So, to start with I was undergoing a feeling of frustration that we were not selling the Brussels process as I felt we should. We were losing the ideological battle. Two things then happened almost simultaneously. One was the independence of Andorra and the other was a meeting that the GSD held with the Self-Determination Group, after which, sitting with drinks and the man beside me turned to me suddenly and said "Look me in the eyes and tell me would you ever be willing to grant concessions to Spain?" and I was taken aback and I said "Look, you would have to say what concessions you were talking about because if for a minor concession we could have a settlement I would certainly go for a minor concession". This he took very, very badly and from the following day there was appearance in the press of reports that I was keen on concessions and a continuous campaign was started against me on the concessions issue. I felt that I had nothing to be ashamed of in what I believed and what I had said and I wanted to defend this position in public. At the same time, the independence of Andorra was declared and when I did go public in defending my position I also said that I found a solution based on Andorra to be acceptable. This obviously set up difficulties between me and the GSD and it was when we decided to part company. To me, Brussels was always an exploratory process which if exploration was successful would lead to negotiation and successful negotiations to mutual concessions and to a potentially favourable solution. That was the position in April 1994. The following September I brought to this House a motion. To my mind a very innocent one which said "This House deplores the deteriorating state of relations with Spain". Deteriorating because of course at that time we were having increased problems at the frontier, double checks and all this, so deploring the deteriorating state of relations with Spain and urging the Government to

establish a process of dialogue in order to improve these relations. A very vague and wide open motion in order to make it possibly attractive. Mr Speaker, I would like to read just one paragraph at the end of my speech to that motion and it says the following: "My position with regard to the Spanish flag is that it will never fly over Gibraltar with my consent in my life time and I say that to any Spaniard that is willing to listen. My position as regards concessions is that the thermometer which regulates concessions that can be made and concessions that cannot be made is that at the end of the day we have to be recognised as a people in our own right. The sovereign rights over our land which we have accrued over 300 years. Any concessions which leave that intact it is possible to make. Any concessions that destroys that is out of the question". That sums up Mr Speaker my position in that debate.

The Government turned that round into a censure motion by taking every word after "This House" and turning it round to a completely different motion. In section one the Government deplored the policy of the Spanish Government to continue with the harassment of the people of Gibraltar introduced in the 1960s by the previous Spanish regime. I would have wholeheartedly supported that paragraph because of course the harassment of the people of Gibraltar is something that we all deplore. Section 2 said "This House condemns the views expressed by the Hon Peter Cumming since April this year concerning relations with Spain" the views of course about possible Andorra format for a negotiated solution. Section 3 said "Declares that such views did not form part of the policies on which the Hon Peter Cumming sought a mandate from the electorate in January 1992 to obtain membership of this House." To me, Mr Speaker, the only policy which changed was the policy which developed. How could I say the Andorra situation, when I stood for election Andorra was a condominium? I have never supported a condominium because a condominium implies domination by two parts and we do not want domination by Britain, let alone by Spain as well. I want a situation of independence such as Andorra enjoys today. The fourth section of this censure motion of September 1994 said "Therefore this House censures the said Hon Peter Cumming, calls on him to resign his seat forthwith and test the support he claims exists for his views by seeking a fresh mandate from the people". This is what happened then in September 1994. We move on to January 1995 where I come to this House with my usual lot of questions at question time and find that they are all left towards the end of question time to be all answered together. The answer then that the Chief Minister makes to all of my 12, or how many, questions they were, is to say that because I have lost all my legitimacy in this House therefore he does not

answer my questions. In spite Mr Speaker of your previous ruling and at the time of the censure motion that my position in this House was legitimate and a repetition of that ruling to me privately and again publicly on the occasion that this answer was given in this House. That is to say that the Chief Minister said I have lost all legitimacy and the Speaker rules that my position is entirely legitimate. In the face of that the Chief Minister continues with a lot of hugging and puffing and I say to him that it is very convenient for him to take this position because the questions that I bring to the House today have sought to shed light on the present crisis in which we are engulfed. The crisis was the impending direct rule from Britain and therefore as the Chief Minister does not wish to shed light on the crisis or the way that he is going to approach it, it is much more convenient to deal with my questions in this way. The Chief Minister said it had nothing to do with convenience, it is because he refuses to accept the wishes of the majority of this House at which moment the Leader of the Opposition intervened to disassociate himself with that sentiment because of course on the same grounds the Government by a majority motion could say the whole Opposition have to resign and if it was binding then they would have to resign. So obviously that is a nonsense and is certainly nothing to do with the democratic procedures to which this House is subject. The Leader of the Opposition goes on to say that it was certainly not the intention of the Opposition to deprive my continued presence in this House of legitimacy. It was not their intention and it was not the effect of the motion said the Leader of the Opposition. The Leader of the Opposition goes on to say that the statements made by the Chief Minister are bordering on contempt of the House because it is not for the majority of the members of the House to decide for a minority. It is obvious and that little debate is summed up by the Speaker at the end who says that it is clear that my legitimacy is definitely constitutionally correct and that I have a right to ask questions but he cannot force the Government to answer. Of course I have always respected that position on the part of the Speaker as entirely correct.

Mr Speaker I would like to look briefly at some of the questions, the kind of questions that since this occurred I have continued to bring to this House in spite of the knowledge that they would not receive an answer. Three of my favourites read like this: The Hon Mr Feetham had recently presided over the opening of Peralta's new supermarket and the Minister said in this speech that was widely reported that if we continued to have faith in ourselves things were going to get better and my question at that time was "Could the Minister specify the exact course of events by which he foresees

that things will get better?" because to me Mr Speaker the democratic function of an Opposition Member in questioning Ministers is to make them justify exactly that type of woolly misleading statement. Like to say "Hang on there" because we are hanging things are going to get better without any logic to the statement at all. I also asked at that sitting for the Government to make a statement on the Baltica case. This was a convenient question to be able not to answer because at a previous session the Opposition had asked for a statement and the Chief Minister had said "I want to give a statement but as the case is sub judice in Denmark, therefore it would be wrong to go into the question of Baltica" and then a few weeks ago we had here the case where the Chief Minister wanted to discuss a case that was sub judice, not in Denmark but here in Gibraltar and that was alright. The fact was that by putting it off and putting it off we never actually got a statement on the Baltica case. Another favourite question of mine Mr Speaker at that time was "Will the Government now begin to link economic expectations to the state of relations with Britain and Spain?" and obviously these three questions are questions that come with a political charge to them, they push a philosophy that I would like to foster and I suppose that I can see it from their point of view in being happy to get out of answering a question so politically charged as that if they decently can. I have a certain..... not sympathy but I can understand that they prefer not to answer such a question if they can get away with it but then there are a series of other questions for which I would like to highlight two or three Mr Speaker where this question of political charge does not apply at all. For example, a neighbour calls me up at my home and says "I am going crazy, my wife is going crazy with all the soot landing here at my window from the Desalination Plant. Could you ask in the House when they are going to stop this soot and the air pollution coming from....." and in the House when I asked when will the problem with air pollution on Gib V come to an end and in the interests of democracy the Government refuses to answer. That, I cannot understand Mr Speaker. That is a question obviously from a constituent and it is not possible to conceive that to deny an answer to that question is a service of democracy in any way. Around that time I had been sent a 'Pay as You Earn' readjustment of over £1,000 and it seemed to me that if it happened to me it could happen to somebody and if it happens frequently there is no point in having a 'Pay as You Earn' scheme at all and let everyone save up for their own payments. So I wanted to ask how often this kind of thing happened, that large sums are involved in a readjustment and why no explanation is forthcoming without having to demand one. This is obviously a constituent-type question which does not come with any

political charge or with any party political type flavour. This is a question that the man in the street can easily be involved in and wants to know the answer to. I asked Mr Speaker "Does the Government approve of the restrictions applied on the use of the entrances to the Alameda Gardens?" and in the interests of democracy I had no answer. The Alameda Gardens was an important part of many of our childhoods. Certainly it was of mine. Later on it was a very important part of my young adult life when I took my children there and now I like to take my grandson there. And now I have to park my car in the Grand Parade and instead of setting the children loose where they can go straight up into the Gardens safely, no, I have to take them by the hand, weed my way into the busy traffic, narrow pavements that go all the way round and enter the Alameda then and then when the children are tired instead of bringing them straight down to the car once again we have to negotiate the dangerous roads back in and if I take the car to the top way I am going to be clamped by parking at Rock Hotel. These are constituent type questions, no political charge, they cannot be denying an answer to them, it cannot be justified on the grounds of democracy. The Students' Association sent me, and I am sure to all other hon Members a portfolio of their problems and their interests, asking to know what different Members' opinions were and one of the things they wanted to know was the criteria for awarding of grants for studies in the UK, further to an initial degree such as a Masters or professional studies and this seemed to me a very fair question. There was a gap in the public knowledge of what criteria was used. Why one could get a Masters and another one could not, if there were criteria and if there were not, obviously there should be. Once again, no answer. There was a write-up in the newspaper from a medical professor who in the newspaper made a very pointed, direct criticism of our medical services pointing out one specific branch, and one specific item that at the time must have surprised many people who read it and it did to me as well, pointing out what he claimed was a deficiency. I asked about this in the House because I honestly did not know and in any case if there was a good answer it should have been public but that did not even reach the Minister. She never even read the question and therefore an opportunity was missed because I later found out that in fact that this was mistaken and misleading in that with a couple of sentences the Minister could have rectified a wrong impression, a slur in fact on our medical services that could have been put right and all this Mr Speaker the Government claim was in the interests of democracy. I asked at that time for a comment from the Government on the articles by Tristan Garel-Jones recent ex Minister of the Foreign office in a Spanish newspaper in which he said many amazing things about the Gibraltar question; a

matter which I felt was definitely worthy of comment and some comment in this House but once again in the interest of democracy the Government would not deign to answer or to comment on that issue. I asked the Government would they make a law so that Gibraltarian status can be inherited through a Gibraltarian mother and this is a matter that interests all Gibraltarian women, that they should be able, in their own right, to pass on Gibraltarian status to their children which is not the case at the moment. Once again there is no answer. Today, Mr Speaker, I would have liked to have made also topical questions which I did not because it is a waste of time as they would not be answered, once again in the interests of democracy. I would have liked to have asked today the Government whether there was anything they could do to prevent the Services Police redundancies. I would have liked to ask them whether there was anything that they could do to prevent discrimination by banks against working class people with small accounts; discrimination that does not occur by those same banks in the UK and therefore those same banks do not practice that discrimination against small account holders in the UK I see no reason why they should be allowed to get away with it here and I would have liked to have to question the Government on what they could do about that. It seems to me that many small account holders in Gibraltar would have been very interested in an answer but once again in the service of democracy no answer would have been forthcoming. Mr Speaker, you will have noticed that this motion makes references that the Government have incurred a further democratic deficit by not answering my questions and implying obviously that there are other democratic deficits and we are well aware of that; the lack of financial accountability is a well rehearsed argument that I am not going into any further now. The infrequency of meetings of this House so that we cannot ask topical questions and have topical discussions is also fairly well rehearsed. I would just like to mention another element referring to the functioning of the House of Assembly which seems to me also very anti-democratic and which is rarely mentioned and it is the marathon sessions that the Government favour where a day is totally packed from 10.30am till midnight, packed in with masses of very important information and opinions and the press is here and obviously on many days when they do not have enough news or information suddenly on one day they are flooded with an amount that they cannot possibly cram into one day and if it is broken up into two or three days obviously the press is biased against news that is two or three days old and a lot of it is lost and it is lost, not to me who have been here but it is lost to the man in the street who is interested and would like to know and be made aware of the issues that are discussed here if they can be given to him in portions that he can

digest. It seems to me that the marathon sessions may have been convenient to the Chief Minister's diary but it is not a system that favours democracy in this House. Mr Speaker I commend the motion to the House.

Question proposed.

HON P R CARUANA:

Mr Speaker whilst I disagree with much of what the Hon Mr Cumming said at the beginning of his long address I have to say that I agree with much of what he said from about a third of the way through to the end. When the Chief Minister announced, following the Hon Mr Cumming's departure from this party that as a consequence of having left the whip of the party with which he had been elected to this House, he announced that that was a reason in his judgement why the Hon Mr Cumming should be treated as a non person in this House, struck me as being wrong whatever one might think of the merits or lack of merits of the Hon Mr Cumming's views as he was then expressing on issues important or unimportant to Gibraltar. Certainly, I pointed out at the time that this was not a precedent in Gibraltar where there were precedents of people being elected to this House under the banner of one political party and then changing horses in mid stream, in some cases not even in mid stream, almost at the very beginning of the stream and no one thinking about that. Indeed, hon Members will be aware that even in England there have been two recent examples where in one case, I am not sure I am going to remember either of the names but there was one Conservative MP who thinks he has seen the writing on the wall and has crossed over to join the Labour Party. I have no doubt that at the 1992 general election in England that gentleman, Mr Howarth, I am sure that he conducted the 1992 election campaign on behalf of the Conservative Party on the basis that the Labour Party were only one step removed from the devil incarnate. Well, when he left the Conservative Party a few months ago to join that very same Labour Party no one stood up, indeed people did stand up in the House and invited him to put his constituency seat back at the disposal of the electorate but when he declined to do so which was a matter of political taunt and choice no one then said "Well, you have lost your legitimacy in this House". He was left to face his electorate in due course when the UK next convene a general election as indeed is the fate that befalls the Hon Mr Cumming in Gibraltar and therefore it did not then struck me as correct and does not strike me as correct now that the Government should because the Hon Mr Cumming has parted company, albeit, on matters of an important policy issue with the party that brought him into this House and that that was a reason why the majority in the House should decide that he had

lost his legitimacy here. That was my view then, it remains my view now. I think that the treatment that the Government Members have given to the Hon Mr Cumming in this House in refusing to answer his questions... They do not answer many of mine. It is in their style and nature to be as unhelpful as possible in answers to questions at the best of times but certainly to refuse even to attempt an answer on the grounds that they do not think that he should be in this House at all certainly in our judgement has incurred in a further democratic deficit and for that reason we will be voting in favour of this motion.

HON CHIEF MINISTER:

Mr Speaker the reason why in September 1994 I moved an amendment to the motion brought by the Hon Mr Cumming was not to criticise him for having left the GSD which in fact I do not consider to be a matter for criticism but for praise since I do not think anybody should belong to the GSD. The reason why I brought a motion calling for his resignation which was supported by the Hon Mr Caruana and other members of the Opposition was because the nature of his utterances, when he stopped being in the GSD, were totally incompatible with the stand on which people have been elected to the House of Assembly. When the Hon Mr Caruana amended my motion in September 1994 he amended it so that instead of us criticising the views of the Hon Mr Cumming we criticised the posture of the Hon Mr Cumming and we accepted his amendment. So we in the GSLP disagree with his posture and disagree with his views. The Opposition Members do not disagree with his views, they disagree with his posture. That is, presumably they do not mind the views if he is sitting down and they mind the views if he is standing up.

HON P R CARUANA:

We disagree as to whether he has got the right to put questions.

MR SPEAKER:

Order, order, if the Chief Minister will give way.

HON CHIEF MINISTER:

Mr Speaker when the motion was brought in September 1994 to this House by me to amend the motion brought by the Hon Mr Cumming the Leader of the Opposition moved an amendment to my amendment in order to replace the words "views" by the word "posture" and we accepted his amendment because it was more important to us to get the unanimous rejection of the Hon Mr Cumming than rather

than to give a way out to the GSD by saying "Well, no, it is not the posture that matters, it is the views that matter" and therefore since they came back and said they would vote by condemning the posture adopted by the Hon P Cumming recently and in the House at the time and then because the posture did not conform with the policy and it is difficult to understand how postures and policies conform or do not conform but nevertheless that is how far they were prepared to go, they then went on to censure the posture and call on him to resign. Well, of course, what the Leader of the Opposition knows full well is that there has never been since the 1969 Constitution commenced and the first House of Assembly was elected or to my knowledge when the 1964 Constitution was in existence and there was a Legislative Council or to my knowledge when the 1954 Constitution was in existence ever in the entire history of elected representation in Gibraltar a situation where a unanimous decision calling on a Member to resign has been carried and then ignored by the Member and that decision to ignore a resolution of the House and carry on here is not a democratic deficit in the eyes of the Leader of the Opposition because he thinks it is quite alright that having been told he is persona non grata he stays here and carries on asking as many questions as he can dream up whenever there is a meeting of the House. Well, I am afraid that the position of the GSLP is that we are consistent in the things that we say and since we said when we called for his resignation that as far as we were concerned he had no right to exercise in this House the position of a Member because he was already admitting even then that if he went back to the people he would not get elected. He was saying that publicly. He said that the reason why he was not prepared to resign there and then was because he did not have a very good chance of getting elected and he needed more time to convince Gibraltar. If we are to believe the GBC/Chronicle poll which I know the Leader of the Opposition does not believe, he believes the Panorama one, I know that, but if for the sake of hypothesis we were to believe it they claim that only two people said they would vote for Mr Cumming. I do not know if they happened to ask him and his wife in Main Street who they would vote for. Therefore, we think that if anybody in this House has been guilty of a democratic deficit it is in fact the Hon Mr Cumming himself by choosing to ignore a resolution carried by everybody else in the House with his vote against and it is no good saying in Parliament somebody left the Conservative party and crossed the floor, this is not the case of somebody crossing the floor. Can one imagine, Mr Speaker, the House of Commons voting 629 to one to say to a Member "You are not fit to continue here" and that Member saying "I will not go"?

HON P R CARUANA:

Would the Chief Minister give way, because we have now come to the crux of the issue Mr Speaker? The House did not say to the hon Member "You are not fit to be here". The House expressed a view that the House would like the Hon Mr Cumming to have resigned and to have put his views to a test in a bye election. That is what the Opposition supported but the decision is his and if notwithstanding the views of the majority of the House and it does not matter the majority is 50 to one or 150 to one, he chooses to ignore the opinion of the majority of the House, albeit that he is a minority of one, it does not entitle the rest of us to then go one stage further and say "Well, if you do not do as we ask, we the majority club together, in effect we decide who should belong to this House and who should not". What we were saying was, "We think you should resign and we think you should test your views in a bye election". That does not mean that the consequences of rejecting our views is that we set ourselves up as some sort of constitutional court to decide who is entitled to stay in this chamber and who is not and that is the difference. We think that we were expressing a view. The Chief Minister thinks that we were expressing a view coupled with consequences as to how that view had to be implemented and that is where we disagree Mr Speaker.

HON CHIEF MINISTER:

I will not be giving way Mr Speaker again because in fact the hon Member had a chance to put his views and he put his views and his view was that he agrees with the Hon Mr Cumming that because we have not answered his questions which is the only thing we have done to him, not answer his questions, we have not actually sent him to Moorish Castle where many Gibraltarians think we ought to have done, what we have done is not answer his questions and that is not..... [Interruption] Sending someone to prison would be a democratic deficit but not answering his questions is no greater a democratic deficit than ignoring the view of the majority. The Opposition Member may think that it is perfectly democratic to have a decision taken, 99 to one and the one says two thumbs up and that is democracy. It may be the kind of democracy that he believes in but it is not the democracy that the rest of the world abides by when people..... [Interruption]

Mr Speaker the hon Member is not entitled to have a say at this stage because he has spoken expressing whether he supports the views of the Hon Mr Cumming or not and it is not his motion that I am answering. One would think that

the Hon Mr Cumming was still in his party, the way he behaves. Mr Speaker, the House censured the posture because he wanted to call it posture instead of view. If he brings a censure motion to the House against the Government does he not expect that the Government would resign? Why does not the Government resign? Because it has a majority and it defeats the censure motion. Is it not normal in any parliament that if a censure motion is passed against the Government the Government goes? Well if the censure motion is passed by 99 to one should not the one go? And if the one says "I will not go" then the Opposition Member believes that if the Government were to be defeated in a censure motion in this House which clearly, clearly, [Interruption] I am not giving way. If a censure motion were to be carried in this House against an elected Government where in fact the ex officio Members are not allowed to vote to support the Government in a censure motion precisely because it is the reflection of the wishes of the electorate, the Opposition Member believes that the censure motion passed against the Government because the Government do not have a majority means that the Government can still carry on governing. He thinks if the Panorama poll gives him a majority we should all go but if a censure motion is passed, we stay on. Strange ideas of democracy which no doubt when I finally tell him the election date he will have an opportunity of explaining. We have a very clear understanding that when we moved the motion here in September 1994 it was to demonstrate that the democratic thing to do was that if the Hon Mr Cumming believes that the views that he was explaining or the posture that he was adopting as the others would have it, were ones which were supported by a section of the electorate, that all he had to do was to go to the people, defend that policy because the people that stood with him said they did not agree that that was the policy that they had shared with him. He has tried to explain today that he does not know whether in fact when he joined the GSD it was that he did not understand where they stood or that they did not understand where he stood or that he has evolved and they stayed still. Or it may well be that he is trying to protect them against the damage that he can inflict on them if they are too closely identified with him, that may be a fourth possibility. The truth of the matter is that we made clear in that motion that if the hon Member did not go to the people to test the support for his ideas we would in fact cease to acknowledge him as a Member of the House and accept that we should respond to any questions or motions from him and we stuck with that and we said it in September 1994 and therefore I am making an exception today, given that this is the last time Gibraltar will ever have to put up with the Hon Mr Cumming in the House of Assembly because he is obviously not going to get re-elected by addressing his motions. I

therefore propose to move an amendment to the motion by deleting all the words after "This House" and substituting by the following words:

"... (1) Notes that the Hon P Cumming was asked to resign his seat in this House by a motion carried on the 29th of September 1994;

(2) Notes that he has continued to express views on Gibraltar's future as an elected representative of the people without a mandate so to do from the electorate;

(3) Considers that in so doing he has abused the democratic process and given comfort to Spain in its aspirations to take Gibraltar over;

(4) Condemns the said Hon P Cumming for doing a great disservice to the people of Gibraltar and creating an impression outside Gibraltar that the mood of the people was shifting in favour of making concessions to Spain."

Mr Speaker, the proposed motion that is contained in my amendment records what is a factual statement to which I have already referred. The hon Member was asked to resign by everybody else in the House and he had an opportunity so to do then and test in a bye election his right as a citizen of Gibraltar to put whatever views he wants like other people have put them, some have put them even more radically than he has and abide by the result. He chose not to do it and he chose not to do it not just in order to stay here and ask questions but in order to continuously appear in the media in Gibraltar and in the media in Spain professing to be putting forward views which were only being given a platform because he was a Member of the House. If he was an ordinary citizen he is entitled to have whatever ideas he wants but nobody would print them. He could write letters everyday to the Chronicle like many other people do but they would not be given the same prominence and coverage as he has been getting and that prominence and coverage that he has been getting has been something that has been music to Spanish ears. They have been waiting for somebody to say things like he has been saying for a very long time. He has occupied the role of the ripe fruit - although it does not look too ripe to me from here - that Franco was long predicting our difficulties would produce and why is that? Because he has often explained the views that he holds as views born out of necessity, not out of desire, which makes it even worse. He has not been saying publicly "I think the best thing for Gibraltar is to make concessions to Spain". He has not been saying "I believe it would be a very good thing for Gibraltar to do a deal with Spain and have dialogue with Spain and settle our differences with Spain", he has not been saying that. He

has been saying "I believe we cannot live by self-determination. We cannot feed our children by self-determination and because we have to think with our belly and not with our hearts and our emotions and our sentiments, we have to accept that there is a need to come to terms with the Spanish threat". That is the language of defeat and abdication. He may not be the only one that thinks it but he is the only one that says it. He may be more honest than others that think it and do not say it but I am afraid that he is more dangerous than the ones that think it and do not say it because the fact that he is saying it is interpreted by people who monitor every single thing that is said in Gibraltar as the first crack in the armour, the first chink in the edifice which we have always tried to maintain in Gibraltar that whatever internal differences we might have when we came to the question of Spain the Spaniards would be hitting a brick wall and we cannot escape the responsibility of what he is doing in undermining Gibraltar's position by saying "Well look I have said that we will never give them sovereignty, we will give them anything except sovereignty". They do not want anything other than sovereignty and everybody knows that, so how can he say "Anything that they want other than sovereignty they can have" and the Spaniards will say "That is the only thing I want" and they have been saying it to us for the last 30 years. This is not new and we have always known it and he knew it in 1992 when he stood for election and therefore the only excuse that I can make for the views that the hon Member expresses is that he really believes that Gibraltar was going to go totally bankrupt, if not in 1994, in 1995 and if not in 1995 in 1996 and he really believed that in the face of that he has said on more than one occasion that we would not be able to deliver a sustainable economy in Gibraltar because on the one hand Spain would have to block it and on the other hand the United Kingdom's Foreign Office would not act to defend our position and therefore apathy on the one side and hostility on the other would guarantee our failure. In the face of that failure we had to be realistic and come to terms with the enemy on our doorstep and rather than have them swallow us in a number of bites negotiate the bite. It is a legitimate view to hold intellectually and it is a legitimate position to defend politically if one asks people in Gibraltar "If you share my view vote for me" and people vote for one. I would hope that there would be very few people in Gibraltar that hold that view, but what I cannot accept is that having been told that he was doing an extremely dangerous thing he carries on doing it regardless and then he comes along to the House and says the democratic effect is "You do not answer my question about the soot in the distiller." He is playing about with the destiny of every man, woman and child in this

place and he has got the audacity to come here and criticise me because of the soot from the distiller? So I have no doubt that most people in Gibraltar who may be listening to this are more likely to agree with my interpretation of the damage perhaps unintentionally but nevertheless there, that the Hon Mr Cumming has done by continuing to propagate views which give the impression that if we were not on our last knees we were just round the corner from it and indeed I think some of the language of his third motion today indicates that he still believes that those are the options, and that in doing so he has done nobody any favours, not himself, not his family, not his children, not his grandchildren because in fact the only way that he has got a right to put such views as an elected representative of the people of Gibraltar is if he gets people to be convinced by his arguments and I would hope that rather than that happening he would be convinced himself that he had been barking up the wrong tree and stop doing it.

I commend the amendment to the House.

MR SPEAKER:

Before I propose the amendment I would like to point out that this amendment I consider it to be a motion of censure against the Hon Mr Cumming and therefore only the elected members will be able to vote in this motion. I do not know whether I need to read the whole motion, if the Opposition have got it with them already I suppose there is no need for me to read. I now propose the question in the terms of the amendment of the Chief Minister.

Any Member can speak. I want to add that this is not an amendment which modifies the original motion. It is in fact a different proposition and therefore the rules that we are going to follow are that Members will be able to talk on both at the same time. The Chief Minister who has just spoken will be able to speak at the end of the amendment. We will take the amendment first and then we will take the original motion. In the process of speaking Members then, who have spoken already may speak again. Members who speak once now will not be able to speak again. At the end then we will have the Chief Minister winding up his amendment, the Hon Mr Peter Cumming winding up his motion and then we will take the vote on the amendment first and if the vote of the amendment first is passed then of course the motion is defeated.

HON P R CARUANA:

Mr Speaker the fact that the Hon Mr Cumming is no longer in this party and the fact that he is extremely politically unpopular; the fact that I strongly disagree with the great majority of the political views that he expresses on the matter of relations with Spain will not discourage me as Leader of the Opposition in this House from making a stand in defence of basic democratic principles. If the Chief Minister thinks that he can try and rouse us all with nationalistic, patriotic sentiments of the sort that he has just used to recruit my support for the political hatchet job that he is trying to perpetrate by his amendment to this motion, the answer is that I would sooner lose my deposit at the next general elections than help him in the destruction of the democratic process on which he appears to be hell bent. [Interruption from the public gallery] Mr Speaker there appears to be a cat in the public gallery. I would not expect of course Mr Speaker a cat to share my enthusiasm for principles.

Now, Mr Speaker, the motion which we were addressing was one about whether the Government were entitled to refuse to answer the Hon Mr Cumming's question and I had already said that we would support his motion to the effect that the Government were not entitled, whatever he had done, whatever the House had voted, to refuse to answer his question. We are no longer discussing that motion. The Chief Minister asked why a Government should resign when it faced a censure motion but not a solitary Member of the House when the rest of the House condemns him. The Chief Minister, Mr Speaker, is either ignorant or determined to manipulate public opinion in the hope that public opinion is ignorant and I suspect that public opinion is not ignorant of this issue. The answer to the Chief Minister's question is so simple that I cannot really believe it of him that he does not know the answer, and that is that the laws of Gibraltar entitle to be in Government only and certainly to hold the office of Chief Minister only that person that commands the support of a majority of the House. So that if one ceases to command the support of the majority in the House, under the terms of the Gibraltar Constitution and under the terms of the House of Assembly Ordinance, the Governor is not entitled to allow one to continue to be Chief Minister. That is why a Government has to resign if it loses a censure motion because a censure motion is the expression by the majority of the House to the effect that the Chief Minister no longer enjoys the confidence of a majority of it. That is why he must resign. There is no provision as far as I with certainty tell this House, either in the laws of Gibraltar nor indeed in the

laws of any democratic, civilised nation that allows the majority to boot out the minority simply because they disagree with the minority's view. Nor, contrary to what the Chief Minister appears to think, do I know of any Gibraltarian that would want to throw the Hon Mr Cumming in prison because he holds a minority view. Indeed, I know of no country in the world now where that might be true. I think they probably might do that in Iraq but certainly not even in the ex-Communist countries have I heard it responsibly said in parliament that there must be many citizens who would like to see the Hon Mr Cumming in prison. That is a further democratic deficit in which the Chief Minister has engaged this evening in this Chamber. It does not matter whether the majority is 14 or whether the majority is nine or eight, the majority in a parliament cannot decide who is entitled to stay in it and if the Chief Minister cannot see that then frankly it strengthens my resolve. It confirms my decision to have supported the Hon Mr Cumming's original motion that the Government Members are incurring in democratic deficit.

And I agree with the Chief Minister's assertion that this evening will be the last time that Gibraltar will have to put up with the Hon Mr Cumming in this House but the difference between him and me is that he wants to bring that about as a result of his action and I insist in leaving it to the electorate. It is true that this is the last time that the Hon Mr Cumming will appear in this House but it will be because the electorate says so and not because the majority in this House says so, and that is the difference between the Chief Minister and me. There is nothing about whether I secretly support the Hon Mr Cumming; nothing about whether we have got a hidden agenda; nothing about whether we want to make concessions with Spain, but because the defence of the basic democratic principle is not something that I am willing to allow the Chief Minister to bastardize on the back of populist statements in this House. Mr Speaker, I am not willing under any circumstances to support a motion brought to this House by the Chief Minister which accuses any Member of this House of having abused the democratic process. Indeed, I believe that the Chief Minister has abused the democratic process in refusing to answer the Hon Mr Cumming's questions over the last several months. The fact that I think the Hon Mr Cumming should have resigned, as I do, does not mean that if he does not he has abused the democratic process. The democratic process of this House is established by the rules of this House; in the Ordinance that governs it and in the Standing Orders and he has committed no abuse of that kind regardless of what we think, of what he says on his feet in this House. Certainly, the Chief Minister's motion is simply not supportable to the extent that he seeks to get this House's resolution that the Hon Mr

Cumming has abused the democratic process. He has no more abused the democratic process than previous hon Members of this House have done when they have left the party with which they were elected and moved to another one. He has not abused the democratic process because he has said things in this House with which every other hon Member of it might disagree. It is a strange definition of democratic process that the Chief Minister would seek to defend in this House and he may wish to defend it but he can defend it by himself and not with our support. The fourth paragraph reads: "Condemns the said Hon P Cumming for doing a great disservice to the people of Gibraltar and creating an impression outside Gibraltar that the mood of the people was shifting in favour of making concessions to Spain". I do believe that the hon Member's statements have done a degree of disservice to the people of Gibraltar but, frankly, the Chief Minister has got to be coherent and consistent. This is after all the man of whom the Chief Minister says repeatedly in this House, or rather of his utterances, that they are the rantings of a person of unsound mind. Well, does the Chief Minister really believe that the Spanish Government could be so stupid as to think that the resolve of the people of Gibraltar to stand firm against their claim to sovereignty or that the determination of the people of Gibraltar to make no concessions to Spain are put into question by the rantings of one man of unsound mind? He has got to be a little more coherent than that. The Chief Minister however great the disservice he thinks the Hon Mr Cumming could have done to Gibraltar's unity on the question of concessions cannot in all seriousness believe that anyone in Spain thinks that the fact that the Hon Mr Cumming stands in this Chamber, usually to the derision of all the rest of the hon Members of it, to express views which everyone knows and certainly if there was any doubt the latest opinion poll confirms it, are supported by almost no one in this electorate and who in any case are going to speak loudly and clearly soon, not soon enough if the Chief Minister insists on delaying the election. Now there is a good reason is it not there? There is a good reason for calling the elections as soon as possible. Let us give the people of Gibraltar the earliest possible chance to make sure that no one in Spain thinks that the Hon Mr Cumming reflects any form of view. Let us have an election in 30 days time so that he can lose his deposit. The interests of Gibraltar do not require us to collectively incur in a further democratic deficit. The fact that the Hon Mr Cumming's views do not reflect the views of the vast, vast, vast majority of the people of Gibraltar will be stated loudly and clearly at the forthcoming general election and it does not require a witchhunt by the Government Members against an hon Member of this House for Spain to know that. It will know that soon enough by proper and legitimate means.

MR SPEAKER:

If no other Member wishes to speak I will ask the mover of the amendment to the motion, the Chief Minister, the Hon Mr Bossano.

HON CHIEF MINISTER:

Mr Speaker the motion has been brought by the Hon Mr Cumming accusing the Government of incurring a democratic deficit and the Leader of the Opposition supports him bringing the motion and supports the motion. Therefore we are perfectly entitled in a democracy also to express our opinion of the Hon Mr Cumming and our opinion of the Leader of the Opposition. I think what is very clear to the people of Gibraltar who may not be able to follow the intricacies of the Byzantine mind of the Leader of the Opposition that the last time when the Hon Mr Cumming brought a motion to the House urging us to establish a process of dialogue and we amended that motion by putting in a motion which called for his resignation and censured him, we caught the Leader of the Opposition on the hop and he was obliged to have to identify himself with a position which he would have preferred to have avoided and that it is clear that this is a repetition of that situation except that this time having already shown his hand by standing up and speaking before me and saying he was supporting that not answering the question was a democratic deficit, he has had great difficulty in shifting the ground because the last time round he was able to do it without showing his hand. The motion condemns the Hon Mr Cumming for doing a great disservice to the people of Gibraltar and the last motion censured him for doing precisely the same thing. He has compounded what we censured him for in 1994 because he has not stopped doing it since. It was not enough to stop him. At the very least, if he did not want to resign his seat he had exercised an element of self-restraint, not even that, he has redoubled his efforts. I suppose only a lawyer would argue with that. I suppose only a lawyer would say "No, no, because a government needs to have the support of the majority, if they are defeated on a motion then that is why they have to resign and everybody knows that". Well, no, of course it is not the case because in fact we can have a situation where the Government can be defeated in the House in a censure motion and notwithstanding that still have the majority of the support because the censure motion is about a specific issue. It happens all the time in many governments in Europe which are then reconstituted. What I am saying is that never to my knowledge outside Gibraltar and certainly never within Gibraltar has an hon Member of the House chosen to disregard the views of

everybody else in the House which by definition includes virtually the entire electorate. Short of going to the electorate and asking them the next thing to doing that is a vote in this House. Therefore how can the hon Member say "If you go to an election and you get defeated, that is democracy" but if the people in the House say "Look, we do not believe you represent anybody and we do not believe you should continue to take advantage of your status as an elected representative to express views which are dangerous, harmful and unsupported" and that hon Member says "Well, I do not care and because I know they are unsupported I am not prepared to test it" and that is a perfectly democratic thing as far as the GSD is concerned. Well, I am prepared to test my understanding of democracy against the Leader of the Opposition any time and I know from the 24 years that I have spent in the business that certainly the way I understand it is the way most of my fellow citizens would understand it. There might be a select few in the same intellectual echelon as the Opposition Member who might understand the nature of the argument that he is using but it is not one that I understand or accept or share. I reject it totally and I think that the truth is that politically he has got a problem with supporting this and we are taking here political decisions. This is an expression where we are here because we are politicians. This is not about theology; this is about party politics and therefore the arguments that the hon Member has used to try and defend his support for the Hon Mr Cumming and his unwillingness to support this motion, I do not think he is going to convince anybody else outside this House and they certainly do not convince members of the Government and therefore we of course expect to carry the amendment with the votes of the elected Members of the Government.

MR SPEAKER:

I now call upon the Hon Mr Peter Cumming to wind up.

HON F VASQUEZ:

I would like to speak on the original motion Mr Speaker.

MR SPEAKER:

No, you cannot. I said so very clearly at the beginning of the procedure. I cannot be open there.

HON F VASQUEZ:

I have not spoken on either of the motions.

MR SPEAKER:

You should have done so before we wound up.

HON F VASQUEZ:

The motion is still.....

MR SPEAKER:

I explained what the procedure was going to be. It is the procedure that we have always followed. Now the proposer of the original motion will speak. Then we will take the vote for the amendment and of course if the amendment carries the majority vote then the motion automatically is defeated.

HON F VASQUEZ:

Mr Speaker, if the hon Member will give way? I am very grateful.

MR SPEAKER:

No, Order, order, sit down. I am going to explain to you what giving way means. Giving ways means when something is said about what you have already said that you want to clarify, but not otherwise.

HON P CUMMING:

Mr Speaker I appreciate the joke that the Chief Minister cracked about when the Chronicle made the poll that they must have met me and my wife down Main Street and that gave me two votes. I think it is quite hilarious. The Chronicle yesterday when they give me binoculars looking for my votes and everybody else are voting for. My campaign has never been primarily aimed at collecting votes although obviously the Opposition never ever collect votes then obviously it is doomed to failure in the long run. I see it more as a campaign of planting seeds to grow in the future. Nonetheless, that said, about the scarcity of the votes on the ground for me, it is an undoubtable fact that 18 months ago I had a six per cent in a poll all on my own which afterwards went down to four per cent, to three per cent, to two per cent and in the face of the elections it has disappeared from half a per cent to nought per cent which to me is explainable more by the immediacy of the elections and the block votes rather than a total lack of support for the idea. But any way even if there was not any support for the idea, I am sure that the Chief Minister does not think that I three years ago thought "Ooh, what a crafty idea

for me getting votes, I will say concessions", that was never obviously my direction. The Chief Minister says that the reason for refusing to answer my questions was the nature of my utterances but in fact that is not what he said when he declared his policy of not answering my questions. He said that it was on the nature of the censure motion itself because he believed that it was mandatory. This is obviously a misunderstanding of the nature of that motion but in my experience of the Chief Minister misunderstanding on his part is always with a purpose. He knew that the motion could not possibly in any realms of democratic processes have been mandatory. It was in fact a misunderstanding on the purpose and the purpose was to mislead. I believe that the Chief Minister has been a past master at the art of misleading people. It was in fact to stir up the people, to use the motive, terms to stir up the people that I was a traitor in our midst, that I was a fifth columnist, to lay on a riot if it was possible, to look for rent-a-crowd. In fact a little riot would have been great cool for him because it would have reinforced the taboo on comprehensive debate of our political situation because it would exclude all those taboo terms for another 30 or 40 years. Fortunately, I think the people of Gibraltar have moved on since we had those political riots of 30 years ago and people have responded with discernment to the main changes in the situation on both sides of the frontier since then. The Chief Minister has sought to compare the censure motion against me with a censure motion against the Government and of course that just will not wash for a moment because when there is a censure motion against the Government it may well be that the Government have to resign but they resign from Government not from the parliament. If another grouping can form a Government, the same parliament goes on. It was obvious that the Chief Minister was scouring the Constitution to see whether he could squeeze some element or find some elastic loophole whereby he could have forced a legal structure to force me to go from this House because he threatened me one day with section 30 of the Constitution which obviously was the one that if a Member becomes certified of unsound mind then he has to go from the House. Section 30 stuck in my mind because later on when the Chief Minister came to the House saying that he was going to lance the boil I returned the favour and reminded him that if he was in fact the boil that was going to be lanced and perhaps section 30 applied to him. Mr Speaker in part of his speech the Chief Minister has tried to make insinuations that the GSD in fact in taking a position on my side were in fact doing that because they were sort of contaminated by the same virus that I myself had and this is precisely the mentality that my whole philosophy attempts to destroy. In fact, I was interviewed on television a couple of weeks ago and one

of the questions that was put to me by the interviewer could have been transmuted into the following. This is not what was said but this was the meaning "Look, you are a publicly declared leper and the group from which you are provenance are probably secretly contaminated with leprosy so therefore you now must declare them to be as unclean as you are." That was the real meaning of a rather convoluted question that was presented to me on the television which obviously I repudiate as being a totally unsound question. I notice that the Chief Minister has gone to quite a lot of trouble to respond to my motion, departing from his own policy which he laid down more than a year ago. I think he gave the reason that it was because this was the last day and all that. It is also a very convenient departure from his policy from which he departs with great consummate ease when convenient because when I was still in the GSD I was trying to put across to my then colleagues to say "Look, already the shape of the election campaign is shaping up because the one card that he has left is the question of nationalism; of appeal to emotions" and this is where this motion has been of service to the Chief Minister in fostering those feelings which will go into the election campaign. The Chief Minister said that in summarising what he believes to be my philosophy part of which he did rather well I thought he also said that I believed that Gibraltar is going bankrupt and therefore unpleasant though it is we have to take a more realistic view to Spain. I do not believe actually we are going bankrupt in so dramatic terms, that we are entering a period of sharp recession, yes. But the Chief Minister said that I believe that and I ask the House why is it that I believe that? The reason that I believe it is that the Chief Minister believes it. Ah he shakes his head. No, but you see Mr Speaker, I take very careful note of his university lectures that he gave us when we were new boys in 1992 in the first budget session where he went to great lengths to school us in his mastery of the science of economics and the brilliant way that he had turned round the economy of Gibraltar and would continue to do so. My views on the question of the economy have been formed by the Chief Minister's views that he laid down in this House in 1992 and he said that unless Armageddon came by the end of this term of office the economy would have soared by 50 per cent and he said I believe it is in fact 6.5 per cent with zero growth having been achieved in this last year. The graph of the economy in the last six, seven years, shows crystal clear that we can only realistically expect recession from now on and these are based on the Chief Minister's arguments. He persuaded me that in order for Gibraltar to stay in the same place, at 14,000 jobs in the economy, we had to run very fast to stay in the same place. He is the one that logically must believe that we are now going bankrupt because these

are all his arguments which I as a good university student took careful note of. Bar Armageddon! And of course the Armageddon that came eventually was a self-inflicted one or rather inflicted by the Chief Minister. I believe that the Chief Minister has many talents, Mr Speaker, and the art of theatre he masters beautifully. He is a first class actor. How he goes from treating the whole matter as a joke to treating it as a vital, terribly important issue. How serious his voice goes when he says the damage that I am doing to Gibraltar. But you see Mr Speaker I can return the compliment. In sincerity I believe that the Chief Minister and the GSLP have done enormous harm to Gibraltar, that his mandate will end up by devastating Gibraltar. He is like leading Gibraltar out into the desert and there to abandon everybody to fend for themselves and to starve like Moses but in reverse without any miracles to back him up. To me, Mr Speaker, the period of GSLP Government which I hope is now drawing to an end has been to me a nightmare in the history of Gibraltar and the sooner that it is over the better.

Question put on the amendment to the motion. The House voted.

For the Ayes:

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

For the Noes:

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

The Hon P Cumming

The Hon M Ramagge was absent from the Chamber.

The motion, as amended, was carried. The original motion was defeated.

HON P CUMMING:

Mr Speaker, I wish to propose the following motion:
"This House wishes to review the Airport Agreement in order to propose specific changes that would render it acceptable".

I have here Mr Speaker the Air Traffic Survey of the Government Statistics Office published in May 1995 giving the arrivals by air from UK over the last years and taking the last seven years from 1989 onwards we find the figure diminishing until in the last account it is half of what it was seven years previously. Admittedly, seven years ago it had come up to a peak and from that peak it is now steadily declining for a period of six years so in the last six years the number of arrivals at the airport have been steadily decreasing until they have been halved in the period of seven years. Arrivals are down by 50 per cent in the last seven years. This is very bad news for our airport because it makes the airport much more expensive to run and we know that the airport has been civilianised.

It is still in the hands of the MOD and the RAF but the RAF do not run it, it is run by a civilian company and the civilian company are paid by the MOD to do it and we know that the contract with SERCO IAL has another three years to run and none of us can say for sure that the MOD will be willing to renew it or if they are for how long they will be willing to renew that contract. It seems unimaginable Mr Speaker that that could happen but to me three years before they closed the Dockyard it was unimaginable and three years before they took the resident battalion away it was unimaginable too. Mr Speaker, I have here the Chronicle of the 31st January last where the Tourism Advisory Board report is commented on with a big heading "Gib needs better access" it says. It says "Gibraltar's restricted accessibility has been identified as one of the major problems facing the local tourist industry according to a report recently published by the local Tourism Advisory Board. The report states that restricted air access, problematic and turbulent frontier relations with Spain and the lack of maritime links with our neighbours are matters which need to be addressed as a matter of priority". I ask myself how these questions are going to be addressed. The Hon Mr Pilcher was involved obviously in this matter and he is referred to in this press article but it seems to me that rather than identifying the cost benefit analysis to identify what investments are necessary, it seems to me that we must invest in processes of dialogue and of negotiations which are far more likely to give Gibraltar the better access that it needs to enhance its tourism and its general prosperity. I have here the Chronicle dated the 16th December last in which the headline reads "90 per cent of traders want Airport move" and it says "90 per cent of the Chamber of Commerce members want an initiative to maximise the use of the airport. This was revealed by

the Chamber President Joe Holliday in his speech for the annual dinner. The airport is probably Gibraltar's most important asset and so the current impasse should not be allowed to continue. Any initiative to increase the use of our airport would have immense economic benefit to Gibraltar and the Campo Area said Mr Holliday, describing economic and employment benefits." Mr Holliday said further down that "initiatives to break the deadlock should be within a commercial framework," that is to say not a political framework. It seems to me, and I have no fight with Mr Holliday at all, that the Chamber of Commerce are inclined to want to make an omelette without breaking any eggs because it seems to me that the veto that Spain has acquired over us joining the Liberalisation Directive for Europe, that is to say making us a fully European airport with freedom to fly to any other airport and any other airlines to fly to us. The veto that Spain has obtained from Britain is one that they are not going to give up lightly. I would say they are not going to give up heavily, they are not going to give up at all until we have presented ourselves to a process of dialogue and negotiation. I also was very struck as was the Leader of the Opposition by the Government's press release on the 11th January last which the Leader of the Opposition referred to in Question 29/96 in an article headed "Ground handling at Community Airports" where new directive has found its way into existence and been the subject to this press release by the Government without which none of us would ever have heard of it and I have been extremely struck, as was the Leader of the Opposition, by the amazing parallel that the series of events have with the series of events that took place when the Airport Agreement came into existence. The article says "The purpose of this directive is to remove barriers preventing operators from different Member States active in airport ground handling market to compete for this different Community airports". The Spanish Government proposed the text to exclude Gibraltar airport. The position of the British Government was that Gibraltar airport and therefore the directive automatically applied. The British Government put up a strong fight on behalf of Gibraltar. The directive carried important tangible benefits for the industry in Britain and it was decided on balance that agreement would have to be reached with other Member States to ensure early application of the directive which in any case would have had limited practical application into Gibraltar. But the Government go on in a very uncharacteristic, grovelling attitude to praise the British Government, this is the first time since I have been here that the British position has been spelt out clearly and unequivocally on the record in defence of Gibraltar's status in the EU and in defence of Gibraltar airport status as a sovereign British airport. I think that is actually not true because at intervals the British Government have repeated frequently that our airport, that it would remain so. So I do not believe that really that this was so epoch making as the Chief Minister wanted to make it sound. "For its part the

Gibraltar Government wishes to place on record its appreciation for the efforts made by the British Government to defend Gibraltar's position. It is recognised that this matter affected important British commercial interests and having put up a strong fight on Gibraltar's behalf the British Government was faced with the difficult position of having to conclude an agreement with its partners. The Gibraltar Government is satisfied that Gibraltar's case was strongly argued and defended given the important point of principle involved". Now, Mr Speaker, this whole affair only catches my attention in so far as it draw an exact parallel with the Airport Agreement. What has happened here? The British Government in Europe want to defend our interests. They do want to defend our interests but when their commercial interests are affected their commercial interests come first. When their alliance with Spain is affected that comes first. Now, when having made a fight for the principle the British Government cave in and give up. In this case the Government praise them for standing up for us but when the Airport Agreement was entered into it was a far more important case than this one. The commercial interests were enormously greater for the UK. In the UK at the time the UK was leading the air liberalisation package. They were presenting it to Europe and they were very commercially interested in its success. Spain was not interested in the air liberalisation package. If we take it on 10 years down the road we see British Airways having done exceptionally well and Iberia needing to be bailed out by recently obtained permission from Neil Kinnock for the Spanish Government to heavily subsidise the air industry, with without European permission is forbidden of course by European law, because it is unfair competition. So Spain was not interested in the air liberalisation and they were willing to sabotage it. Britain was enormously interested and they held out for nine months on our behalf on a matter of principle but there were leading articles in all the major newspapers crying out that in no way could Gibraltar stand in the way of air liberalisation for all of Europe. So the British Government set their mind to caving in and how could they cave in? Well, they were going to exclude us on the air liberalisation but in order to make up to us a little bit they left a loophole, a way in which we could if we so wanted find our way back into the air liberalisation stream which would set our airport free and turn it round with the possibility of commercial viability. Because the question of commercial viability for our airport is one in which local experts, is very, very problematical for our airport to succeed commercially when Malaga airport and other airports in Andalucia have been surging ahead when the road network is constantly being upgraded to launch our airport commercially now at huge competitive disadvantage and more so with every year that passes. So, Mr Speaker, anyway this press release from the Government to me, I fail to understand completely what their purpose was. Maybe they are trying to train the British Government in a new fashion by praising every

little tiny, positive thing and punishing every tiny bad thing as if that was going to have any impact. In this case when the British Government have caved in they have praised them and when they caved in on the Airport Agreement which is far more important they referred to it as the infamous Airport Agreement without any understanding of the vast commercial interests that Britain had at stake and which obviously they put their national interests before ours and this is something that we have come to terms with. Whenever the British national interest does not coincide with ours they will put theirs before ours.

Mr Speaker, in reviewing the records after obviously I had written my motion which had to be in over a week ago where I said that in order to propose the changes that would render it acceptable it seemed to me as I reviewed the records to be a forlorn hope that the Government could, with specific changes, find it acceptable because in all the records that I have been reading I see the Chief Minister totally intransigent on this issue. He categorically states that he prefers no airport to an airport in any way shared with Spain. He said it is a question of the sense of pride that we have in ourselves as a people, of the love that we have for our country. It seems to me that we love our country; we must not allow it to be impoverished. To me this GSLP attitude is not a sense of pride but a fanaticism because the real facts of the matter is that our position in this matter is not a strong one and we must not let the people believe that it is a strong one. We had the other night the benefit of the Hon Juan Carlos Perez scientific telecommunications technology broadcast in which he said all these marvellous telecommunication networks that were going to be set up with the base in Gibraltar, in great scientific detail only to tell us at the end that of course these are under attack from Spain. We have already lost the flag under the attack from Spain but he goes on to say that the ones that are presently in hand we will win because we are right. I am sometimes accused of being naive but that seems to me the most naive political argument I have ever heard. We will win because we are right and of course we are right on the airport issue as we are in everything that we have stated in the past about our political position but being right and being able to establish and enjoy our rights in this hard, cruel world is a totally different issue. Therefore, it seems to me that the sensible thing is to be a little bit flexible. The real choice that we face is an airport shared to some degree with Spain or within a very few years no airport at all. I feel that we must put our trust in what Britain has repeatedly guaranteed, that under the Airport Agreement the airport would remain a British airport and that the agreement in no way impinges on the sovereignty of the isthmus. The Airport Agreement in fact makes clear that whatever happens under the Airport Agreement the land on which the airport is built, the case for one side or the other is not changed in any way over the sovereignty of the land itself so it seems to me that

if we went ahead with the Airport Agreement and it turned sour what would we lose? We would lose the use of the airport. We would not lose the land, we would use the use of the airport but it seems that losing the airport is on the cards anyway as we lost the Dockyard, as we lost the resident battalion. There is no guarantee that the British Government will be willing indefinitely to renew the contract for the civilianisation and the running of the airport, particularly as the airport becomes increasingly expensive to run as passengers diminish and diminish. The question of sovereignty implications involved in the Airport Agreement seem to revolve exclusively around the question of whether Spain would have consultation or whether they would have a veto in the Civil Aviation Authorities of Britain and Spain that would run the airport. Britain says consultation and Spain says that they have a veto. Now, I would like to be able to ask Spain that if they believe they have a veto in what circumstances do they believe that they would be justified in using that veto? Because obviously if they were going to use it to exert pressure at the airport as they do at the frontier, that obviously is not going to get us very far at all but the curious thing is that about two years ago Sr. Solana was addressing the Foreign Affairs Committee of the Spanish parliament. It was the time that he said that the Spanish Government realised that it had been counter productive to have the frontier shut and the separation of Gibraltar from Spain, the alienation that it felt was counter productive and at that time he also said that it was a great shame that the Airport Agreement had not been implemented because if it had it would have acted as a confidence-building measure. He was saying this to his own people. It is not that he was trying to con us, he was saying it to his own parliament that in their book if the Airport Agreement had been got off the ground and it had been run to our satisfaction and to our benefit it would indeed have been a confidence-building measure, that they would have found fruitful. I believe that there is a very good likelihood that they would in fact have used it in that way - veto or no veto and that vetos would have been exclusively associated with professional matters so that flights come or go or are forbidden or encouraged according to the professionals in the field. In any case that obviously is a matter that we have to be clarified about the Airport Agreement the question of veto and consultation. I do take the Chief Minister's point made in other parts of the papers that I have reviewed where he says to Britain "Look, come to us with one agreement, not with two". Britain and Spain must be saying the same thing, before we can go down that road.

Mr Speaker, the Spanish Government and the Spanish media, when the Airport Agreement was made public proclaimed a great victory for themselves and this was the main factor that turned Gibraltar against it. The statement I have

taken from the biography of Sir Joshua Hassan that this is what Sir Joshua Hassan believed, that the main fact in turning the people against the Airport Agreement was the Spanish cry of victory when the Airport Agreement was proclaimed but, curiously, a couple of months ago when Sr. Brana was addressing the Rotary Club in Algeciras it was broadcast over the radio, I heard it over the radio, Sr. Brana made reference to that with an implication that we should have been able to see through the self-congratulations of the Spanish politicians that had achieved the Airport Agreement as a step forward in gaining their sovereignty over the isthmus because in fact the Airport Agreement does not give any sovereignty over the land. The sovereignty implications are exclusively related to the permission for flights. Now, Mr Speaker, the Airport Agreement many say was spawned by the Brussels Agreement. When people denounced the Brussels Agreement as they frequently do they say "Look what it brought us, it brought us the Airport Agreement, it brought us the Spanish pensions" but surely there is no logic whatever in that. If we had never had the Brussels Agreement, Spain would still have joined Europe and would still have used its position in Europe to try and do us harm and to me it is quite clear that part of the sovereignty of Gibraltar is exercised by the European Commission. The blue flag with the ring of stars which flies over the Rock contains an element of sovereignty in it which Spain already exercises over the Rock and it is through that element of sovereignty that it already enjoys that it uses to harass us and to get away with things like excluding us from the Air Liberalisation Directive. I also think that in the eyes of the experts who do remind us that the world is not waiting for us, that the Malaga airport in particular is surging ahead, that its business increases, that the day we want to commercialise our airport it will be very hard to break into the market and to compete with them and the longer that we leave it the more difficult that will become. I would seek specific changes that would make the Airport Agreement acceptable to me would be obviously on the question of the veto, on the question of one airport agreement and not two but also the question of financial arrangements that would be involved. Whether or not what would be the Spanish financial involvement? Would Britain continue to subsidise the airport while it was making a loss until it turned to profit? And when that day arrived would it then be willing to hand the airport over to us so that all its profits could come directly to the people of Gibraltar? Those would be the assurances and the clarifications that I would be seeking before I would be willing to accept an airport agreement. Mr Speaker, in the airport demonstration where so many Gibraltarians took to the streets to protest in shock and horror, I was amongst them. I was as shocked and angry and horrified as anybody else. There had been some months of indications that something was cooking but in a matter

of months one does not come to terms with something as shocking as that was to us - that Britain could have done that to us in any circumstances, that it could have taken what we considered to be our airport and offer it to Spain to have authority over it. It was something that I associated with completely to reject, that we reject and we reject and the world moves on and are we going to be stuck in that moment of the airport demonstration emotionally stuck to that going round with the same and the same thing whilst the rest of the world moved on or will be try to adapt and survive and make the best of what is admittedly a bad job?

I commend the motion to the House.

MR SPEAKER:

I now propose the question in the terms of the motion moved by the Hon Mr Peter Cumming. I take it that all hon Members have copies of the motion. Any member now who wishes to speak can do so. I just want to make it clear before we speak, if there is any amendment which turns it into another new proposition the procedure will be exactly the same as before, that I would not like any member to stay out of the debate simply because he did not hear what the procedure was.

HON P CARUANA:

Mr Speaker, I suspect that you have let the Chief Minister's cat out of the bag.

MR SPEAKER:

What I just want to make sure is that nobody else is (Interruption)

Order, order.

HON P CARUANA:

I am obliged to you Mr Speaker. Mr Speaker, the members of the Opposition will not be supporting this motion. In the first place the motion reads: "This House wishes to review the Airport Agreement in order to propose specific changes". The Airport Agreement is not an agreement to which this House or indeed the Government that flows from it is a party. It is therefore not ours to review. It is therefore not an agreement which this House is in a position to amend by anything that we might decide in it. If it were, it would have been dealt with long ago. Furthermore, the agreement itself is now so discredited, not just by the political damage that has been done to it by the different interpretations put on it by the British

Government and the Spanish Government but also by the entrenched views that we, the people of Gibraltar, have now taken on it. Indeed, also by the changes that there have been; the progressions that there have been on European Union laws in matters relating to air liberalisation; that the defects in the agreement are now so extreme that they are not capable of eradication by amendment and furthermore, Mr Speaker, thirdly any airport agreement which might be acceptable to us is not likely to be an agreement that can be scribbled casually as this one is on two and a half pages of print. It is always interesting to remember that the agreement applying to Mulhouse/Basle Airport between two such friendly nations as France and Switzerland over the sovereignty of which there is no dispute run into something like 4,000 pages. The suggestion, therefore, that any agreement likely to be acceptable to the Parliament of Gibraltar can be dealt with in 2.5 pages is, frankly, absurd and therefore there is no 2.5 page agreement that can be amended in order to make it acceptable to at least the party that I lead. That said this House knows that my party considers that it would be in Gibraltar's commercial interests to explore the possibilities of arriving at a different airport agreement based exclusively on commercial considerations. I take cognizance of the Hon Mr Cumming's point that that might be an attempt to make an omelette without breaking eggs. Let me tell the hon Member that whilst we believe that a commercial agreement with no sovereignty implications is in Gibraltar's commercial interests, if notwithstanding whatever initiative we take on it, if notwithstanding all attempts by us, Britain and others to persuade the Spaniards to accept it, if they reject it, then there will be no airport agreement because as far as we are concerned whatever the commercial advantage to Gibraltar of having an airport agreement if the only way of securing one is that we should make concessions over the sovereignty of the territory on which it is built or indeed that we should compromise our exclusive ownership of the airport then the answer is that we would all of us much rather not have an airport agreement at all and if the result of that is that in three years time we lose it, well then, frankly, we should convert it into a racecourse because if the choice is between losing the airport and giving away the half of the sovereignty of the land on which it is built to the Spaniards, I would rather lose the airport. Now, that does not prevent me from holding the view which I do that Gibraltar should be more pro-active in trying to smoke the Spaniards out. Gibraltar should be more proactive in throwing on the tables in London and in Europe a commercial airport agreement that is acceptable to us and let the Spaniards explain to Europe why it is not acceptable to them. That is our approach to the airport agreement. I am haunted by the words of an English MP when we were in London, I do not remember when, some time during the last 12 months, in the CPA Regional Conference the last one of which took place in London and one MP in the House of Commons - one would expect that English MPs are the best informed, they

are not always very well informed but certainly they are the best informed, one would expect them to be better informed than the MPs in the rest of the European Union - this man asked me in raising the question of the airport agreement he said "What is the matter with you, Gibraltarians? Why don't you want to let Iberia use the Gibraltar airfield?" and I said "I beg your pardon?" and he said "Yes, why do you not want to allow Iberia to use your airport?" and I said "Is that your perception of the problem surrounding the 1987 Airport Agreement because it has nothing to do with that issue?" and of course it took me 15 or 20 minutes to explain to him what the real problems in relation to the Airport Agreement were but it struck me then as it always has done that we are the victims of much misunderstanding even amongst our friends of what opposition on the Airport Agreement is. Problems that we could avoid, problems that we could assist to dispel by taking the initiative, putting together a demonstrably commercial airport agreement with no..... to use the words that have been used in this House before, with no political strings attached. Let them reign in great numbers around every opinion former's table in Europe and then let us listen to what the Spaniards tell their European partners and that MP in London about why the people of Gibraltar do not want to share. It is not that the people of Gibraltar do not want to. We know what we want and we know what we do not want. We put on the table what we are prepared to have. It puts the onus on them to explain to others who are presently labouring under misconceptions as to what it is that they want. Therefore, Mr Speaker, for all of those reasons I do not feel that we can support this motion.

HON CHIEF MINISTER:

Mr Speaker, we do not support the motion moved by the Hon Mr Cumming either. There is much that the Leader of the Opposition has said that I agree with which is not a very frequent occurrence. I have to say that I agree with him that there are many United Kingdom MP's who one would expect to be better informed, who do not particularly appear to be well informed but then we have to look closer at home than that, after having listened to the Hon Mr Cumming, I do not think he is particularly well informed. So, before we start educating our friends in Parliament in the United Kingdom and then our friends in the European Parliament, we would have to start educating him while he is still with us. I have to say that having listened to him speaking in support of this motion I have heard him say all the very things which I think he ought not to be saying and which has led us to believe in the Government benches that the things that he says through ignorance as much as anything else and it is all very well as the hon Member said in the previous motion that if I accused the Opposition Member of being of unsound mind,

why should I worry about the attention they pay to him in Madrid? Well, because here we have a motion in the House of Assembly moved by a Member of the House of Assembly who is telling us that he will never support any sharing of the sovereignty of the land but it is a different issue to share the sovereignty of the landing rights. Look, the landing rights is as important as the land. He is saying that he does not mind sharing the decision of giving permission to somebody to come to Gibraltar, Mr Speaker. That is what being the competent authority and granting landing rights means. It means that someone thinks that if a Frenchman needs the permission of the Spanish Foreign Secretary to come to Gibraltar, he does not think that is an issue of sovereignty because nobody has said the land is Spanish. How long will it be before one thing leads to the other? One is as objectionable as the other. We would not pretend in Gibraltar to tell anybody who can go or cannot go to La Linea. Why should anybody tell us who can come or not come to Gibraltar? That is what we are talking about. Now, to actually stand up in this House and say there is a difference between the two things and then to say that the Chamber in wanting a commercial deal without political concessions is wanting to make an omelette without breaking eggs. Well, which are the eggs he wants to break? The eggs translated into Spanish that he wants to break are going to upset a lot of people here. I have to say that the hon Member in introducing his motion did not seem to understand just how big a difference there was between the position of what happened in 1987 and for example the fact that we have welcomed the position that the United Kingdom took on the Life Directive. There is a fundamental difference between the two things because this was not a meeting of the European Union where there were 10 previous occasions, where on 10 times there had been a phrase saying "This does not apply to Gibraltar" 10 times and then on the eleventh time Spain says "We want the same clause" and UK says "No". This is important and it is worth recognising that it is important and it is not normal. They have stood up on other issues before on the external frontiers they vetoed it since 1991 and we warmly congratulated them for it. On the Identity Card they threatened to take legal action and we congratulated them for it and on this occasion they said "The fact that we said yes 10 times before does not mean what Spain says it means and we want to say it now and for the previous 10 times" and I think the hon Member ought to recognise that that which has not happened before is worth recognising as something positive on the part of the United Kingdom Government just like we criticise them when they do things which we think are not doing what they are obliged to do in defending our interests and we can understand that sometimes they do not go as far as we would like them to go but if they go at least 90 per cent of the way then we ought to respond differently from when they go 10 per cent of the way and these are facts. He can check those facts from himself. So we have a situation where what took place in 1987 and the hon Member has told

us that because in 1987 the agreement to share the airport with Spain came as a shock to everyone including himself, he has now got over the shock, and now he is prepared to think the unthinkable, what was unthinkable in 1987 and that we should now be trapped in the position we took in 1987; that we should move with the times. Why should any of us believe him when he says in the next motion that he will never surrender sovereignty? Suppose he moves with the times in another nine years as he moved from the time since the demonstration on the airport? The fact that we are not moving on the airport is a guarantee that we are not going to move on an inch of our soil, of one grain of sand on our beaches and he may think that it is emotional, fanatical and patriotic. Well, I can tell him that that is what the Gibraltarians feel like deep down inside. That does not mean we are hostile to Spain or that we want to have rows with either them or the UK but when the crunch comes people have to stand up and be counted. Mr Speaker, when the hon Member thought about the speech of Solana to the Foreign Affairs Committee saying if we had implemented the Airport Agreement that would have been a confidence-building measure, he was not talking about our confidence, he was talking about their confidence. The hon Member has totally misunderstood upside down what Solana was saying. Solana was saying we have no confidence that the UK Government can deliver anything under Brussels because the one thing they promised has not been delivered and if they implement we will regain our confidence in the process of osmosis. That is what he was saying to the Foreign Affairs Committee and he was saying "We want a gesture from the UK to us" not a gesture to the Gibraltarians. What Solana and the rest of the Foreign Affairs Committee believe is that the UK defends us too much. We believe they defend us too little but the Spaniards believe they defend us too much and what they mean by building their confidence is that the British Government should be less firm on the insistence that they have to respect our wishes and if our wishes is that we dig our heels and we will not move then we should be cajoled, pushed or nudged or all the other things that occasionally find their way into articles. I have to say that we understand that the survey carried out by the Chamber of Commerce said that most people wanted the airport not necessarily in the 1987 Airport Agreement but the airport to have a way of being utilised. It all depends how the question is put but I do not know of anybody in Gibraltar who would not subscribe to the idea of having more flights coming to the airport, whether from Spain or from anywhere else provided we were clear that this was being done in a way which did not put in doubt on which part of the frontier the airport is - on ours and we are happy to let anybody use it but at the end of the day what we cannot do is let people use our property and then finish up having to need their permission to use it ourselves. And what is wrong with the Airport Agreement and which is different from the recent exclusion of Gibraltar on

ground handling is that the Airport Agreement even gives the right of consultation under article 1 on nonEEC flights which has nothing to do with the EEC. I can tell the hon Member that when I was in the Opposition in 1987 and there was this indication of what was being cooked in the Airport Agreement my advice to the British Government which they chose not to take and they did not have to take because they did not have to consult me, they had to consult the Government of Gibraltar and not the Opposition but I offered it unsolicited and I said "Look, if you really are in a situation where you feel that you have no choice, at the very least do not sign an agreement on the conditions that we have to accept to go in because then you are locking us out permanently. The actual Spanish position in July 1987 was better for Gibraltar than what the British signed in November. What Sir Geoffrey Howe rejected in Luxembourg on the 7th July 1987 which was the position that Spain was willing to settle for when all the members were sitting together - and it was a compromise - was a worse deal for them and a better deal for us than what was finally done bilaterally because the July position which Spain had the support of the other Member States and which the UK vetoed was a temporary suspension of the directive in respect of Gibraltar until we agreed how it would apply and that left us with a totally blank sheet of paper. What we have now is a permanent suspension of the directive where Spain says "The only way that you are going to get back is to implement what was there in 1987 irrespective of how out of date it is, of how irrelevant it is, because there is your signature and it says here it will come in when the House of Assembly approves it and therefore all I need to do is wait and it is either this or nothing". Therefore the hon Member is right in saying Spain will not give up the veto, easily or perhaps even at all. But then if he believes that Spain will not give up the veto, easily or at all, is he not guilty of trying to make an omelette without breaking eggs? Or is he saying, because they will not give up the veto we will give up the opposition to the veto? Therefore having listened to his arguments I propose to move an amendment which I think reflects the correct position and the way forward, and I beg to move that the motion be amended by the deletion of all the words after "The House" and the substitution of the following words:

- (1) Notes that the Anglo/Spanish Airport Agreement 1987 was rejected by the Gibraltar Government in 1988 and unanimously rejected by this House on the 27th March 1991;
- (2) Notes that the terms of the Agreement are acknowledged by Her Majesty's Government to be now incompatible with Community law and in need of amendment;
- (3) Notes that all efforts at amending the Agreement have been rejected by Spain;

- (4) Calls on Her Majesty's Government to formally notify Spain that it is terminating the said Agreement; and
- (5) Considers that any future arrangements for the greater utilisation of the airport should be purely commercial without political implications for its status as a British Regional Airport within Gibraltar's jurisdiction."

Mr Speaker I imagine that even Mr Holliday will approve my amendment especially Mr Holliday even since he is such a recent convert he might even become unconverted, we never know. The House of Assembly has in fact passed many, many motions on the airport and the position has always been consistent in separating the inescapable commercial logic of creating more economic activity which would be of benefit not just to Gibraltar but to the whole of the hinterland and seeking that we on our side should have to pay a political price to obtain the economic benefit which nobody else is being asked to pay. Nobody is saying "Look, you have to share the sovereignty of what used to be the other side of the isthmus" which suddenly disappeared one night and we found that the guard had moved across what we used to call the neutral ground. Nobody is saying we are going to have something where there is use of land on both sides which we both have rights over. What we are saying is here is land on our side, an airport built by us and it is a nonsense to talk about the dispute of sovereignty and the Treaty of Utrecht and the isthmus like the Spaniards speak in the European Court of Justice because to argue that the reason why they cannot accept that the airport is in the European Union is because the airport only joined the European Union in 1986 when they joined and not in 1973 when the rest of Gibraltar joined, is a complete nonsense in the context of the 1984 Brussels Agreement where they asked for advance EEC rights not once they had crossed the isthmus but as soon as they crossed the frontier.

The Spaniards were not saying because we do not think the airport is in Europe in 1984 what we are saying is "You leave Spain, you enter non-European Gibraltar when you cross the runway and then you enter European Gibraltar when you get to the Glacis Estate." They did not say that in 1984 but they actually had the audacity to put that case to 13 judges - two of whom were Spanish - in the European Court of Justice and they did it without blinking an eyelid and they argued that their position was a very clear one. Here we had a piece of land which they said was part of the Member State Spain and the UK said was part of the Member State UK, and like all disputes in this reasonable era of dialogue what we do is we say "Well, look, it is neither one nor the others", except that I was in the tenth row back without having a voice trying to say "Wait a minute, it is my piece of land, it is not one or the other" but we did not have a say because we are not a sovereign country and because we are not a

Member State and because we are not allowed to go to the European Court of Justice and, regrettably, the entity that could have gone which was Gibraltar Airways was not prepared to go because it is not just the British Government that when it is pulled between political responsibility and commercial interests, get swayed, it was the fact that GB Airways had then flights to Jerez and to a number of other destinations in Spain which made them say to me quite clearly "Look, we understand that it will be very valuable if we as an airline did the case but if we go there as an airline we will never leave Jerez again if we are allowed to land" and I could understand it because at the end of the day it is a business and it was a political battle. But we need to understand that if that is done by GB Airways then it is not surprising if it is done by British Airways or done by commercial interests in the United Kingdom when they come to fighting over extending the air liberalisation programme in the European Union because they stand to make money. Clearly, this would not be an easy thing for the United Kingdom to do but at the end of the day I can see no other way. If we are all convinced that there is no prospect of the House of Assembly ever agreeing to implement that 1987 agreement then presumably agreements that are unimplementable can be capable of being terminated, I would have thought. It is an agreement without a set date but certain things were supposed to be happening in 1987 and 1988 which did not happen and which are not going to happen in 1997 and 1998, 10 years later. I can tell the House that it would not be too difficult to obtain the necessary private capital to develop the airport if we could find a way of freeing it from political ramifications. It would not be too difficult. We have in the time we have been in Government, we have had a parade of people who always said "We think the geography of Gibraltar makes this a viable proposition provided we can be given reassurance that we are not going to invest millions and then somebody is going to come along and say "Well, there is an airban and you cannot land". We have had situation where, quite apart from anything else one of the extraordinary omissions in the 1987 agreement is that it did not even commit the Spaniards to removing the restriction on the flight plan to Gibraltar. It was so badly drafted, as the Leader of the Opposition has said, in a hurried fashion to meet a deadline on a couple of pages that even though it envisaged flights from Spain it did not even provide for the plane to be able to come straight from Spain to Gibraltar without having to go round the Rock across the Bay and not pass over Algeciras, not even that. One would have thought the logical thing is that the air restrictions were put there by Franco in 1973 or 1974, it would be one of the clauses saying the restrictions on air approaches will be removed on the implementation of the agreement. That is not there and I can tell the House that when I raised this with London shortly after being in Government and we looked at the agreement, they said "Well, we have taken it for granted that that will happen", but assuming that something will

happen with the Spaniards because they put it black upon white and signed it is a hell of an assumption. Assuming they are going to do something they have not even put down, one must be living in another world if one believes that and therefore clearly the agreement leaves a great deal to be desired and if we are going to have something else the next thing the UK Government have got to take the bull by the horns and go back to Spain and say "Look, this is a non-starter if we really want to make some progress and if we are really serious about working together for a sustainable economy in Gibraltar and in the surrounding area let us accept that we have got to go back to square one and let us scrap the old agreement. I can tell the House that I have no doubt that if we could find a way of producing the scenario of externalising the issue from issues of sovereignty and dispute and political sensitivities - which is easier said than done, I do not pretend to have the answer - then there would be absolutely no problem in getting 100 per cent private capital to invest in developing Gibraltar into a major international airport feeding the zone because the competition for such a site in this particular part of the world is very great. There are many people who are prepared to risk their capital, who are experts in the field. The people that we have had coming to see us are not people who do not know what they are talking about, they are people who can produce the necessary credentials to convince us that they know how to run major airports and that they are involved in this business. It would seem to me that the way we phrase the fifth clause would meet what I imagine most people would want if they were asked and therefore if one assumes that what the business community is saying is that they want a commercial airport without political implications is because they see the airport as something that can be of great benefit to everybody concerned but of course if we have to put a price on our liberty, on our rights, on our freedom, on us being able to decide who comes into our country and who does not, then no price is too high and therefore if the price is no commercial deal or no airport, that is the price we will pay. I commend the amendment to the House.

MR SPEAKER:

I now propose the question in the terms of the amendment moved by the Chief Minister, the Hon Mr Joe Bossano.

Let me explain the procedure now. Again, this amendment does not modify the original motion. It is an alternate proposition. Therefore we shall follow the rules that we did last time, that is, any Member can speak now on both the motion and the amendment and the winding up will be done by the Chief Minister for the amendment and then after him the Hon Mr Peter Cumming for the original motion. Any one who has spoken on the original motion can now speak again but any member who does not speak now cannot speak after the Chief Minister speaks winding up the amendment.

HON P R CARUANA:

Mr Speaker's explanations of the rule are clear as always. Mr Speaker, we have absolutely no difficulty in supporting the Chief Minister's replacement of the motion which I believe correctly states the position around which this House should unite. I would, however, like to suggest some improvements to it which I will not do formally unless the Chief Minister indicates that he will accept it because I do not want to complicate the debate. I am quite happy to support it as it is but if we can improve it I would suggest amendments in paragraph 2. One of the things that I said in my own address to the Hon Mr Cumming's motion is that I do not think that the Airport Agreement of 1987 is capable of being rendered acceptable by simple amendment and indeed I think the Chief Minister recognised the same thing in his moving of the amendment when he said that the reality of it is that the Airport Agreement of 1987 cannot be implemented. I would therefore suggest to them that they consider therefore whether the use of the words "and in need of amendment" is not unduly generous to the 1987 Airport Agreement. I would much rather say something like "Notes that the terms of the Airport Agreement are acknowledged by HMG to be now incompatible with Community law" and then say one of two things, either "cannot be rectified by amendment" or alternatively "cannot therefore be implemented". We would then say in paragraph 3 "Notes that in any event all efforts at amending the agreement have been rejected by Spain". We then go on to call on HMG to formally notify Spain that it is terminated, not because it needs amendment but precisely because it cannot be amended. That is why it needs to be terminated because if the Agreement can be amended it does not need terminating. I give way.

HON CHIEF MINISTER:

There is a slight problem in Paragraph 2 in that although I agree with the Opposition Member effectively what Paragraph 2 is reflecting is the view that has been put by the UK. That is to say, the UK has said publicly already that we need to update the Agreement and they have put that view to the Spanish Government who have in turn rejected it by saying "Implement first and then we will look at updating it". I agree with him that the view of us here in Gibraltar is that it cannot be implemented but it is not a view that the UK has ever necessarily accepted and it certainly has not accepted it publicly. Publicly it has said it is capable of being amended and has urged Spain on a number of occasions both formally and informally to recognise that the way forward is the updating of it.

HON P R CARUANA:

Perhaps we could say that it is incompatible with Community law and therefore is in need of updating, we could then

add "before implementation" just to take care of the Spanish argument.

HON P CUMMING:

Mr Speaker would the hon Member give way?

MR SPEAKER:

Just a second please, let us clear the actual wording of the amendment first.

HON P R CARUANA:

Mr Speaker what we want to do is carry a motion I am not going to propose any amendments unless the Chief Minister has indicated so I am not proposing a formal amendment. They are considering possible wording which if they indicate they will accept, I will propose it.

MR SPEAKER:

Let me clear the position if there is an agreement to an amendment to an amendment then we have to vote on the amendment to the amendment when all Members can speak on that. What we are trying to clear now is whether the Government agree with the amendment of the Leader of the Opposition. Let us hear that first.

HON P R CARUANA:

Can I just summarise where we have come to Mr Speaker. The latest proposition is that we delete the words "in need of amendment" and substitute them with the words "is therefore in need of updating before implementation".

HON CHIEF MINISTER:

Mr Speaker I think there is a difficulty. To be quite honest with the Opposition Member I think his first amendment made paragraph 2 tougher and the second amendment makes it weaker if he analyses it, because we started off by saying we remove that it is in need of amendment and instead we say "it cannot be implemented" and therefore it is dead and now we are saying "is in need of updating before implementation" and of course "updating" is not as strong a word as "amending".

HON P R CARUANA:

I accept that. I am quite happy Mr Speaker. This motion is intended to reflect the views of this House, not the views of Her Majesty's Government and, frankly, if this House believes that the agreement is incapable of implementation and therefore should be terminated, that is what we should say, and let us just say "and is therefore it cannot be implemented".

HON CHIEF MINISTER:

I accept that entirely and I think the original thing is acceptable to us by adding the words "and cannot be implemented" but that we need perhaps grammatically have something which distinguishes between what is acknowledged by Her Majesty's Government which is that it is incompatible with Community law and what we believe which is that it cannot be implemented.

HON P R CARUANA:

Mr Speaker, it might be done by splitting the two paragraphs. "Notes that the terms of the Agreement are acknowledged by her Majesty Government to be now incompatible with Community law. 3. Considers that the said Agreement cannot therefore be implemented" and then we carry on. We just separate the concepts by having them in different paragraphs. I do not want to make too heavy weather of this. Frankly, the political message is the same except that we are leaving open the possibility of amendment. Perhaps they can amend the 1987 Airport Agreement in the same sort of way as the Chief Minister amends the Hon Mr Cumming's motion, by deleting everything after the first words and starting with a clean sheet.

MR SPEAKER:

Let us be careful, we cannot get all bogged down in this. Let us clear now, between the Leader of the Opposition and the Chief Minister what is going to be the wording of the amendment and if the Chief Minister has got anything written down, could he please pass it on to me and to the Clerk.

HON CHIEF MINISTER:

I would suggest that the best thing would be Mr Speaker that the Leader of the Opposition should introduce a new Paragraph 4 because I think it is better that Paragraph 3 comes after Paragraph 2 given the fact that it follows logically and that the new Paragraph 4 should say "Considers that the Agreement is incapable of implementation" and then of course Paragraph 4 becomes Paragraph 5 and follows logically because if we consider it incapable of implementation then it is natural that we should ask HMG to formally terminate it and that would introduce it at a place where it makes more sense and of course it is a sentiment that we share entirely so I suggest if we introduce a new Paragraph which just says that and makes clear to us the view of the House and then renumber Paragraphs 4 and 5. That should cover the point.

HON P R CARUANA:

Yes, Mr Speaker, I think that that is what I had suggested

although I think I had suggested putting the new clause in at Paragraph 3 instead of at Paragraph 4. I am very happy to move the amendment as a new Paragraph 4 in terms of "This House considers that the Agreement is incapable of implementation" and that we renumber Paragraphs 4 and 5 as Paragraph 5 and 6 respectively. Mr Speaker there is just one other point which a perfect motion might cover and that is that in saying in what is now Paragraph 6 what is acceptable to the House one of the preconditions to render any Airport Agreement acceptable to this House of course is that it should be approved by this House and that we should not be exposed to other people's interpretations of what is purely commercial. In other words, that we ought to introduce the concept that there should not again be an airport agreement which is signed bilaterally without our advance consent and I would therefore contemplate a possible amendment by adding the words at the very end, after the word "jurisdiction" "and must be acceptable to the House of Assembly".

MR SPEAKER:

Will the Leader of the Opposition now introduce formally the amendment please?

HON P R CARUANA:

Mr Speaker I beg to move the following amendment to the Chief Minister's amendment to the motion. I suggest that existing paragraphs 4 and 5 be renumbered 5 and 6 respectively and that a new paragraph 4 be inserted to read as follows:

"Considers that the Agreement is incapable of implementation" and I further propose that the full stop at the end of what is now Paragraph 6 should be removed and the following words added there: "and must be acceptable to this House".

MR SPEAKER:

I take it this is fully understood now. I am going to propose the amendment to the amendment and then of course again everybody can speak who have not spoken on the amendment to the amendment. I now propose the question in the terms of the amendment moved by the Leader of the Opposition the Hon Mr Peter Caruana.

HON P CUMMING:

Mr Speaker, the original Paragraph 4 on the amendment which talks about terminating the said Agreement reminds me of one of the papers that I was reviewing last night in preparation for this with reference to the airport.

MR SPEAKER:

Please speak on the amendment to the amendment now.

HON P CUMMING:

Terminating the agreement is what I am referring to. In one of the papers that I was reading it seems that the question of the Airport Agreement cannot in fact be terminated because it is practically engraved in stone in the sense that it is mentioned in the Directive and to change the Directive is so immensely complicated that even though one could perhaps say "Airport Agreement now means something else" but the only way for Gibraltar to get into the liberalisation is through the Airport Agreement whether we can change the content of what it means but apparently according to the paper in which the Chief Minister had contributed we must always have an airport agreement because it is in the Directive and the Directive cannot be changed. Will I have an opportunity to say other things Mr Speaker?

Question put. The House voted. All hon Members voted in favour except the Hon P Cumming who abstained.

The amendment to the proposed amendment was carried.

HON CHIEF MINISTER:

I want to say very little more Mr Speaker other than to say that it is obviously very welcome that we are able to carry this and I would hope that one of the last acts of the Hon Mr Cumming will be to vote in favour of this so that we do not break the record that we have in all previous airport motions in the House where every hon Member voting has in fact voted in support and I think it would be better, if he cannot bring himself to vote in favour, if he were to temporarily absent himself and at least not have on the record that there is any dissenting voice on this motion which I propose to put to the British Government and which has got clearly a very important message to say.

MR SPEAKER:

Now I call upon the mover of the original motion the Hon Mr Peter Cumming.

HON P CUMMING:

I just want to make a small reference to something the Chief Minister said referring to sovereignty and not giving up an inch of sovereignty. It seems to me Mr Speaker that it is rather difficult to measure sovereignty in inches nowadays. I would measure it more in shareholding because obviously there are sovereignty implications in the Airport Agreement as it stands which cannot be measured in inches but in the shareholding that they would achieve in the whole thing in the end. I would like to return to the question of eggs and omelettes and I am very loathe to interfere with a motion that the House may think is of some use and therefore avail myself of the Chief Minister's advice to go to the loo but I would just like to say why

I feel that the question of the eggs and the omelettes is important because I feel that a motion like this gives our people false hopes that an airport agreement is possible which is purely commercial. I think it may be a good diplomatic move as the Leader of the Opposition is saying that it would show that it is the Spaniards in a bad light and it is them that do not cooperate and that they want a hostile sovereignty claim already and it is not us that stops Iberia from to Gibraltar. It could be a useful diplomatic exercise but in the foreseeable future Spain will be persuaded by dialogue or by diplomacy to give up the stranglehold it has got on our entry to the Air Liberalisation, I think is to mislead the people and to give false hope.

HON P R CARUANA:

If the hon Member will give way to me. Mr Speaker, the motion presented originally by the hon Member read: "This House wishes to review the Airport Agreement in order to propose specific changes that would render it acceptable". Presumably he meant acceptable to the people of Gibraltar.

My point is not made in jest. I would ask him to consider that perhaps he does not need to rush out to the loo because really this motion as amended must reflect the views of the people which if it is not complied with would not be acceptable as he himself has admitted in his own motion is required. Which of the following preconditions for acceptability would the hon Member be willing to drop? Does he not agree that a future arrangement for greater utilisation of the agreement should be purely commercial without political implications? Well he must agree with that because he is telling us that he is not willing to make sovereignty concessions and therefore he must accept that it has to be purely commercial without political implications. Surely he agrees that an airport agreement for it to be acceptable which is what he thinks it should be acceptable under the terms of his own motion has to preserve the airport as British because he must know that an airport agreement which compromises the status of the airport as being totally British is not going to be acceptable and therefore would not comply with his own motion and presumably he agrees that it must be acceptable to this House. Therefore since he agrees with all the preconditions that this motion attaches to acceptability of an airport agreement really it is only saying in more words what he was saying with admirable brevity in two lines. Namely, that the Airport Agreement needs changing in order to make it acceptable, and I would really urge him not to rush out to the loo but to stay here and vote in favour of this motion which really is on all fours on the basis of additional explanations which remove all possible ambiguity. In other words, that it is certainly entirely consistent with his own motion and therefore in the interests of the unity on this matter for which however

the hon Member may wish to interpret the Chamber of Commerce surveys this is an issue upon which there is complete and utter unity and consensus amongst the people of Gibraltar. I think it would be nice and helpful if on this issue which is perhaps the least contentious issue politically in Gibraltar in the sense that there are no divisions amongst us, that consensus should be reflected also in the vote of this House.

HON P CUMMING:

Mr Speaker, my grandmother used to tell me many stories as a child of many delightful days spent at the airport in Victoria Gardens and at the racecourses and I see a delightful picture there all green instead of bare concrete, lovely racecourses, people coming from Marbella to watch the racecourses like Royal Ascot; stables all round, trees, lovely, beautiful. I vote in favour of that picture. What I want is that we should be consistent that we must say now that the Leader of the Opposition is in a position to say to Mr Holliday "Look, do not bleat and whine about the airport because only any moves that we are going to make are simply diplomatic to put pressure on Spain but there is no possibility of a commercial airport as you keep bleating and whining about. So tighten your belts, forget about the airport because we will have an airport while the British subsidise it and then we will not have it any longer" and let us not give false hopes to our people that round the corner there is an easy fix for the airport because there is not. I am prepared to sacrifice the airport if everybody else is. I will tighten my belt but let us not have mealy-mouthed statements about making it to the people that this is going to come easy.

Question put on the amended amendment to the motion.

The House voted.

The motion, as amended, was carried unanimously. It read as follows -

"This House -

- (1) Notes that the Anglo/Spanish Airport Agreement 1987 was rejected by the Gibraltar Government in 1988 and unanimously rejected by this House on 27 March 1991;
- (2) Notes that the terms of the Agreement are acknowledged by HMG to be now incompatible with Community law and in need of amendment;
- (3) Notes that all efforts at amending the Agreement have been rejected by Spain;
- (4) Considers that the Agreement is incapable of implementation;

(5) Calls on HMG to formally notify Spain that it is terminating the said Agreement;

(6) Considers that any future arrangements for greater utilisation of the Airport should be purely commercial without political implications for its status as a British regional airport within Gibraltar's jurisdiction and must be acceptable to this House".

The original motion was defeated.

THE HON P CUMMING:

Mr Speaker I wish to move a motion:

"That this House:

1. reaffirms its belief that the people of Gibraltar will never be willing to surrender to the hostile Spanish sovereignty claim in spite of the many sacrifices which we shall be called upon to make in continuing to resist including a lowering standard of living and increasing immigration in search of jobs; and
2. nonetheless calls on the people of Gibraltar to support a process of dialogue with Spain in which we can assist Spain to adopt a new and more democratic attitude to the Gibraltar question and explore the possibilities of a favourable compromised settlement".

Mr Speaker, to have any hope of solving the problem of the future of Gibraltar before we can plan a solution first we have to identify the problem. What exactly then is the problem that the people of Gibraltar face? I believe that the people of Gibraltar have been protected from the harsh realities of our situation for too long by the whole political establishment including the press. Britain guarantees us one thing only and that is the Preamble to the Constitution. We will not be passed over to Spain against our democratically expressed wishes. Nothing else. The Foreign Office plans to leave us simmering in our own juice until we are ready for change. Mr Speaker in the Parliamentarian magazine that we receive as members of the Commonwealth Parliamentary Association in the last magazine there is an article written about St Helena and the problems that St Helena face. I have twice met delegates from St Helena in CPA Conferences and in the last one on the Isle of Man there was a young lady newly elected who, in addressing the Conference about the problems that St Helena faces with its relationship to Britain, actually broke down in tears and in fact it was a devastating speech because within minutes there was a lobby of the House of Commons formed, a new lobby group, the St Helena lobby was formed within half an hour to take

up the interests of St Helena in Parliament. There they have no airport and they are isolated and I cannot remember exactly the number of weeks that it had taken these delegates to reach the CPA Conference but it may have been as many as six weeks because they have a little boat and it takes a long time to reach civilisation, as it were. Now there is only one flag in St Helena. It is the British flag and they have a statute from Charles I guaranteeing that they are as English and Englishmen born in England and they are subsisting on budgetary aid from UK frozen for as many years as they choose and they are complaining about a generator which is constantly breaking down. A new replacement has been cancelled by ODA. They have to wait now for another three years in the hope that it will then be replaced. They have electricity power cuts. Their children go to school without food. Unemployment has gone up by 200 per cent in the last year. They are very worried people, without an economy, with very tenuous contacts with outside. When they come to Britain they have to have visas stamped on their passports and have to present themselves at police stations. It is incredible and this lady who burst into tears about the problems. She said "There would only be enough St Helenians wanting to enter Britain freely if they were allowed to fill a bus." What I do not want for the Gibraltar that I love is to find ourselves deteriorating into the position that St Helena finds itself and is apparently getting worse not better. Really the thesis of the GSLP for Gibraltar's future I find incredible. Some people as I say have said that I am naive but the way that I see their programme for our future is that through the United Nations we reverse the United Nations resolutions. Now, this is like climbing the wave and one climbs up the wave but as one goes climbing, the wave goes getting bigger faster than one can climb. The Chief Minister himself has referred to the difficulties of persuading delegates who next time he goes have been replaced by somebody else and he has got to start at the beginning to persuade them again. United Nations resolutions then prompt other nations to assist, to come to Gibraltar's aid by putting pressure on Spain. Spain then succumbs to that pressure and abandons its claim to Gibraltar and then we live happily ever after. If that is the way the future is laid down for the people of Gibraltar by the GSLP I would ask the GSLP to stop misleading the people of Gibraltar. We are also asking Britain to support Gibraltar more wholeheartedly and in order to do that they must fall out with Spain permanently. They must support our economy permanently. They must defend us militarily on a permanent basis and they must accept the loss of business and political support from Europe that would be caused by rupture with Spain. I would submit Mr Speaker that it is too much to ask from Britain who will always put their national interests before ours.

In formulating this motion in two parts. The first part we resist surrender with everything that we have got the

second part we try to leave no stone unturned to see whether there is a favourably compromise that could possibly be reached to bring home the fact that it really is true that we are facing harsh economic future over the next few years, gradually increasing one. People say that my message is ahead of its time. I always ask "How many years do you think that it is ahead of its time. Is it three, four, ten?" I believe it to be three. Now we come up to an election period where the normal thing is election promises and we have got to be very careful with the election promises at this time when our economy is so likely to enter recession, that promises do not mislead the people seriously on the question of our future. The GSD is also implicated in this. We have Mr Netto for example offering everything that he knows as an expert that the unions want and this is what he is going to try to achieve for them. I am sure he will do his best. Mr Holliday knows as an expert of the Chamber of Commerce what the Chamber of Commerce needs, less rates, less municipal charges and so on, and this is what he undertakes to pursue on their behalf and then somebody will have to add up the bill and say how is it going to be paid. On the other hand the GSLP, I have no indication what its manifesto may contain but if it was to be honest and consistent with their views they would not be offering any goodies at all in this election. They will be offering like Churchill, blood, sweat and tears and calling people to a realisation that following the foreign policy that they have what we have to do is to tighten our belts. A stark programme, in other words, that does not mislead the people about the realities that we face. I would call upon the GSLP not to connive with Britain in pretending that over this last year we have not been facing constitutional crisis or that there was no threat of direct rule. It is not that long ago that in this Chamber we discussed the laws that Britain was asking us to pass urgently extending the finance laws to an all crimes basis and I remember vividly the Chief Minister saying that if this was an issue that the people could easily understand, this is a matter that he would take to the people, to the streets. Now it seems incredible to me that the Minister of State for the Foreign Office comes to visit Gibraltar and is asked on television reference to the constitutional crisis and the threat of direct rule and he says "What is that, I have never heard of any press speculation, press speculation". I would ask the GSLP not to connive with the Foreign Office in misleading the people of Gibraltar for a better image at the elections, that these were not the realities that we were facing. In fact it is amazing when we think of the consummate ease with which the Foreign Office saw and brought the Chief Minister to heel, with hands perfectly clean. Afterwards they said "This is never going to appear" and he said "Well, this never happened". This is the coup that never was. When the British Government decided to take the law into their own hands and even act illegally with the confiscation of the launches, even though I greatly support the principle that something had to be

done, nonetheless when they decided to intervene they did not intervene with the agreement or support of the GSLP Government and they intervened in a way which embarrassed the visit to the United Nations by the Chief Minister, put at risk the Island Games and caused riots. It did not bother them at all.

HON CHIEF MINISTER:

Mr Speaker, will the hon Member give way?

HON P CUMMING:

Certainly.

HON CHIEF MINISTER:

Does he realise what he has just accused the British Government of doing? He is standing here, in the House of Assembly, having been sworn in as a loyal Member of this House and he is accusing the Crown, because that is what the British Government is in Gibraltar, of deliberately behind the back of the elected Government, confiscating private property illegally in order to bring about riots. Of all the insane things I have heard him say in this House, I think this takes the biscuit Mr Speaker.

HON P CUMMING:

It was the Governor himself in the Garrison Library, I do not why it should have been the Garrison Library, I think it may have been the French Consul's reception, told me that the action on the launches put them at risk of court action. Sir John Chapple told me. They must have been outside the law then. I make public some correspondence that I had had with David Davis on the question of what was realistic for our constitutional development because I had written to him on the off change that he might say something useful about Andorra situation solution. He wrote back saying for constitutional reform it was necessary to be realistic so he took the Andorra solution as constitutional reform and I tried to tie him down to what he meant by realistic and of course I tried to tie him down in writing. When he came to Gibraltar, face to face in the Rock Hotel he told my crystal clear - there are two things that make constitutional reform for Gibraltar realistic. One is the bedrock of the Preamble to the Constitution which Spain has to accept and the second is what we have to accept, that Constitutional reform must take into account Spanish sensitivities. That night on television, interviewed by Clive Golt, also urging him to say something about what was realistic and he goes all the way round the garden except to the mention of the realistic thing that we have to face. Obviously if he comes to Gibraltar and there is riots, when he goes back I suppose they tell him off and they say "Look, we did not send you to Gibraltar to

cause trouble. You do not upset the natives". I am sure that Government Members believe me when I tell them that that is what David Davis said to me privately, that he will not repeat it afterwards in public is another matter or that he refuses to put it in writing. One has to deduce from this how Britain will conduct our affairs in the future and I would similarly call upon the GSD in its election campaign not to claim too easily partnership with Britain against Spain because it is clear that the Chief Minister, in the last year or two, has had increasing difficulties in moving Gibraltar's business forward to obtain British help as we feel that that we are entitled to have. In resisting the Spanish claim, often Britain, instead of helping, has been an ally of Spain. In other words the enemy of our independence or of the aspirations that we have held over many years Britain also is associating with our enemy and therefore it would not be too long with the foreign policy as laid down by the GSD before they run into exactly the same problem. Therefore, in appealing to the electorate the GSD also has to be careful not to mislead the people because I think that the most important aspect of the functions of this House of Assembly is not to mislead the people. My position is clear Mr Speaker as regards to the future. I remember Douglas Home in the early 70s Conservative Prime Minister advising the Spaniards that what they must do is to woo the Gibraltarians and of course Scottish gentleman that he was with probably no understanding of the Spanish character it seemed so unlikely that Douglas Home would persuade the Spanish Foreign Minister that his duty now was to woo the Gibraltarians. My position is that what we must do is Spain must try to woo us and we must try to woo them to see whether it is at all possible to come to some intermediate compromise. I believe that we must be like midwives. We must help Spain to give birth to a new more democratic attitude to Gibraltar but we can only do that through dialogue and through an attempt at meeting of minds.

I would like to refer briefly to the speech that the Chief Minister made at the United Nations in July of 1993 where he says "We recognise that there is a disagreement, indeed a dispute, with Spain which places constraints in our ability to exercise our right to self-determination and that these constraints have to be addressed in a process of dialogue in which we are entitled to recognition of our separate identity as a people. I hope that the evolution of new attitudes in Spain towards Gibraltar will make such a process of dialogue and reconciliation easier to achieve". This kind of sentiment has not appeared again in other United Nations speeches and I think it is a pity because I think this is a very valuable element, that is to say, that the Chief Minister has recognised in this text a distinction between the right to self-determination that we all agree we have and the possibility of exercising that right in reality and that he accepts that Spain must be a party in the dialogue that

we must carry out between us, Britain and Spain, as to how we are going to exercise in practice our right to self-determination. This is a very important paragraph and it was picked up by the Leader of the Opposition in a debate that we had on self-determination in January 1995 in which I abstained because on the grounds that this was of course the answer that the GSLP Government was giving to intense British pressure to say "We demand self-determination written into our Constitution" which I would have agreed to at any other time except that in my view this was a provocation in its timing. In the amendment that the Leader of the Opposition proposed at that time there were four aspects. The first is that we assert our rights to self-determination. The second, we call upon Britain to recognise that right in our Constitution. The third, we call for tri-partite dialogue, that is to say Spain, Britain and ourselves on Gibraltar's future status and number four the overriding principle for this dialogue is our right to self-determination. This was the amendment that the Leader of the Opposition proposed at that time and in which I immediately offered to join in order to make a unanimous motion because I saw there something of so much value that it would override the disagreement that I had with the question of provocation because to me it made a blueprint around which Gibraltar as a whole could unite. Because it has all the aspects necessary for broad spectrum consensus in Gibraltar and it opens the possibility of dialogue with Spain and the arrival at some acceptable compromise. Our right to self-determination, we call upon Britain to write that right into our Constitution, to put it into our Constitution and then we accept that the principle of self-determination must be distinguished from putting that abstract right into daily practice so that we can enjoy it. We cannot enjoy, and I have said this before Mr Speaker in this House, self-determination without Spain's toleration in the literal sense of enjoying like a man eats a cake and enjoys it, we cannot enjoy self-determination in Gibraltar without Spain's, at least, tolerance because they would see to it that they harass us and hassle us so that we cannot enjoy the self-determination which we believe is our birthright. I thought it was a great pity, although the Chief Minister did say, but one wonders how much he meant it that this could be brought at a later time to bring a unanimous motion that they would consider going along with, the call for tripartite dialogue he felt was not appropriate at that time.

Mr Speaker, I want to comment very briefly on something that the Chief Minister said at Chatham House recently on the 16 December last at the Royal Institute of International Affairs when he was contrasting the previous address given by a Gibraltarian Chief Minister and his own. What Sir Joshua Hassan had said there in 1983 and he quoted Sir Joshua as saying "The vast majority of Gibraltarians want to live under British sovereignty but

given normal friendly relations, given mutual respect, given cooperation in tourism and trade, and outbound contacts, and the common status as nationals of the European Community the people of Gibraltar may one day take a different view of their relationship with the Spanish State". He added that this was not a promise and it was not even an offer. The Hon Mr Bossano then says "I will go further, if that gives Spain hope then I will be blunt, Gibraltar will never be Spanish. I will campaign for as long as I live against my country's incorporation into the Spanish State and others will follow me". Now, Mr Speaker, it is so easy to be swept along with that sentiment and I myself feel sympathy. In saying Gibraltar will never be Spanish I tend to agree that Gibraltar will never be Spanish, and it will never be Spanish with my consent or with my help but Sir Joshua obviously was leaving a door open for a future time in which it was in fact leaving hope open to Spain that if they behaved differently they may persuade a future generation of Gibraltarians to think differently. The problem is that in the alternative that the Chief Minister has brought forward, if we analyse it, it is pure nationalism and it is in fact anti-democratic because it is one thing to say "Look, I will never allow my grandchild to be Spanish if he wants to be". This is our democratically expressed wishes. If the democratically expressed wishes of the Gibraltarian 50 years down the road is for something different, God bless them. I do not think that will come. It certainly will not come with my help but to stir up that emotional feeling that is pure nationalism and it is in fact when we analyse it, anti-democratic. For myself I have said I will never surrender to Spanish sovereignty. I will never accept the Spanish flag over Gibraltar. I will accept heavy sacrifices in resisting the hostile Spanish sovereignty claim but because I realise that that road will see myself and the Gibraltar that I love impoverished I want to leave no stone unturned in the search for an acceptable alternative to surrender to the hostile Spanish sovereignty claim. Therefore, I believe in dialogue and I believe in searching for the hope that one day a compromise arrangement will be possible. It seems to me that anybody who is totally against any possibility of compromise and the compromise that I suggest sometimes I may have given the wrong impressions thinking that it is half way, we go half way and they go the other half, what I have been saying is that they must recognise our right to our land, our separate identity as a people and our right to self-government when they have done that then I will be able to compromise with them on the question of a constitutional court and of a head of state because in my view a Spanish head of state would not change the sovereignty of Gibraltar. A Spanish head of state may make that head of state Gibraltarian but it would not make Gibraltar Spanish. There is the anti-Brussels lobby who really believe that Brussels is very dangerous and the somehow it might trick us into against our will becoming Spanish even though we

would be resisting, that by participating we put ourselves on a slippery slope that unawares almost we could find ourself sold down the river. I would accept as reasonable somebody who said "Look, I am willing to make some slight compromises to reach a settlement with Spain but not through Brussels." Therefore my position would be, okay no Brussels and no dialogue with Spain until such time as they show themselves also willing to compromise. This is not my position but the position I would respect if it was for example the GSLP position or a position from the anti-Brussels lobby because it is crystal clear to me that unless there is some movement and some flexibility the Spanish sovereignty claim will simply not disappear. We have got to help Spain to dilute their claim, to come down to earth, to be more realistic and to be willing to compromise on this issue and I would respect somebody who said "Look, no dialogue with Spain until such time as they indicate willingness to make real concessions to us". I have finished what I wanted to say, just one small thing more if I can find it. Today's paper reminded me of Maurice Xiberras who recently in his articles in the Panorama claimed that there was a kind of telegram that the Foreign Office could send in the eve of the elections that would enable one to win that election. In a far smaller way of course where Teofila Martinez of the PP which the paper calls her one of her famous leaders, says that no matter what Joe Bossano may say about the PP introducing a host of repressive measures against Gibraltar they would do nothing of the sort. She added that PP leaders were well acquainted with the situation and the bad results yielded by Spanish policy towards Gibraltar in recent times, therefore their actions would be substantially different. It seems to me, Mr Speaker, a very hopeful message if they carry it through.

MR SPEAKER:

Order, order, no member in the public gallery can make any gestures. I will ask you to leave it you carry on.

HON P CUMMING:

I am just finishing Mr Speaker. This lady Teofila Martinez of the Partido Popular, Mayor of Cadiz, one of the PP's most famous leaders according to the Chronicle has made this statement in order to reassure Gibraltarians and that seems to me hopeful, positive and may be the PP will come in and surprise us with a change of attitude or may be it will not but my view about a negotiated settlement and eventual compromise goes beyond that time. We may well have to wait for Ruperez to come and then wait for Ruperez to go but the time for him to go will come and changes will come and we must help changes to come to make possible a settlement.

Question proposed.

HON P R CARUANA:

Mr Speaker, the Hon Mr Cumming is certainly making us work for our salaries tonight. We will not be supporting this motion. The Opposition that I lead, as this House knows is keen to promote a process of dialogue in which Gibraltar is separately represented with its own voice in order to explore the possibilities of reducing the hostility in the relationship of mutual cooperation, of cohabiting as neighbours within the European Union. We do not promote dialogue for the purposes of exploring the possibilities for a favourable compromised settlement. A favourable compromised settlement presupposes a willingness to compromise on the subject matter of the claim. The claim is for the sovereignty of Gibraltar and certainly the party that I lead is not willing to take part in a process of dialogue for the purposes of settling on a compromise basis Spain's claim to sovereignty because that must necessarily involve concessions on sovereignty and that is the reason why we will not support this motion. The hon Member spoke of helping Spain to dilute her claim. We are quite happy to help Spain to get over her historical hang-up which causes her to persevere with her claim but certainly we do not believe that the way to help Spain to get over her problems is for us to compromise her claim to sovereignty over our homeland. Mr Speaker, I have heard with interest the Hon Mr Cumming's suggestion that I might be invariably either being dishonest or misleading the electorate with our manifesto in that we are promising them more than he thinks that he thinks he can deliver. If the hon Member thinks that we are being dishonest or that we are misleading the electorate, could I then ask him please to stop asking them to vote for me which I am sure he will not want them to do if he thinks I am being dishonest or misleading them and I think that that will be the best thing for all of us?

HON CHIEF MINISTER:

Mr Speaker, the Government do not support this motion. The hon Member, in moving the motion, has once again gone through the litany of calamities which face us and he has now calculated that he is a prophet ahead of his time by three years, that is to say the rest of us - the unfortunate winner of the next election - will find in the third year of the fourth year term of office that the Rock capsizes. There is absolutely nothing to suggest that we face that level of economic problems. Nothing whatsoever and if the hon Member wants to quote me then why does he not go back to what I said in January 1992 when I said we are in for tough times, ahead of an election? But tough times did not mean we are going to be like St Helena sending hungry children to school and with power cuts because we did not have a generator. Tough times meant tough times in having to compete to bring business to Gibraltar when we had said we had spent four years creating the capacity to handle the business and now the more difficult part

comes which is going to get the business when clearly the Spaniards will be trying to use their influence to dissuade people from coming here like we know that although there is absolutely nothing to stop European airlines flying into Gibraltar today, legally and technically, because when I was in the European Court of Justice on the airport exclusion, the argument that was being used by the Commission lawyer was that Gibraltar had not been prejudiced by its exclusion because the exclusion did not prevent anybody from coming. It prevented anybody from going from Gibraltar to another country and Gibraltar did not have an airline trying to go anywhere. The leaving us out of the airport directive did not mean that Air France could not fly to France without French permission and GB Airways was not trying to go to France and if the French wanted to come here there was nothing to stop them. They used that as an argument to demonstrate that we could not claim to be prejudiced commercially by our exclusion. Of course, we know, for example, that the Swiss have been told that it would not be considered a friendly act to come to Gibraltar and that that has happened over a number of years with a number of airlines. The fact is that some airlines can pay attention to it and some cannot and that of course when we are talking about the airline business the route would not be expected to be such a lucrative route that it is worth upsetting Spain but if somebody wants to come and bring in a bank to Gibraltar then it does not matter upsetting Spain because Spain cannot go round closing their banks but it can certainly make difficulty for an airline in giving them more or less priority on slots in a Spanish airport. So the tough times is tough in terms of being competitive, of having to work hard to bring business to Gibraltar when other people may be better placed than us to provide incentives and of doing that on the back of losing the staple element of our economy which was MOD expenditure but we are not talking about having to run a guerilla war in the Upper Rock to defend our homeland. A lot of other colonies have had to do that. When the hon Member talks about the sacrifices that we shall be called upon to make in continuing to resist, including a lowering standard of living and increasing emigration, this is total, absolute rubbish. There is no risk of this happening, no (interruption). No, it is not already happening. Over the last few years more Gibraltarians have come back to Gibraltar than at any time in our history. They left when the frontier was closed and they have come back because for the first time in our history they have been able to sell their home in London and buy a home in Gibraltar and the record shows it because we have got an election coming up next week where there are 1,700 more people than there were (interruption). We have got an election coming up in the near future which has got an electoral roll that shows a very large increase since 1992. Where is the evidence of the emigration? Let the hon Member look at the Employment Surveys and he will find that notwithstanding the fact that there has been higher unemployment that any of us would have wanted the number of Gibraltarians employed

has been going up because there are more Gibraltarians not less. So it is not true and if he believes it to be happening he ought to base himself on factual information. There is no evidence that that is happening now and there is no evidence that that is going to be happening round the corner. And let me tell the hon Member one thing. Although it is not true that we are dependant on UK support for the economy in terms of getting any money from them because they are not giving us any money other than an allocation of EC funding, if indeed we face a situation from Spain which was a repetition of the one that we had when they locked us in here to try and make the economy collapse, I think the UK would have a responsibility to restore the sustain and support policy that they had then and that they have an obligation to do it. This is not something that we say "Please will you do it?" The United Nations Charter says that the administering power has a sacred trust to protect the people that is under it because they are not sovereign and they are not free to do it themselves or to do a deal with another country. If we are not able to run our own defence and we are not able to do a deal with somebody else to defend us because this is constitutionally outside our remit we do not have to say to them "Look, please come and stop us being invaded", it is their job. So let us be clear that this is not something where we are saying either we have to do a deal with a neighbour or we have to accept that we are going to be allowed to sink because the British Government will simply surrender its responsibilities. I do not think we can permit them to do it and I do not think they have shown an indication that they will do it. They have shown an indication that they would like us to go down the route that the hon Member would like us to go and that they would like us to go down the route that the Government in 1984 went with the Brussels Agreement and that they would like us to go down the route that the previous Government went down with the Lisbon Agreement in 1980 and that they would like us to go down the route that the previous Government went down with the Strasbourg Process in 1976 and we have been the stumbling block in the Opposition in 1976, in 1980, in 1984, in 1992, in 1996 and we will keep on being there to stop it happening, wherever we need to be. It does not bother us but we will prevent it.

So let us be clear about that and that was the message that I put across in the International Institute of International Affairs and I do not accept the hon Member's understanding of democracy that it requires that we should say "Well, we do not want to be Spanish but who knows our children might want to be Spanish or our grandchildren may want to be Spanish". I do not hear anybody else saying that anywhere else. I do not hear the Saharais saying "We do not want to be Moroccans but our children or our grandchildren may want to be". I do not hear the Palestinians saying "We do not want to be Israelis but

our children may". No other people seeking self-determination says that. So we are going to be as undemocratic as the rest of the human race except the hon Member who must have been the greatest democrat since Democratus invented the word in Athens. Certainly it is true that when Sir Joshua spoke in the International Institute of International Affairs he did say "I am not making any promise and I am not saying it is going to happen but perhaps, if they are nice to us, who knows in the fullness of time people might change their minds" and I think that it is correct that what the hon Member says that that has got all the symptoms of leaving a door open and I want that door shut and bolted. It does seem to give a hope to Spain and I say give them no hope so the positions are clear and we stand by that position. That does not mean that we can say, "Look, if it is a question of saying who is the one that does not want to talk in the full knowledge that we are talking about a conversation of the deaf and the dumb". We are not going to be the ones that say, "We do not want to talk to anything that comes from Spain because they are pariahs or lepers and allow other people to use that to make us out to be the bad guys and the Spaniards the good ones because there is more than sufficient reason for not wanting to be seen in the same part of the world as they live, never mind talking to them, more than enough reason. The position that they adopt is totally indefensible. The hon Member talks about democracy. How can we even think that he can use the language of democracy with these people next door when they have the audacity to turn round and say what the dictatorship did in locking the gate and putting pressure on the Gibraltarians and putting a boycott on them, was terrible? We would not have done it if there had been a democracy in Spain. "What will you give me to take it off?" If we have a war against the Nazis and someone arrives at a concentration camp, one does not say, "The Nazis were terrible to put you in the concentration camp but what will you give me to let you out?" That is what the Spaniards are saying because they signed an agreement in 1984, for heaven's sake, saying the ferry service will come back in February 1985 and it is now 11 years. What more evidence does the hon Member want? Because after the closure of the frontier and after the disappearance of the ferry service there was still flights between Gibraltar and Madrid with Franco there and there are none now. Franco did not say "In order for British Airways to fly London/Madrid/Gibraltar we must have joint use airport agreement". Franco did not say that. The democratic Spain has said that. They have not even restored what there was in 1969. We can say "In the real world even though you think that what was done was wrong, if you can take advantage of it, you are going to exploit it". Fine, but then let us not kid ourselves about the kind of people that we are dealing with and let us stop messing about with attempts to get away from the reality of the position and I agree with the hon Member about one thing. What I agree with was what he said about the

previous motion on the airport because he actually voted in the previous motion to terminate the agreement having been persuaded by the Leader of the Opposition who has obviously got far greater powers of persuasion on him than I have. I do not know because he was still saying no when I had finished and he started saying yes when the hon Member started. The hon Member clearly persuaded him by actually conning him into thinking that my motion and his motion meant the same thing and he swallowed it. But let me tell him what he has done. He has actually said that Britain should go to Spain and say "The agreement is dead and buried and if you are really serious accept that that is a fact of life" which is a perfectly valid message because that is the message which he says we should be putting to our people. He is saying our people should be told these are the facts of life, and we have got to face it. Look, the facts of life have got to be faced by everybody. The facts of life are that life might be easier, more pleasant and more lucrative with a neighbour showering boundless gifts on us but the alternative to that is not that we would be living in poverty as if we were in New Delhi. This is not the contrast and this is not the choice before our people and if that were the choice then it might well be that there would be few people who would be able to resist a take over if they had starving children, decaying schools, power cuts and third world deprivation. In Gibraltar that might be difficult where people sometimes seem to have difficulty in coping with overtime cuts, never mind third world deprivation. But of course the example which the hon Member claims that I put to our people of commitment to our country and the defence of it is asking little compared to other people in front of the United Nations Committee of 24. If the hon Member thinks that I am wasting my time putting Gibraltar's case before the Committee of 24 I would imagine that he would now be Indonesian instead of East Timorese because the East Timorese have been doing that in exile for 25 years. What message of realism would he put to those people who have got the right of self-determination recognised by the Committee of 24? What would he say to the Saharais and the Polisarios? What would he have said to Arafat, he should have given up a long time ago? There is a fundamental contradiction in his message because he asks us to be realistic on the basis that accepting defeat is the only thing that one can be realistic about and the rest of the world around us shows us that persistence, determination and commitment against all odds does make for occasional successes. In some cases countries have disappeared totally and been absorbed and we have never heard of them again but they have been absorbed because there have not been any real movement to defend the right of the people. Where there has been and they have gone into exile it may have taken them a very long time but eventually they have got through. The hon Member seems to be forgetting that the hopeful signs in Spain are not what Teofila Martinez says now, because what is she saying? "Look, Joe Bossano is very anti-Spanish and do not believe anything he tells

you". I imagine that they would want me to win the election as much as I want them to win the election - the feeling is mutual. But small though it may be the fact is that the surveys that have been carried out by the Department of Social Studies of the Complutense where the professor is from La Linea on attitudes about Gibraltar show very slow but increasing support for the recognition of the right to self-determination. The last survey which was published earlier this year which related to last year showed that the percentage was highest amongst people who had further education and amongst people who were under 25 and that is a very encouraging indicator because it shows that the younger and better educated Spaniard have got a more open mind than previous generations and it is an open mind not about dialogue or concessions or a deal but about recognising the right. We have not even got to the stage of getting it recognised before we can even talk about exercising it. The hon Member quoted what I said in the United Nations in 1993. Of course I said it in 1993 in response to what was the position when the matter was first raised in the United Nations because what I was saying to the Committee was "In 1964 you said the resolution on decolonisation applied in full to Gibraltar but at the same time there is a difference, indeed a dispute, between Spain and the United Kingdom and they should get together to try and solve their dispute out" and we said "We agree that there is a dispute in the context that we agree that there is a dispute having said the decolonisation resolution applied fully to Gibraltar" because when that was said in 1964 Mr King who was the representative of the United Kingdom at the United Nations rejected the position that there was a dispute and there was anything to talk about. They were even more hard line then than we are now. Now, we have no reason to change our position because ours is not one of convenience and theirs might well have been. The Spanish argument had some substance in it when they said the United Kingdom is so intransigent not because it loves its colonial subjects in Gibraltar more than it does in the rest of the Empire but because it has got very important strategic interests in the place. We know that it had in 1964 because virtually nine out of every ten Gibraltarians were working for them either directly or indirectly and so was half the Campo Area. The UK had important military interests in Gibraltar because it had a world influence and a lot of overseas possessions and it was in defence of those possessions that they needed Gibraltar. The world has changed. The importance is not there but, out course, the obligation and the responsibility have not altered. There was nothing in the United Nations Charter of 1948 that said "An administering power has a sacred trust if it has an important military base but a lukewarm trust if the base is reduced". The sacred trust of that responsibility is identical today to the one that it was then and will continue to be there even if there is not one single employee in the MOD. Otherwise the United Kingdom as the administering power is in breach of the

Charter of the United Nations and we must hold it to it. So, first of all the despondency that leads the hon Member to the second part is totally unjustified and uncalled for and does nothing for our cause. It can only serve if it were to be believed to undermine the will of our people to resist and to encourage the Spaniards to turn a few more notches on the screw so as to make the prediction happen quicker as the standard of living is progressively pushed down by their efforts. The reality of it is that their efforts have not been as successful as they would have liked. The reality of it is that we have just been able to reduce our debt very substantially in the last year which neither they nor UK seem to be capable of doing because they are both going in the opposite direction. Notwithstanding all their efforts we are still in a position to be able to look forward with confidence but not of course to be complacent and say we have nothing to worry about because we can expect more trouble at every turn of every corner but we must have the conviction that we can beat them. Therefore, having said that, I propose to amend the motion of the hon Member by the deletion of all the words after the words "This House" and the substitution of the following words:

"1. Notes that the declared policy of all three national political parties currently contesting the general elections in Spain continues to be to achieve Spanish sovereignty over Gibraltar;

2. Notes that it has been demonstrated at the United Nations in October 1995 that the Brussels negotiating process gave effect to the consensus adopted by the General Assembly on the 14th December 1993 which in turn referred back to Resolutions 2353 (XXII) of 1967 and 2429 (XXIII) of 1968 which called for Gibraltar's decolonisation by reference to Spain's territorial claim;

3. Rejects the Brussels negotiating process and any variant of it irrespective of the number of flags or voices involved;

4. Considers that there can be no process of dialogue with Spain for as long as the Spanish Government persists in its hostile attitude to Gibraltar and fails to accept the people of Gibraltar's right to self-determination."

I commend the amendment to the House.

MR SPEAKER:

I now propose the question in the terms of the amendment moved by the Chief Minister, the Hon Mr Joe Bossano. May I point out that once again this amendment does not modify the original motion it is a completely new proposition and therefore from now onwards we shall use the procedure as we have done earlier today. Members can now speak

on both motions together and again we shall put to the vote the amendment first after the proposer winds up and after that we shall ask the proposer of the original motion to wind up. The vote will then be taken and if the amendment is carried the motion is automatically defeated.

HON CHIEF MINISTER:

Even if no other hon Member contributes I believe the rules provide that the mover of the motion can speak in concluding and since nobody in the Opposition has given any indication of whether they intend to vote for or against the motion I can only assume that the silence I can take as acquiescence and therefore I will welcome the fact that the motion will be a clear cut rejection of the Brussels negotiating process which ought to have been done in Haiti rather than in Brussels given the time that it has been buried and been brought back to life. I would have thought that if we can bury it once and for all as we have done so successfully with the previous motion on the Airport Agreement of 1987 then it will be an important point on which to hold the last participation in a debate in this House of Assembly. I have to say that of course we have been through this process once before in 1991 but perhaps not in as clear cut a statement of policy as this provides and I commend the amendment to the House.

HON P CUMMING:

Mr Speaker, I was going to sort of give up and be reduced to silence but the Chief Minister urging Arafat as an example to Gibraltarians was just too much for me to swallow without some response because he puts his finger in the wound in mentioning Arafat because if the Palestinians and Arafat had been more flexible from the beginning they could have had their Palestine at the same time that Israel was set up and they would not now be living in the poverty that they are. They would have developed alongside Israel to an equivalent standard if they had been a bit more flexible and a bit more willing, for example, to recognise the right to exist of Israel and similar things. The other thing that always depresses me and fills me with gloom is the love the Chief Minister has for the two examples of East Timor and the Polisario Front because after 25 years the East Timor has lost all hope of exercising self-determination ever and they are still turning up there to claim their right. I find it so infinitely pathetic and because the Chief Minister loves this picture I see him turning up there after Gibraltar has totally given up all hope of ever achieving the right to self-determination and still turning up to claim it and believing that it is something wonderful instead of something totally pathetic. I agree that the Complutense reports on the change in the Spanish perception of the Gibraltar problem and the 30 per cent of Spaniards that support self-determination for Gibraltar is very important and that recently they have gone up one or two points to

30 per cent is a very important statistic I agree entirely. I believe that propaganda is very important because as he so rightly says education is a very important part of this. I would have a Government Ministry of Propaganda or else if it is constitutionally impossible a private company dedicated to lobbying in Spain, to lobbying the central government, the central opposition parties, bringing over Spanish politicians to show them the problem from our point of view, to have personal contacts with them, to educate them about Gibraltar and this, I feel, is something that would help change attitudes in Spain much quicker because I do believe that a change in attitude is long overdue in Spain because they are so democratic in their other institutions and yet their attitude to Gibraltar has not been penetrated by democracy yet, but there is hope that it will be because it is so overdue. I believe that we have got constantly to hold up the mirror to them so they see the picture of what they are. The example of sending their young men to Bosnia to fight for the selfdetermination of the Bosnians and at the same time spoiling our own self-determination I believe is a very good example. Recently Garel-Jones held up this mirror to Spain and called Madrid and London both bullies for what they do to Gibraltar and I believe that that is a very good thing for him to have done on our behalf. The Chief Minister says that Spain continued Franco's attitude to Gibraltar after they were democratic and I agree that this is very bad but nonetheless there are reasons for that. It is difficult for them to change our policy on this issue overnight. They have got to carry the people with them. They have got to walk with the people and at the beginning they were very much afraid of a military takeover, the "golpismo" as they called it and the Gibraltar issue was being one particularly prone to upset the military and therefore there is no need for them to have gone as slow as they have gone for 20 years I agree but certainly in the first years there was justification for them to move slowly, now changes are well overdue, I agree. The question of support and sustain I agree that Britain is not going to leave us to starve or to be in a guerilla warfare up the Rock, of course we would have support and sustain in the same way as St Helena has but that is not a picture emerging from colonialism and it is not a picture of a people flourishing.

Question put on the amendment to the motion. The House divided.

For the Ayes:	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

For the Noes: The Hon Lt Col E M Britto
 The Hon P R Caruana
 The Hon P Cumming
 The Hon H Corby

Absent: The Hon M Ramagge
 The Hon F Vasquez
 The Hon B Traynor
 The Hon K Dawson

The amendment was carried and the original motion defeated.

ADJOURNMENT

HON CHIEF MINISTER:

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

MR SPEAKER:

Before I put the question to the adjournment of this last meeting of the House of Assembly before the general election due to take place sooner or later

HON P R CARUANA:

Mr Speaker, on a point of order. I believe that the House cannot adjourn sine die, given Mr Speaker that it dissolved by operation of law on the 14th February and that in any case another meeting of the House could not be called given the necessary seven days' notice since it is now already the 9th of February to adjourn the House sine die is a nonsense.

MR SPEAKER:

There is no other way of adjourning. I am afraid I will have to carry on. It is the end of a House of Assembly and I would like us to pass a message.

I would like to thank all hon Members for your cooperation to the Chair as it has always been traditionally the case in this House, whilst in no way envying the lively behaviour of Members of Parliament in the House of Commons. I know that to maintain this working relationship some hon Members have had to show some degree of self-restraint as indeed the Speaker has had to do also. I know from experience the feelings of such occasions as I have sat in the three sides of the House. It is not always possible for the Speaker to make a Solomon judgement and consequently in those circumstances one party at least may feel resentment. This is the price in self-restraint that has to be paid in a parliament such as the House of Commons and ours where to maximise freedom of speech, controversy politics is encouraged. The spirit is even fostered by sitting

arrangements designed for the Opposition and Government to confront themselves face to face in verbal battle formation and may it long be so because as the Speaker of the House of Commons said not so long ago, "We have controversy politics in this Chamber and I hope we shall always have a robust Parliament and not be mealy mouthed". No one can say that I have not subscribed to this vibrant concept of parliamentary democracy in all the three sides of this House that I have served and I feel gratified for having done so. You will be pleased to learn that our diligent Clerk has been given promotion and as this could well be my last opportunity of thanking him in the House I would like to say that from the very first day he assumed his responsibilities he has worked selflessly to enhance the House, to serve all Members with the highest sense of loyalty and to assist me in every possible way. Furthermore, simultaneously he has prepared the Register of Electors for the coming general election which has been a gigantic task because of the many changes in the addresses of electors due to the large housing developments and he is now in the process of making the necessary arrangements for the coming general election. I congratulate him most heartily on his promotion and thank him profusely for his contribution to democracy in Gibraltar in the three positions that he holds - that of Clerk of the House, Electoral Registration Officer and Returning Officer. Also he has acted brilliantly as Secretary of the Gibraltar Branch of the Commonwealth Parliamentary Association as was evidenced by the success of the Regional Conference held in Gibraltar in 1993. My appreciation and thanks are also extended to the rest of the staff of House and others who worked under Mr Dennis Figueras in his four capacities that I have just mentioned. No one knows what the fortunes of the elections may hold for hon Members who will be standing. Of course, I wish you the very best of luck as indeed I do to those who may not be standing, in your possible new undertakings. As I may not be called upon to utter Order, Order, in this House again I would like to say, for the record, that it has been my greatest honour and privilege to have presided over the functions of this Parliament where the supreme will of the people of Gibraltar is expressed without fear or favour and if I am called upon to continue to preside over the next Assembly by the newly elected Members I will be more than delighted to carry out the duties to the best of my ability. Finally, this is my last tribute to you all. Thanks a lot for putting up with me so gentlemanly and for the lady, so ladylike, for the last four years up to this very moment. Thank you.

Question put. Agreed to.

The adjournment of the House was taken at 9.15 pm on Friday 9 February 1996.

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

28TH JUNE, 1996

(adj to 5th July 1996)

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Second Meeting of the First Session of the Eighth House of Assembly held in the House of Assembly Chamber on Friday the 28 June, 1996, at 10.00 am.

PRESENT:

Mr Speaker(In the Chair)
(The Hon Judge J E Alcantara OBE)

GOVERNMENT:

The Hon P R Caruana - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Dr B A Linares - Minister for Education, the
Disabled, Youth and Consumer Affairs
The Hon Lt-Col E M Britto OBE, ED - Minister for Government
Services and Sport
The Hon J J Holliday - Minister for Tourism, Commercial
Affairs and the Port
The Hon H A Corby - Minister for Social Affairs
The Hon J J Netto - Minister for Employment and Training
and Buildings and Works
The Hon K Azzopardi - Minister for the Environment and
Health
The Hon Miss K Dawson - Attorney-General
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon J L Baldachino
The Hon Miss M I Montegriffo
The Hon A Isola
The Hon J Gabay
The Hon R Mor
The Hon J C Perez

IN ATTENDANCE:

D Figueras, Esq, RD* - Clerk to the House of Assembly

PRAYER

Mr Speaker recited the prayer.

MR SPEAKER:

I have got a short announcement to make before the start of the proceedings.

The Standing Orders are silent on the question of dress and Erskine May does not help. During the long hot summer without air-conditioning in this House I think that it is permissible for any Honourable Member who suffers from heat to take off his jacket, provided he retains his shirt and tie, particularly if the tie is that of the Commonwealth Parliamentary Association.

As the master of this vessel I shall be the last to discard my coat.

CONFIRMATION OF THE MINUTES

The Minutes of the Meeting held on the 31st May 1996, having been circulated to all hon Members, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Financial and Development Secretary laid on the table the Draft Estimates of Revenue and Expenditure for 1996/97.

Ordered to lie.

HON CHIEF MINISTER:

Mr Speaker, on a point of order. Before we commence the official business of the House I would like to, on behalf of all Members on the Government benches and although we have extended our condolences to him in our private capacities, formally and for the record extend Government's condolences to the Hon Juan Carlos Perez on the death of his father and his brother. He has the sympathy and the condolences I am sure of the whole House.

MR SPEAKER:

And the House includes the Speaker.

ANSWERS TO QUESTIONS

The House recessed at 12 noon.

The House resumed at 3.15 pm.

Answers to questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Friday 5 July 1996 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 5.30 pm on Friday 28 June 1996.

FRIDAY 5TH JULY 1996

The House resumed at 10.00 am

PRESENT:

Mr Speaker(In the Chair)
(The Hon Judge J E Alcantara OBE)

GOVERNMENT:

The Hon P R Caruana - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Dr B A Linares - Minister for Education, the
Disabled, Youth and Consumer Affairs
The Hon Lt-Col E M Britto OBE, ED - Minister for Government
Services and Sport
The Hon J J Holliday - Minister for Tourism, Commercial
Affairs and the Port
The Hon H A Corby - Minister for Social Affairs
The Hon J J Netto - Minister for Employment and Training
and Buildings and Works
The Hon K Azzopardi - Minister for the Environment and
Health
The Hon Miss K Dawson - Attorney-General
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon J L Baldachino
The Hon Miss M I Montegriffo
The Hon A Isola
The Hon J Gabay
The Hon R Mor
The Hon J C Perez

IN ATTENDANCE:

D Figueras, Esq, RD* - Clerk to the House of Assembly

MR SPEAKER:

Hon Members will have noticed that there are two notices of motions dealing with the same subject matter, ie the granting of the Freedom of the City to Sir Joshua Hassan.

The first was tabled by the Hon the Leader of the Opposition on 21 June and the second by the Hon the Chief Minister on 27 June.

Standing Order 47(1) provides that a matter already appointed for consideration by the House cannot be anticipated by a motion, as long as the former remains upon the Order Paper. The motion tabled by the Hon J Bossano remains upon the Order Paper and I must therefore rule that the motion by the Hon the Chief Minister cannot be moved.

I should mention that there were no grounds for not accepting the tabling of the motion by the Hon the Chief Minister as putting it in the Order Paper safeguards the moving of his motion had the first motion been withdrawn.

The second ruling is that the mentioning of the name of a relative of a Member of this House is not improper. It may mention by name. It is improper if mentioned by relationship to the Member. Let me give an example - an honourable Member might wish to state that Mr Lugaro has done something, good or bad. It would be wrong for that honourable Member to say that the Speaker's son-in-law has done something.

DOCUMENTS LAID

The Hon the Financial and Development Secretary moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of documents on the table.

Question put. Agreed to.

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

1. Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary (No. 16 of 1994/1995).

2. Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 4 to 13 of 1995/96).

Ordered to lie.

MOTIONS

HON CHIEF MINISTER:

Mr Speaker, I beg to move the Motion standing in my name. Mr Speaker before I do so I should just like to clarify in relation to Mr Speaker's ruling to which of course I bow, if Mr Speaker would clarify whether the ruling is based on the slight difference in wording that there is between the Gibraltar Standing Order and the United Kingdom Standing Order as interpreted by Erskine May?

MR SPEAKER:

The Standing Order of the House of Commons is completely different to our Standing Order which is more restrictive and that was the basis of my ruling.

HON CHIEF MINISTER:

Would Mr Speaker agree with me that I am at liberty to move the suspension of Standing Order 47?

MR SPEAKER:

I think everyone is at liberty to move the suspension of a Standing Order, we have just done it.

HON CHIEF MINISTER:

Indeed. Mr Speaker, under the practice that prevails in the House of Commons the rule which Mr Speaker has correctly applied.....

MR SPEAKER:

We have not reached that stage have we?

HON CHIEF MINISTER:

Well, it depends on which Motion I want to address first.

MR SPEAKER:

All right.

HON CHIEF MINISTER:

Mr Speaker under the rules which presently prevail in the House of Commons the rule of anticipation which Mr Speaker has correctly interpreted and applied in so far as Gibraltar is concerned, is different and because the practice is in the UK what I am about to suggest, I am convinced that it is not unparliamentary or indeed a disservice to the proper working of democracy in this House to move to suspend Standing Order 47 in these circumstances. Mr Speaker, according to Erskine May the 21st edition, under the heading "Motions", the rule of anticipation is made clear and I quote from it Mr Speaker "Stated generally, the rule against anticipation which applies to other proceedings as well as Motions is that a matter must not be anticipated if it is contained in a more effective form of proceeding that the proceeding by which it thought to be anticipated, that it may be anticipated if it is contained in an equally or less effective form."

What that means Mr Speaker is that because the Motion of the honourable Member opposite, the Leader of the Opposition and mine are both instruments of equal parliamentary effectiveness, in the United Kingdom, in the House of Commons the rule against anticipation would not apply to prevent my Motion going ahead notwithstanding his. It is for that reason Mr Speaker that I move that Standing Order 47 be suspended to enable me to proceed with my Motion in relation with the Freedom of the City to Sir Joshua Hassan.

MR SPEAKER:

Before we finish with you, I have got to refer you to Standing Order 59 which reads: "Any Standing Order may, with the consent of the President....." who is me "..... be suspended on Motion of which at least one day's notice, in writing, exclusively of Saturdays, Sundays and Public Holidays, has been given to the Clerk. Provided that, if he is satisfied that the matter is one of urgent necessity, the President may dispense with the requirement that notice shall be given. If the motion be carried the Standing Order or Orders shall be suspended so far as is necessary to carry out the object for which the Motion was made. No debate shall be allowed on such motion being made." So you have got to convince me the urgent necessity for this.

HON CHIEF MINISTER:

Mr Speaker, if Mr Speaker is not satisfied that the Motion in my substantive form is urgent in the sense of importance then I will have to have recourse to another device which will simply delay the consideration of this matter which is not, as far as I am concerned, troublesome but it would mean that the matter in question cannot be disposed of today. In the sense of avoiding inconvenience to the House for procedural reasons, Mr Speaker may wish to consider that in terms of the progression with the House's agenda as quickly as possible, nothing is lost by proceeding on this basis but I am entirely in your hands Mr Speaker. If you would rather that I dealt with this matter when it is raised by the honourable the Leader of the Opposition in his Motion I am very happy to do that.

MR SPEAKER:

The Freedom of the City to any citizen is a necessity that can never be an urgent necessity so I rule that without the Notice the Standing Order cannot be suspended.

HON CHIEF MINISTER:

Mr Speaker, then I beg to move.....

HON J BOSSANO:

I do not know whether Opposition Members have anything to do or say in this matter because it says that there shall be no debate on the Motion to suspend a Standing Order. But I would, if you would allow me, draw your attention to the consequences of what the Government are trying to do for which there is no precedent since the Constitution of 1969 was enacted. It has never happened before.

MR SPEAKER:

But I have already ruled they cannot do it.

HON J BOSSANO:

Yes I accept that, but given the fact that the Chief Minister after you have made the ruling, has attempted to still do it by seeking to suspend Standing Order 45, I would like to raise the point and on which I would welcome your views, if you are in a position to give guidance on this matter, as to whether in fact, the consequences of allowing the Government to move the Motion that they propose to move,

of which they gave notice after I had given notice of mine, would be, that I would then be prevented under the rules of not being able to debate a matter which has already been debated from debating mine at all.

MR SPEAKER:

I feel I have given already too much guidance this morning.

HON CHIEF MINISTER:

Mr Speaker, I beg to give notice of a motion standing in my name: "That this House resolves that the following Members should be nominated to the permanent Select Committee on Members' Interests: The Hon Lieutenant-Colonel E M Britto OBE ED, the Hon K Azopardi, the Hon R Mor, the Hon J Gabay."

Mr Speaker, this is a matter of traditional early business in the first meeting of the House to establish one of the few Standing Select Committees of this House. I understand that there has been due consultation with the Opposition Members as to their nominations to this Committee and therefore I do not propose to take any of the House's time in addressing the motion. I commend the motion to the House.

Question proposed.

Question put. Passed unanimously.

BILLS

FIRST AND SECOND READINGS

THE APPROPRIATION (1996/97) ORDINANCE, 1996

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that a Bill for an Ordinance to appropriate sums of money to the service of the year ending with the 31st day of March 1997, be read a first time.

Question put. Agreed to.

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that the Bill be now read a second time. You of course Mr Speaker with your long and

distinguished career of public service will record the occasion when formerly a Member of the House the Financial and Development Secretary used to make a speech on these occasions. In accordance with recently-established convention I do not propose to make a speech nor indeed in keeping with the tradition of restraint which I have become famous in the last two years do I intend to make any preliminary observations of a more general nature even including Shakespearean quotations. I will leave the subject to the politicians to discuss, Mr Speaker, and commend the Bill to the House.

MR SPEAKER:

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

HON CHIEF MINISTER:

Mr Speaker, the Appropriation Bill before the House and the Draft Estimates of Revenue and Expenditure tabled in support of it is not, of course, the budget of this Government and in this respect we are in a similar but not in an identical position in terms of time that has elapsed since polling day, to the one in which Opposition Members were when they first gained office in 1988, namely that it is just quite apart from the fact that these Estimates had already been tabled before the Election in this House, there has in fact been insufficient time for the incoming Government to reconsider the budget in detail and indeed for the civil service, to prepare any new or significant amendments to the Estimates. In those circumstances, what we propose to do Mr Speaker, is to debate and if the House thinks fit, adopt the budget and the Appropriation Bill as it is before the House and the Government anticipates that it will be necessary to bring a Supplementary Appropriation Bill to the House some time during the autumn, in any case before the end of the calendar year.

Mr Speaker, this Appropriation Bill and the Estimates laid in support of it is not a statement of the recurring Revenue and Expenditure of the Government of Gibraltar. Honourable Members will recall that I made that point repeatedly when I was on the other side of the House. The fact is, that the Appropriation Bill and the Estimates of Revenue and Expenditure contain only about 65 per cent, probably nearer 60 per cent, of the Recurrent Revenue and Expenditure of the Government of Gibraltar and therefore omits the other 40 per cent or 35 per cent and the devise by which that state of affairs was brought about during the term of office of the

previous administration is one that this House is aware of, namely that because the law requires that permission of the House of Assembly for expenditure to be sought to the mechanism of the Appropriation Bill only for the expenditure of monies that have first been paid into the Consolidated Fund, the previous Government, diverted large amounts of public revenue and income from the Consolidated Fund to other Special Funds and entities so that they would not need the permission of this House to the appropriation mechanism to spend it.

That, Mr Speaker, is a state of affairs which is not acceptable to this Government. It was not acceptable to us when we were in Opposition and it is not acceptable to us now that we are in Government. We have not had time to do it for this year's budget but when the House considers the Appropriation Bill in respect of the Financial Year 1997/98 and when the House considers the Estimates of Revenue and Expenditure next year, in about May, it will have before it, and this Government will have restructured Government finances in a manner that all revenue collected by Government, with the exception let it be said, of the traditional pension fund which historically has been outside of the appropriation mechanism of the House, will be before this House either in the Appropriation Bill or certainly in the Estimates of Revenue and Expenditure. If we have not by then had time to actually include all the revenue within the appropriation mechanism, but certainly the information will be contained in the Draft Estimates of Revenue and Expenditure. Mr Speaker, if this Appropriation Bill were prepared and if these Estimates were prepared in accordance with the principles of transparency in public finances to which I have alluded, the Estimates of Revenue would not be as the present Estimates suggest, £72 million, it would be a figure in the order of £111 million and the Expenditure of the Government of Gibraltar would not, as this document suggests, be estimated at £95 million. As I say, Mr Speaker, the real position will be reflected in next year's Budget through the Consolidated Fund and preferably but if not and, certainly or, at the very least disclosed in the Budget so that the information and the Government's views of the Estimates will certainly be in the public domain.

Mr Speaker, the list of companies wholly-owned by the Government of Gibraltar directly or indirectly would appear to be as follows:

Gibraltar Investments Holdings Limited
Gibraltar Land Holdings Limited
Gibraltar Residential Properties Investment Company Limited

Gibraltar Commercial Property Company Limited
 Brympton Co-ownership Company Limited
 Westside II Co-ownership Company Limited
 Westside I Co-ownership Company Limited
 Gibraltar Information Bureau Limited
 Gibraltar Joinery and Building Services Limited
 Gibraltar Industrial Cleaners Limited
 Calpe Cleaning and Painting Services Limited, subject to
 question mark that I still have to clarify, and
 Gibraltar Quarry Company Limited.

The Government are considering which of these companies can be eliminated and it is the policy of the Government to eliminate such companies as are not essential for the proper and good organisation of the affairs of Government in the light of the structures as they presently exist. But, whatever happens during the course of the restructuring for the elimination of as many of these companies as possible, as part of the system to restore the presentation of public finances to a transparent one, the Government will shortly publish all the historical accounts of these companies and place them in the public domain. That is not something which the Government are required to do by law but it is something that the Government pursuant to our policy of complete public transparency in matters of finance are to do voluntarily. We will shortly be making available for public inspection, the audited accounts of all companies which are presently directly and wholly-owned, or indirectly but wholly-owned by the Government. Mr Speaker, whilst we proceed with this restructuring and certainly in any case in respect of any companies which we are not able to eliminate as quickly as we would like, the Government will answer questions in this House about the affairs and the finances of any company which is wholly-owned by the Government directly or indirectly and in that respect, it is our intention to reverse the policy of administrations hitherto which as Mr Speaker knows has been that Ministers are not answerable for the affairs of Government-owned companies even though those Ministers are the directors and in full control of those companies. That position, Mr Speaker, is not acceptable to the Government and will not be proceeded with in that way.

Mr Speaker, I can inform the House that currently, or at least as at the 14th of May, 1996, the cash balances held in the Gibraltar Savings Bank by the companies that I have just named is a figure close to £11 million. The activities of these companies, as I have indicated Mr Speaker, is something of which there has been almost no public accountability. I can report to the House as a matter of

information that the Gibraltar Residential Property Company Limited owns, amongst other things, 35 flats at Merlot House, Phase III of Vineyards which it purchased at the cost of £3.2 million and it acquired this property because the Government at that time, and using the mechanism of the Gibraltar Residential Property Company Limited, financed by way of loan Benpar Properties Limited, the developers of Vineyards and of Phase III of Vineyards which is called Merlot House. The developers got into financial difficulties and were unable to service the loan that Government had made them and accordingly Government executed, or foreclosed on, the mortgage that it had over the real estate being built, namely Merlot House, and that is how £3.2 million of taxpayers' money ended up being invested in the acquisition of 35 flats in Merlot House.

The previous administration also, through the Gibraltar Residential Property Company Limited, acquired a number of properties in Portland House through the Public Auction that the developers of that property announced some time towards the end of last year. Through Gibraltar Residential Property Company Limited the previous administration invested £921,680 through the acquisition from the developers of Portland House of 11 units in that building. Directors of the Gibraltar Residential Property Company Limited were then the Chief Minister, the Hon Mr Bossano, then Minister for Trade and Industry, the Hon Michael Feetham, and then Minister for Buildings and Works the Hon J Baldachino.

Mr Speaker, the Gibraltar Information Bureau Limited is a company wholly-owned by the Government of Gibraltar indirectly. Its functions are now to operate the new small business Bureau, it operates the clamping service, Gibraltar Security Services, it operates the Citizens' Advice Bureau, it operates as people know, the Government's collection of PAYE and some other arrears. it deals with the payment and engagement of all marketing and travelling expenses and of course it funds the Gibraltar Office in London. The Directors of the Gibraltar Information Bureau were the Hon Mr J Bossano and the Hon Mr J Pilcher. Mr J Pilcher in his capacity as Minister for Tourism and the Environment held formerly the position of Managing Director of this Company. The revenue of Gibraltar Information Bureau Limited consists of such things as contract fees for the provision of services to the Government of Gibraltar including airport departure taxes, port dues and market rents. The total revenue of Gibraltar Information Bureau Limited during the year ended 31st of December 1995 was £2,145,751 comprising, commission on the collection of tax arrears £152,382;

salaries recharged £385,163; royalties £45,032; marketing income £390,000; Government contract fees £363,972; airport departure tax £378,987; port dues £195,033; market rents £39,756; miscellaneous income £33,596; GSS, that is Gibraltar Security Services income £121,830; management fees £60,000. The expenditure of Gibraltar Information Bureau Limited during the same period was £1,753,576. The Government, as honourable Members I am certain will anticipate fully, intend to dismantle the structure of Gibraltar Information Bureau Limited and to transfer its functions, its revenue and its expenditure to appropriate Government departments and heads of Revenue and Expenditure under the Appropriation Bill mechanism.

Turning, Mr speaker, to the question of Special Funds, which is the other device to which the Government at the time had recourse in order to take revenue and expenditure out of the Appropriation mechanism of this House. Mr Speaker, I have already indicated that Revenue Expenditure will be returned to the Consolidated Fund and through the Consolidated Fund by operation of law to the Appropriation mechanism of the House. The number of special Funds, Mr Speaker, will be substantially reduced and to the minimum necessary to enable Government to continue to function during the restructuring process. I can inform the House, Mr Speaker, that as at the 14th of May 1996 current disposable cash balances, that is to say, money reasonably available to the Government to spend on things that the Government is entirely free to decide expenditure on, amounted to £10.5 million to £11 million. Mr Speaker, the initial estimation which is still being assessed in detail as to the current extent of Gibraltar Government revenues would therefore throw up equations of the following kind. In respect of disposable cash balances held in the Government-owned companies to which I have referred a figure of the order of £11 million. In Special Funds a figure of the order of £12 million and in the form of the reserves of the Gibraltar Savings Bank a figure of the order of £13 million, making in all a figure of between £37 million and £40 million of available Government reserves and by available Government reserves, I exclude things which have traditionally been regarded as ring-fenced funds. In other words, that excludes the transitional payment funds, the historical Pensions Fund, the Benefits Funds, the Note Currency Security Fund and things which were originally ring-fenced funds for particular and historically identified purposes. It is the intention of the Government to restructure Government finances in such a way that we end up with a single pot in which Government reserves are measured and contained so that

in future this House and the community as a whole will be in a position to know what the Government's financial disposition from time to time actually is.

Mr Speaker, it may interest the House to know that in accordance with the latest statistics that have been provided to me in my capacity as Chief Minister the number of insured persons, that is to say the number of persons lawfully in employment in Gibraltar in the sense that their employment is fully regularised, was, in respect of 1994, 11,972 and in respect of 1995, as at the end of December 1995, 11,698. This brings me, Mr Speaker, into the area of statistics generally. The capacity of the Government of Gibraltar to collect and to present and to digest and therefore use statistics, has been in recent years depleted by the reduction in personnel and resources in the Statistics Office. The Government intend, not just to enhance the ability of the administration, to collate useful statistics, but indeed it intends to make such statistics publicly available at the earliest possible opportunity. Honourable Members may have noticed that one of the items of assistance which the British Government have agreed to make available is assistance with the putting into place of systems for the identification of statistics which would be of assistance to the Government in formulating and implementing social and economic policies and also in putting into place systems apart from their collation, systems for their consideration, for their implementation and to extrapolate from the statistics maximum possible policy-making use.

Mr Speaker, one of the aspects of restructuring, and it does not arise from anything that the Members opposite did in order to make public finances less transparent, it is the natural consequence of the position as it has been in respect of Gibraltar pensions since the Social Insurance Fund was dissolved in 1992, something which the then Government did, withdraw the support in Gibraltar, and one of the consequences of the present position which is that the Social Assistance legislative structure, not the Social Assistance, the Pensions legislative structure is going to be restored in two forms. Firstly, in the form of a closed scheme to deal with the rights accrued up to the date of dissolution and an open scheme to deal with rights which accrued from the 1 January 1994 and onwards on a continuing basis into the future and as I said in the House last week, the British Government's pension agreement is that they will fund, in respect of a closed scheme, all the pensions obligations to the Spanish pensioners. But of course, one of the consequences of doing that, is that the Government

will have to take actuarial advice as to the funding of the closed scheme and indeed of the new open scheme because Government is determined that statutory pension fund liabilities under the new Social Insurance Ordinance should not be a budgetary item. In other words, it should not have to be met, as indeed it is in several other countries in Western Europe, but it should not become an item of expenditure which has to be met from recurrent revenue. It is the policy of the Government that in as far as possible, resources will have to be allocated to restore the capital value of the Pension Funds to ensure, as has more or less been the case historically in Gibraltar, that pension fund liabilities can be met from the designated income for that purpose, which would of course, has historically been the interest income, the investment income of the Pension Fund itself and the contributions in respect of employees to Social Insurance contributions. We will now engage in an actuarial process to establish the extent to which the Fund, which as honourable Members know, has depleted considerably over the years because it has not been topped up whereas transitional payments have come out of the old Social Insurance Fund. The revenue has not been accrued to it in the form of social insurance stamps, so that therefore, at the last reckoning and from memory I think that the current balance of the old Social Insurance Fund now of course known as the Transitional Interim Payments Fund presently contains a sum in the order of £17.5 million. Of course that Fund traditionally consisted of an amount much nearer the £50 million.

Mr Speaker, the finances of the John Mackintosh Homes is a matter of concern to the Government. Like the rest of Gibraltar, the Trustees appear to have misunderstood the philanthropic gesture of the then Chief Minister in the run up to or rather following the Christmas lottery draw last year. Honourable Members will recall the fanfare, not to say photographic opportunities, with which the then Chief Minister announced that he had decided to donate to the John Mackintosh Homes the £500,000 unclaimed first prize attaching to the 1995 Christmas lottery draw. It is I suppose reasonable that the people of Gibraltar, certainly it has happened with the Board of the John Mackintosh Homes, all of whom are sophisticated businessmen, that they took these assertions at their face value by which they understood, as I am sure did the rest of Gibraltar, that the Government would be actually making available £500,000 of new money in cash to the Board of the John Mackintosh Homes and indeed the Board of the John Mackintosh Homes proceeded with their expenditure and refurbishment plans on that, not illogical, assumption. It is therefore with consternation I

have to report to the House that the Board has discovered that the Government's generosity was actually not actually measurable in money in the same way as it was measurable in valuable publicity minutes on GBC Television because this was not going to result in a cheque for £500,000 being sent to the Board of the John Mackintosh Homes for them to spend. What the Government actually did was to say to the Board subsequently "you owe the Government already in respect of 1992 and 1993 £600,000 or £700,000 I am going to make you this generous gift of £500,000" but then did not give it to them, it was simply a book entry. £500,000 of the historical debt of the Home was simply written off and that was the extent of the honourable the Chief Minister's generosity which is not totally ungenerous in the sense that having £500,000 written-off is not entirely insignificant but it is not what people were led to understand by the Government's presentation of this gesture, nor indeed is it what the Board of the Homes understood, because now, they find that they do not have the £500,000 of new money which they were counting on, for which they were thanked publicly and which it now falls on this Government to have to provide to them over and above the amount provided in the Estimates because the Board feel that there are essential structural refurbishment works that cannot wait much longer and that is what they were going to use what they thought was the additional Christmas present that had been then promised to them.

Mr Speaker.....

HON J BOSSANO:

Mr Speaker, would the honourable Member give way. Can I just say, I am only interrupting him at this point because when I rise to reply I will be dealing with many other points and I do not want this to be lost. Let me say that he has been totally misinformed and that the commitment that was given was that the £500,000 of the first prize was a one-off windfall which they had available for use for the refurbishment of their property. That was a clear commitment that I gave to the Trustees of the Mackintosh Homes and in fact the overspending of previous years which had been met by loans was to be reduced by them being given annual grants in excess of their recurrent requirements which would produce a book entry removing part of the accrued debt to the Social Assistance Fund. I want to say that quite categorically and whoever has given that information, probably in good faith, to the Chief Minister is wrong because the commitment that I gave is there and ought to be honoured because it was a clear commitment.

HON CHIEF MINISTER:

Mr Speaker, the papers that I have seen as opposed to the statement that I now hear from the Leader of the Opposition do not reflect the position that he has just described as neither do the draft Estimates that his Government had prepared of either the Consolidated Fund Revenue and Expenditure, nor indeed of any Special Fund that I have seen, write-in an expenditure even on a one-off basis of £500,000 for this year for the Homes over and above the traditional amount which has historically been increased I think by about 15 per cent in a year. Certainly none of the papers that I have seen either of his Government's making or of other people's making reflect the position that he has just described.

Mr Speaker, the Government also intend to restore to the public administration within the restraint and the constraint of the financial resources that are reasonably available, intend to restore to the politically accountable public service a degree or a greater degree or for that degree of capacity to serve the Government of the day in the full range of public affairs that the previous Government systematically dismantled. In that respect we are formulating plans which will very likely lead to new Government Departments or units within existing Departments that will centralise the arrears or the collection of all arrears of public revenue including, needless to say, arrears of revenue of PAYE. We will restructure around the person of the Minister for Tourism a Department of Tourism. We will establish around the person of the Minister for Employment and Training a Department for Employment and Training and we will establish around the person of the Minister for Social Affairs a Department of Social Affairs. In addition, there will be a legislation and support unit which will amalgamate not just the present facilities for transposition of EU Directives provided by the European Community Law Unit but indeed a capability not concentrated as has been in the past in one person for legislative drafting capacity in respect of Government-owned domestic legislation and indeed also the management and upkeep of the laws of Gibraltar to ensure that never again will they fall into the state of disuse in the sense of unuseability that they had become during the last eight years.

Mr Speaker, Government intend to centralise in respect of the whole Government the machinery for procurement of goods and services and we propose to create a Department that will amalgamate such things as the present Passport and

Nationality Office, those parts of the Immigration Department which remain in an administrative capacity in the hands of the base at New Mole House with the Police and the Registries of Births, Deaths and Marriages which presently live under the auspices of the Registrar of the Supreme Court. In other words, one Department dealing with nationality status and civilian registration of all sorts.

Mr Speaker, Government will be engaging in a process of manning level reviews and resources audit as promised in our manifesto to ensure that the system that we establish is not only the most efficient system possible but indeed that it is within the level of financial resources that Government can reasonably make available to the public administration machinery and indeed to ensure that morale, confidence, career opportunities and, indeed, capacity to conduct the affairs of Gibraltar is restored to the civil service. This will be done, needless to say Mr Speaker, through a process of consultation with the respective staff associations and unions.

Mr Speaker, Members opposite know that one of the issues of unnecessary expenditure to which this Government now has to dedicate very substantial resources when, if things had been done better, not to say properly the first time round, that money would have been available for other much needed spending objectives, is the situation relating to Harbour Views Estate. Honourable Members know that there are a number, not just of fire safety related issues but indeed a number of serious structural defects which not only put in question the safety of the building but indeed the integrity and durability of the structure for its envisaged life span. Although we have not yet received the Government's professional advisers final report on the necessary remedial works and the various options available have not been costed, although it is clear that all the options involve the expenditure of capital amounts of money, the taxpayer of Gibraltar will be fortunate if this problem can be remedied for a figure which will not give much change from £7 million.

One of the practices, Mr Speaker, that the new Government have already dealt with in the sense of causing the necessary instructions to be issued and pursuant to the commitment of the Government to total transparency in the matter of public finances and contracting, is what is known in jargon as nettings, that is to say, when Government contracturises the collection of, for example, rates or house rents or income tax arrears or anything of that kind, in other words when the Government contracts out the

responsibility to collect matters which are really public funds and public revenues, there is of course a cost of doing that. There is either a fee to be paid to the company in whose favour this has been privatised or contractarised or there is commission to be paid as in the case of the commission paid to Gibraltar Information Bureau for the collection of PAYE arrears and until now, the figures that have been appearing in the Budget here, when they appear at all that is, is the net figure. That is to say, if £100 is collected in rates and of that £5 has to be paid to the collection agent, the figure stated here of rates collection is £95 and we think that that is wrong and it should not happen in future. In future the figures of Government revenues that will be exposed in the budget will be the gross figure and then we will show separately the cost figure in whatever form it takes, whether it is commission or whether it is management fee or whether it is a contractual fee but let the gross revenue and, perhaps more importantly, the net expenditure which nets that gross revenue be transparently visible.

In keeping with statements Mr Speaker made not just during our election campaign and in our Manifesto but indeed when I was sitting on the other side of the House, it is the Government's intention at the next meeting of the House and I do propose to engage in a process of consultation with the honourable the Leader of the Opposition beforehand and that is, the question of establishing in this House a Public Accounts Committee and the way in which it should.... the parameters within which it should work and the rules which will guide it. Needless to say, Mr Speaker, a Public Accounts Committee in a House configured as this House is configured, is primarily for the benefit of the Opposition pursuant to their monitoring role because we do not need a Public Accounts Committee of the House to out question civil servants about how this money has been spent or whether that money has been correctly spent in accordance with, firstly the Appropriation mechanism of the House and, secondly, on a value-for-money basis. The Public Accounts Committee is therefore intended to enable the Opposition to have greater access to the machinery responsible for the collection and expenditure of public monies so that throughout the year and not just at Budget time the Opposition has a proper opportunity to monitor the performance of the Government machinery in the expenditure of public monies not just as against what the House has authorised to the appropriation mechanism but indeed to ensure that Government is delivering to the taxpayer as much value for money as it can. Mr Speaker, the large volume of contracts signed by the previous Government with various entities in the form of

contractorisation private or in pursuance to contractorisation and privatisation of functions that were previously within the public sector, all that large body of contracts is presently being studied and perused and that will in some cases lead to a review of those contractual positions.

Mr Speaker, I would like to end on the subject of income tax. In compliance with an electoral commitment so to do the Minister for Education has already announced that as of the beginning of the next academic year, in September, private nursery fees would be the subject of tax deduction as a partial compensation to parents who send their children to private nurseries. As partial compensation for the fact that some parents in Gibraltar are lucky enough to be able to place their children free of charge in Government-owned nurseries. The House will already be aware that one of our first decisions, already announced by my colleague the Minister for Education, is the enlargement of the number of nursery places by sixty, by the provision of 60 new nursery places at Notre Dame. The second part of the equation therefore is that the fees paid by parents for sending their children to non-Government nurseries will be the subject of a £500 per annum per child flat allowance. This will apply only in respect of the children that would have been entitled or that are entitled for consideration of placement in Government nurseries, in effect, three to four year olds. The cost of this tax give-away is estimated to be in the order of £60,000. Government will shortly be taking the necessary steps to make available a £500 per annum per child allowance to any parent that satisfies the Department of Education and the Income Tax Commissioner that their children have been placed in a private nursery continuously during an academic year, with the exception obviously of normal absenteeism of a normal kind.

Mr speaker, it is also a manifesto commitment of the Government to neutralise, to eliminate, the tax increases which taxpayers in Gibraltar have suffered during the last eight years as a result of the previous Government's failure to increase personal tax allowances by at least the rate of inflation, which would not have amounted to a tax cut but simply to ensuring that inflation does not operate, and the value of personal allowances in a way to which in practice amounts to an increase in taxation. That is a commitment that we have as a four-year commitment, that the Government intend this year to cover 35 per cent of the ground lost between 1988 and 1996. That will involve the increase with effect from the beginning of this tax year, which was three days ago, of single persons allowance by £200, from £1,450

to £1,650. The married persons allowance by £400, from £2,800 to £3,200. The Elderly Persons Single Allowance by £40, from £320 to £360 and the Elderly Persons Married Allowance from £450 to £510, that is £60. The Government fully intend to honour our commitment during the next years, but certainly during this first term of office, to eliminate the remainder of the 65 per cent of the ground lost between 1988 and 1996 and indeed to ensure that the situation keeps apace with inflation. In other words, we have not only to give back the eight years that have been lost but we have got to factor in the inflation that operates between 1996 and the year 2000. Mr Speaker, the cost of the tax give-away in respect of personal allowances which I have just announced is estimated by the Income Tax Department as somewhere in the region of £2 million per annum, somewhere between £1.8 million and £2 million per annum.

It is, as Members opposite know, the policy and aspiration of the Government to progressively lower the incidence of taxation in Gibraltar on the back of expanding and successful and prospering, broadening, of the economic activity base. We believe that it is possible to enable such things as the Finance Centre to deliver greater value to ordinary citizens, not themselves directly employed in the Finance Centre, that the whole community should derive the advantages of Gibraltar being a Finance Centre as indeed they do in Jersey, for example, by enabling increased tax revenue and the finance Centre to fund tax cuts in respect of ordinary taxpayers. That is the middle to long-term economic fiscal aspiration of this Government to convert the economy of Gibraltar generally into a low tax area and of course that can only be done at a pace consistent with preserving the revenue income, the revenue flow to Government, that it needs to fund the public services which are presently Government's responsibility. Mr Speaker, I commend the Bill to the House.

HON J BOSSANO:

Mr Speaker, it is of course correct of the Government to state that these Estimates were not prepared for them. They were prepared for the previous administration and they therefore reflect the policy decisions of the previous administration as indeed happened when we were elected for the first time in 1988 and the 1988/89 Appropriation Bill and the attached Estimates of Revenue and Expenditure reflected a continuation of what existed in 1987/88. Therefore what is clear from the contribution of the Member opposite is that what we can expect is to go back to 1987/88 and that if we are going to discuss the policy and the

management of the resources and the assets of Gibraltar today we could not do it by reference to the figures that are in front of us but by reference to the methodology that was operational prior to 1988 and which they intend to put back. I have to say to the Member opposite that he will eventually find out how much putting that back will cost and how much less he will be able to do and it will take him time to find that out and I have no doubt that even when he finds out he will not be willing to admit it because he would find it politically inconvenient to do so.

The Member has talked about the degree of information and transparency that there is. The truth is, that since 1992 the information on the revenue streams dedicated primarily to two Special Funds were provided for him at the same time as the Estimates in answer to his questions. Whether they are attached to the Estimates or incorporated in the Estimates, the net result is that the process of the movement of expenditure and income from year to year is something that can be tracked with the level of information that is available already. There are, of course, as I have said, principally two Special Funds and the indications are that those two Special Funds are going to be discontinued. One is the General Sinking Fund and the other one is the Social Assistance Fund. Let me say, that throughout the last four years, when they were on this side of the House, they always took the position that they were not questioning the Social Assistance Fund because of the fact that it had been brought into existence as a consequence of the problems that we had faced since 1985 in relation to statutory provision for benefits and the consequences of having statutory provision for benefits in respect of the people who may, under the provisions of European Community law, claim such benefits. There is no doubt that the provision of benefits in a certain shape according to the advice that was there even before 1988, I remember clearly that the first legislation that had to be repealed was the legislation that provided for a non-contributory statutory Elderly Persons Pension because on the advice of the United Kingdom, if that was done as a result of legislation and as a result of an appropriation in the Appropriation Bill it was challengeable in Community law if the money was concentrated on Gibraltarian beneficiaries and not beneficiaries of other nationalities. He may well find that the more he goes in that direction the more people he will finish up paying. I certainly advise him to carefully think of that dimension when he starts pursuing the kind of route that he has mapped out today which of course we will reserve our final judgement on when we actually see what transpires. The General Sinking Fund was a commitment of the GSLP in the

1992 General Election and we will not criticise the Members opposite for doing what they said they would do because that is what they have been elected to do. Certainly, they seemed to think, when they were on this side, that we should not do the things we had been elected to do and we had put in the Manifesto because they did not agree with them. They will not find that approach from us. Obviously, we will try and persuade them whatever they may want to do themselves, to do other things which they may not have decided upon but which we think are desirable and therefore that is a role which we feel is appropriate to us in terms of attempting to persuade to influence the policy of the Government of the day.

The General Sinking Fund was a commitment on the basis of an approach to the management of the financial stability of this territory which, of course, constitutionally is ultimately the responsibility of the United Kingdom Government but in practice that responsibility has never been reflected in the British Government being willing to underwrite even the public debt of Gibraltar. The provision of that Sinking Fund gives a vehicle which would allow the Government to finance capital investment and at the same time to proceed with the gradual reduction of the public debt of Gibraltar which we would urge the Government to do which is a commitment that we had that was not mentioned by them. In our view the financial strength of the Government which is clearly not as weak as we were being told in this side of the House 12 months ago, when the House was being told by Members in a Motion that the state of Government finances was such that we might not be able to meet wages by the end of the year or that the state of the economy was the worse in our history and that we were at the time being told that we had a level of public debt which was a millstone round our necks, none of that was an accurate assessment of the situation then, and it is certainly not an accurate assessment of the situation now. The truth of it is that the finances of Gibraltar are in a very sound shape and that they need to be and therefore in the knowledge that the view that we have taken as a Government over the last eight years has been to consolidate the financial position of Gibraltar and to build up reserves we believe that that must be the line that we continue to urge on the Government. The analysis that we made from the beginning in 1988 was that there was an inevitable direction in which our economy was going. It was a direction which had been there since the Defence white Paper of 1981. But that direction was unstoppable and the only thing that was unknown was the speed at which we would move in that direction and that direction was the gradual, sometimes not too gradual for our

liking, rundown of the British military presence in Gibraltar and of course, the British military expenditure in Gibraltar which provided predominantly through employment levels but also through procurement in the local economy a virtually captive market for the sale of Gibraltar services, for the output of Gibraltar's workforce which was virtually guaranteed from one year to the next and in a situation where that is the dominant factor in the economy the revenues of the Government and the level of economic activity were not exposed to market forces. The economy of Gibraltar today is not the economy of 10 or 15 years ago and the more it is dependent on Gibraltar's competitiveness the more it is exposed to a situation where the kind of business that we get in Gibraltar can switch to a competing jurisdiction with little warning, this is not a negotiable thing, if the MOD say that they are going to cut X number of jobs the Government of the day can make representations for that to be slowed down for compensating factors to be looked at but if banks decided that they can make more profit by being in Luxembourg than by being in Gibraltar, there is absolutely nothing the Government can do to keep them here, they will go, and therefore we believe that a prudential fiscal policy requires, and we have always defended it, that the fallback position of the Government should be one of financial strength. We have maintained indeed that that is an essential element of the Government being able to have its own voice in anything because they can only have their own voice when you are paying your way and it is an essential element in the drive to finally put an end to colonialism and to achieve self determination. The strength of the finances of the Government and the strength of the level of economic activity are not divorced from the political determination to emerge from a colonial relationship into a new relationship with the United Kingdom which will reflect our position in the European Union and indeed which will reflect what has been happening in the rest of the world in the last 50 years where we have been stuck in 1969. It is clear that everything that the Government is proposing to do at this stage is designed to spend money. There has been no indication of Finance Bill being brought to the House to raise money and obviously they are only in a position to spend money because the money was there on the 16th of May to spend. It is not that they are printing money. It is of course their prerogative to spend the money in the exercise of their judgement because that is what the people of Gibraltar have decided, that they should have the responsibility of judging how that money should be spent, how much of it should be spent and whether it should be spent.

In looking at the structure of the companies mentioned by the Member opposite in his opening statement, I do not know whether it is that even now he has not become fully conversant because he did not seem to be fully conversant before but of course it is not true that in every case the companies concerned are drawing their income directly by charging for services because one particular company for example.....

HON CHIEF MINISTER:

Mr Speaker, if the honourable Member will give way, and in any case as a point of order, to suggest that something that I have said is not true requires his analysis of what I said to be accurate. I have not referred to the sources of revenue of these companies. I have limited myself to saying what the current cash balances held by those companies are. Certainly he can give whatever explanation he wishes but not to prefix it with the suggestion that the honourable Member does not know what he is talking about and that the honourable Member is not telling the truth. The people of Gibraltar have been hearing those two prefixes for the last four years. It did not service the honourable Member opposite in good stead in May 1996 and it is no more impressive now.

HON J BOSSANO:

I do not expect to impress the Chief Minister any more than he impresses me and he may even impress me less than I impress him and I am of course making myself entirely responsible for the accuracy of what I said and I propose to demonstrate it by reference to the Estimates of Expenditure we have in front of us. Mr Speaker, the Member opposite has said and we may need to go back and check Hansard if he does not believe that he has said what he has. In listing the number of companies he has said that these companies are spending money which do not appear in the Appropriation Bill and that there is going to be a reversion to reflect that in the Estimates of Expenditure, and I am about to demonstrate that this is not true in every case, and that it may well be that he has not checked every case Mr Speaker. After all, the Member opposite will have his final say and I am willing to give way if it is not the case that that is the point that I am making because that is the point that I started making when he interrupted me.

I was saying, if we take one particular company, for example, it is an example that I have given to him before in this House. Gibraltar Industrial Cleaners is responsible

for the collection of refuse in Gibraltar, and the cost of collecting that refuse is the charge made by Gibraltar Industrial Cleaners to the Government of Gibraltar and the payment of that fee to that company is shown in the Appropriation Ordinance as the money that is devoted to collecting refuse in Head 4, Subhead 9, Collection of Refuse £1,000,000. If tomorrow the company is discontinued and the refuse collectors revert to Government, the item will still be Collection of Refuse £1,000,000 except that it might cost more than one £1,000,000 if it reverts to Government. I am giving this as one particular example, where here, we have one situation where the actual collection of refuse that is contracted out is contracted out to the people who were doing it for reasons that were explained when that happened and for reasons which were designed by the Government in consultation with the people involved in carrying out the task by mutual agreement on a voluntary basis and after an assessment of the cost effectiveness of doing it that way. Certain improvements in the collection cost would not have been possible within the Government structure because it would not have been possible to contain any agreement to that particular area, there would have had to be agreement across the board affecting many thousands of other employees who were not in a position to deliver in exchange improvements in productivity and organisation that this particular group was able to do. There we have, clearly, a rationale for doing this which has nothing to do with being less or more open or anything else. It has to do with the efficiency in terms of value for money of a particular service. It is clear that when the Member opposite looks into more of these contracts he may well find that there is wisdom in keeping what works, but of course he has the right not to keep it if he does not want to. Eventually, the bill for doing things in different ways will appear in future Appropriation Bills and in future Estimates of Expenditure. Let me say that the point made by the Member opposite of letting in terms of removing the collection costs of particular charges for particular services is something that has been part of the Laws of Gibraltar since the 1969 Constitution came in and it is something that was there even before the 1969 Constitution came in, in terms of the Public Health Ordinance and it is something that is to be found in Treasury instructions in the United Kingdom and it is something that has got a logic to it and the logic to it is, that it is in fact a misconception to say we are going to vote in this House how much money we spend and to include as pending a payment which is a commission based on performance because we do not control the performance in this House of the activity. So, if you have got a situation where you have got somebody that

you engage to collect arrears, as a collection agent, the payment that he gets depends on how successful he is. It is a nonsense to say we are going to vote other than simply for the sake of showing the amount but in terms of the real decision-making process of voting expenditure this is not expenditure determined by the House. This is expenditure determined by the person conducting the activity. What is decided in the first instance by the Government in the process of negotiation with the collector of that debt is how much the proportion of the debt that he collects may be or how much the proportion of the fees for departure taxes may be and it is, of course, one thing to say we expect so many passengers to arrive in Gibraltar in the current financial year....and, of course, we do not debate revenue in the Estimates, we debate expenditure and you can put then a tentative figure on the yield of departure tax and that tentative figure is no more than a guesstimate based on a judgement as to whether the number of people that arrive and depart from the airport is going to go up or come down or stay the same.

All the revenue estimates are estimates of that nature. They are all estimates which presume that something is going to happen or not going to happen in relation to what has happened in the previous financial year. But, of course, if what you have is a proportion of the departure tax being retained for the running of the terminal and you put as an expenditure item here, in this House, that you are going to vote to give money to the operator of the terminal, independent of the numbers of passengers, then that money has to be paid even if the passengers are not there because it is money that has been appropriated from the Consolidated Fund and has nothing to do with the departure tax itself. So there is a logic to the situation. There is an incentive built in. It cannot be done the way the Member opposite does, certainly with anything that exists at the moment in terms of the finance provisions of appropriating expenditure from the Consolidated Fund, because it is not possible to do. The Member opposite may want to show it as an annex at the end of the Estimates and obviously he would provide the information if asked like we used to, but that is not money voted by the House. It is not money appropriated by the House but of course if he puts the gross figure.... if the Members assume that there are going to be 70,000 people departing from the airport and that each is going to pay a £5 departure tax and that that produces £350,000 and he puts the gross figure of £350,000 on the revenue side of this Bill and on the assumption that there are 70,000 departures, he appropriates from the expenditure side of the Bill £50,000 for the sake of example to the operator of the

Terminal, that £50,000 voted by the House has to be paid irrespective of whether the 70,000 people come because.....

HON CHIEF MINISTER:

Would the honourable Member give way. Surely, his understanding of the appropriation mechanisms of this House, after having been in it since 1972, must exceed the remark that he has just made. These are Estimates of Revenue and Expenditure. We do not have to spend any of it. The fact that this House authorises the Government to spend £73 million, except the items which are a legal charge in the Consolidated Fund like public debt, the £55 million that this House is now giving the Government permission to spend, we do not have to spend a penny of it. The statement that because it is approved by the House, we have to spend it and have to pay to the contractors is perverse in the context of the knowledge that he must by now have acquired of how this House works.

HON J BOSSANO:

No, Mr Speaker, it is not perverse. I am simply demonstrating that what the Member is talking about in his opening remarks, after all, Mr Speaker, I am trying to exercise my right as Opposition in responding to the announcement that he has made. That does not make me perverse. It does not mean I do not know how the Estimates work, of course, but by the logic of that argument it is totally irrelevant whether we debate anything in these Estimates because he can say these Estimates approve £70 million of expenditure and when we change everything he is going to approve £100 million of expenditure but in any case it does not matter whether we approve £70 million or £100 million because we do not have to spend any of it. That is a nonsense because the Member opposite is signifying the intention to Parliament of spending that money and the money may not be spent for a variety of extraneous circumstances but if the House if asked to vote for £50,000 to be given to the contractor that operates the Terminal, irrespective of the numbers of passengers, then there is a different situation and it is a level of expenditure where a policy decision is being taken as to whether to spend the money or not and the point I am trying to make to the Member opposite is, that there is, as far as we are concerned, philosophically, ideologically, a qualitative difference between the two things. There is a qualitative difference between having somebody on a contract paid by result, where we in this House are not responsible for those results, and another thing is, where we actually approve the spending of

money which is based on a decision to carry out a certain amount of work or carry out a certain amount of purchasing of materials and the bulk of the appropriation ordinance is about spending money and about estimating the income that will flow to the Government from that expenditure and I am pointing out, that what he has indicated that his Government proposes to do, is something which can be debated and questioned. That does not mean that because he has decided to do it none of us understands how the system works. I am pointing out to the Member that how the system works has changed by us in the knowledge that it was a perfectly logical thing to do, that it reflected better the position of the money available. It is a more accurate reflection of the money available to the Government for other things, if you net the revenue of the Government in a position where that is a reasonable thing which is capable of being done, if you net it to show the collection costs. If the Government of Gibraltar, for example Mr Speaker, has £22 million from import duty as an estimate, which is the figure that the Member opposite gave at question time, and that money is going to the Social Assistance Fund, then there is in this case a book entry transaction which nets the collection cost of the revenue. However, the collection cost of the revenue because they are talking about a Government Department and people on established fixed salaries is not determined by the result. So you can say, if £22 million of import duty is collected it will cost £2.4 million to collect it and if it was £24 million it would still cost £2.4 million. In this case the meeting is a book-keeping entry between the Special Fund and the Consolidated Fund and the Consolidated Fund recharges the Special Fund the collection costs but of course the money that is available for the purposes of the Social Assistance Fund is not the £22 million it is the £22 million netted by the cost of collection. That is not giving less information, in the areas where the amount is done on a contractual basis and the balance of the putting into operation of that contractual relationship is what goes into the Consolidated Fund as it does in these Estimates and as they propose to change, it gives a more accurate reflection of what is available to use for other things unconnected with that function. So the situation is, that if at the moment the income from departure tax is netted that is because the netted amount, the balance, is what the Government can use for other things. The gross amount, in our judgement, does not provide a more accurate picture, it provides in fact a distorted picture because it gives the impression that you can collect £350,000 from departure tax which goes into the Consolidated Fund and is available in a single pool of revenue, when in fact it is not available and

in a single pool of revenue because there is a contractual arrangement that determines, that if three fifty is collected, fifty shall be paid and the decision-making process of the House is not in fact technically capable of changing that contractual relationship. So, if we have an item of appropriation that says the contractor is paid fifty thousand, not only is it the case that it may or may not happen as is the case with every other Estimate of Expenditure but that in fact if the amount was more, the House has no right to stop it happening. We could not decide, in theory, because I am sure Mr speaker you will agree that the whole concept of this House determining expenditure or affecting the level of revenue is in fact not possible since any amendments that result in a charge of public funds or which result in changes in revenue can only be moved by the Government. The nature of the Constitution prevents this side of the House from actually altering the income and the expenditure and therefore although we can debate till the cows come.... No, no, no, it is not just the fact that we are a minority, it is a fact that under the colonial relationship it has to be with the necessary approval signified through the Financial and Development Secretary, that any item affecting the revenue can actually be introduced in this House, and I think, if the Member cares to check, it is either in the Public Finance (Control and Audit) Ordinance or it may be even in the Constitution itself. That is the nature of the constitutional relationship. So, if we were able to persuade the Government to make any alterations, the actual alteration would have to come from them and not from us under the provisions of the Public Finance (Control and Audit) Ordinance.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

If the honourable Member will give way. I think it is when one is increasing revenue, it is necessary to go through the procedures of the House as the honourable Member has described, Mr Speaker. Although I seem to recall that when the honourable Leader of the Opposition was Chief Minister, not so very long ago, during the eight year period, he did introduce an amendment whereby certain increases in fees can be done without returning to the House, or maybe that was the negative resolution proceedings. He probably knows more about it than myself.

HON J BOSSANO:

Yes, Mr Speaker, I accept that that can be done without recourse to the House. I am saying what comes to the House

cannot be altered in any other way. What does not come to the House certainly is not caught by that particular proviso because in fact it is by reference to the right of appropriation and the right of raising money that the provisions exist, but clearly in a situation where by notice in the Gazette a fee can be altered, at the end of the day there is no question that the notice in the Gazette is going to be put by the Opposition, so the issue does not arise. It is where, in theory, we are here. I can tell you Mr Speaker, from recollection of previous meetings of the House, going back some time, that when an attempt has been made as a sign of protest to have a token amendment removing one pound from somebody's salary, Mr Speaker ruled it out of order because the Opposition could not move amendments to the Appropriation Bill. So in putting in these Estimates amounts for appropriating to pay something that is currently netted and therefore is currently revenue-driven, not driven by policies here, we would not be exercising a real level of control. The Member opposite may be right in saying we would be providing information which is not currently available but in practice, in the judgement of the GSLP the presentation of that information would not present to the average man a clearer picture but if anything a more confusing one. Therefore, we do not support the removal of netting. We think it is a good and an efficient mechanism and therefore we think it is totally consistent with the position that existed in the laws of Gibraltar. In the Public Health Ordinance there is a specific mention of the income collected under the Public Health Ordinance being capable of being netted by the retention to the commitment in their manifesto to set up a Public Accounts Committee. I will give him the opportunity that he has indicated, that he wants to take up, of trying to persuade me that we should support it. If the Member is going to consult me, presumably the only thing that he can consult me on is how would we like it to be in order to participate and that has to be on the premise that we are willing to participate and he first needs to convince us of that. The Public Accounts Committee, Mr speaker, existed prior to 1984, twelve years' ago. It was discontinued at the time of the 1984 Election when we were in the Opposition by the then AACR Administration. Before 1984 when I was the only Member of the GSLP in this House, the GSLP did not form part of the Public Accounts Committee and kept its distance from it and certainly the way it worked during that very short period when it existed was that it became a forum like the star chamber to which civil servants were summoned and grilled. We do not believe that that is the function of the Opposition. We believe that the function of the Opposition is, that as the member opposite has said, they do not need

it themselves to keep check on public spending and although in last year's Estimates, for example Mr Speaker, when the Member opposite spoke, he concentrated not on the Estimates of Revenue and Expenditure that were then before the House but on the comments of the Principal Auditor, on previous years' expenditure and that was the bulk of his contribution to that particular debate in 1995, although it was pointed out to him that the controlling officers are civil servants, but that of course, the political responsibility lies with the elected members. We would look to questioning the elected members of the Government for areas of public spending which we feel need to be questioned and not the civil servants who are employed to do the job. We do not think it is our function. We never thought it was our function in 1984 and we are still of the same view in 1996. Therefore, I can tell him that we are unlikely to support the setting up of a Public Accounts Committee and unlikely to be persuaded that we should form a part of it, but I will wait until the consultation takes place to see if they can produce an argument that I have not heard before to enable us to review our policy of this matter.

Mr Speaker, the House has had an indication from the Government of the changes that they foresee taking place either during the course of this year or in the Estimates of Revenue and Expenditure that are to be presented next year which are really arguments about the compilation and the presentation of that information, and when that happens, we will express a view on the wisdom of what is happening. Clearly, it is not a difficult exercise to put everything back as it was in 1987. These things can be done relatively simply, so it is not something that needs to wait that long, if that is what they want to do, and it is not something that we will support or recommend. We feel that if we work in giving the Government less flexibility in carrying out their policies which we feel they are entitled to have, like we felt we were entitled to have it before. So they will not find us complaining, because what we will look to, is not so much how they go about doing it, but at the end of the day what we are interested in is the results. If the result is that they do things quicker, that they do things more efficiently, that they produce spin-off effects by having less cumbersome and less bureaucratic procedures, we believe that is better and it produced better Government and more efficient Government rather than being hide bound by tradition that we have to do things in a certain way because that is the way it has always been done, and because that is the way it was introduced in the 1969 Constitution and before that in the 1964 Constitution and before that in the 1954 Constitution and it is the way..... this system is the

system that the UK invented and exported to all its colonies. There is nothing sacred or magic or special about it. There is no reason why things should not be done another way as long as the effect of doing them another way is that at the end of the day more things get done. At the moment, nothing that has been announced about changing the presentation will have any effect on the real world and on the real economy and on the number of jobs and on the rate of economic growth. It may well be, that when other Members of the Government speak, they may indicate other things that are going to be happening during the year, but certainly by changing the accounts from showing one figure to showing another figure nothing else is going to change. Therefore, on that basis, although we recognise that it is only fair to give the Government time to get on stream the things that it wants to do and that it would be wrong in fact of us to seek to hold them to account at this early stage in their life we are therefore keeping an open mind on any policies that they introduce and making a judgement on that basis of results as to whether those policies are good for Gibraltar or not good for Gibraltar or something else should have been done. That will be the tone which we adopt in this House. It is the tone that we adopted before. It has been absent from the Opposition benches, I regret to say, since we have been in Government and we are restoring a style of opposition which I think is more civilised than anything we have seen for quite a number of years. It is a matter of judgement whether it is necessary, because Mr speaker, the Member has jumped up twice to interrupt me and felt the need to use language which I have not been using in my contribution, so it may be that temperamentally, since now he has to bite his tongue when talking to our colonial protectors in London, he feels he needs to loosen his tongue with me as a compensating factor.

MR SPEAKER:

That is a good note for a recess of 15 minutes.

The House recessed at 12.05 pm.

The House resumed at 12.20 pm.

HON K AZZOPARDI:

Mr Speaker, I was not sure whether the honourable the Leader of the Opposition had finished his contribution to the House? Mr Speaker, as the honourable the Chief Minister indicated, much of what we are going to say is going to be a broad thrash of the policy that we intend to implement in

our specific areas. Indeed, it is certainly true to say that we will now, that we are delving into our own specific Departments, will be giving more of a specific indication of what we are going to do, things that are going to change which will affect the real world, to coin the use of the phrase by the honourable the Leader of the Opposition. Certainly, though I give a broad thrash, I will give a more specific outline of measures that we intend to take if and when legislation is necessary and certainly when presenting it to the House.

I intend firstly to deal with the issue of health. This is one thing that has been present for many, many years in the Health Authority, in the health service. One thing that has constantly been a fundamental pillar of support to the health service is the quality and efficiency of the staff, which has never been put into question by the Members on this side of the House, and the efficiency and medical services available to the public have always relied upon, not to say, that those particular members of staff have not operated under easy conditions. Indeed, they have not. We all know that the public have voiced many, many concerns concerning the issues of medical services that patients have. One of the criticisms I think over the last few years and perhaps it is a historic criticism that the patient makes, as to waiting lists. The effects perhaps of private practice on those waiting lists, the lack of communication between members of staff, between management and members of staff, the lack of communication between the staff member and patients, for which the staff member is not at fault. It is just that perhaps the procedures are not outlined clearly enough for the patient to make use of them and also problems and problematic areas when it comes to the engagement of key personnel and whether, there is a need to engage further key personnel in medical matters. These are all concerns that are outlined by patients and the consumer. Indeed, as my counterpart the honourable Member opposite has indicated several times before in this House, the Gibraltar Health Authority created by Ordinance met infrequently, indeed, I understand annually. My impression is, and the view expressed to me by some people is, that the Management Board also created by that Ordinance, was undermined and its function broken down to a very large extent. I do not see the role of Minister responsible for health as chairman of the Gibraltar Health Authority as providing any opportunity for me or indeed that the role implies any sort of political control or political interference in medical matters. I think that the role as chairman of the GHA will be to set and channel Government policy through that body. It will then be implemented by a management board and indeed the

managers and employees of the Gibraltar Health Authority. One of the final concerns I want to highlight which is always also expressed by the consumer, is the fact of the administration resources. That is a matter that we intend to look at. Indeed, a lot of money is spent on the health authority and perhaps the resources need to be better administered and that is a question, once the Government has had an opportunity to examine the budget together with the management, to give a statement of policy in certain areas and then the management will indeed implement decisions of policy as I indicated.

We have mentioned throughout the election campaign and certainly through several months that there was a need to review many issues in the Gibraltar Health Authority. I set against that background the fact, which is well known, that there have been old reports, several reports prepared over the last few years, over the last ten years indeed, into aspects of the health services. In 1986 there was the well known commissioned Hill Report into Nursing Services used by the Members opposite while in Opposition against the AACR. In 1989 the Rocca Report was accepted by the Party opposite once in Government, also into nursing services and of course we also have the report in 1987 the lengthy creation of the Gibraltar Health Authority by Ordinance. That set up a relatively new structure, that report examined the aims, workings of that structure. It sought to implement a more efficient system. We are nearly now ten years down the line. It is clear that many criticisms still exist of that by many patients and many users of the service and it is therefore the Government's policy, as indicated during the election campaign and indeed in the manifesto, to conduct a review and a reappraisal of what was created to see whether it is working, to what extent it is working and if it is not working, what we can do to better it. I have had several meetings, various meetings with members of the staff to touch upon these issues of concern throughout the last two months. It is two months that we have been in office now, next week, and I am happy to say and I take this opportunity in the House to announce the fact that this very week the review boards were appointed by Government. There will be two reviews, a review into medical matters and structure, what I call the medical/structure review. That review will look at the efficiency and the workings of the GHA. It will look at waiting lists. It will look at medical manning levels. It will also look at private practice, and when looking at that particular issue, I really only need to refer to a comment made by my counterpart the honourable Member opposite in 1988 in her first budget speech as a Member of the Government, when she said, and I quote her,

"the relationship between public and private practice has not been established and therefore there is little or no control over private practice and a lot of work needs to be done in this area." Unfortunately, for eight years subsequent to that statement the Government then proceeded to ignore the fact that private practice was occurring side by side with the public service in St Bernard's Hospital. That is a matter that will be looked at by the review and recommendations will be made in that connection. The second review board that I want to highlight is one into nursing issues, manning levels and training, selection and recruitment procedures, those review boards have been tasked to report back to the Members of the Government in a few months' time. That will give sufficient time for us to consider those recommendations by the next financial year and then we will be in a position to discuss specific measures emanating from those recommendations. But certainly I do take the opportunity of saying publicly and to this House first, that the Government's manifesto commitment in this respect has already been put in place and the review boards will be up and running and will be ready to report in a few months' time. There are, course, other areas that we need to discuss, fundamentally, as I do not need to talk about specific issues, very very specific net issues in the health authority but there are other issues that we mentioned in our manifesto that are central to the health policy of this Government. We intend to set up a patients charter of rights. We said so in the manifesto. The work towards that will begin soon. Indeed, once the Gibraltar Health Authority, which I intend to use as a more regular vehicle for meetings is running and meeting, then one of the issues that will be discussed by the GHA is the patients charter rights which I see as a document that will embody the right of the patient to information and treatment. It will review the complaints procedure and indeed it will review the need for legislation, because let us not forget, that whilst there was no legislation implemented by the last Government in relation to complaints procedures, there was a reference made in the Ordinance to it, but there was no specific legislation. In England, of course, there is a substantial body of specific legislation, the Health Complaints Procedure Act 1985 and then most recently one that extends Complaints Procedures to Clinical Complaints, only about a couple of years ago. All those matters need to be looked at and the work will be channelled through the Gibraltar Health Authority. The third fundamental area that I want to touch upon, which I think is also essential to the progress of the health of the community, is the concept of health education. I think it is crucial that when we try to fulfil the statutory duty

placed upon the Gibraltar Health Authority of providing a comprehensive diagnostic and preventive service in Gibraltar, I think it is crucial that we set a health education and promotion fund because it is an unrecognised, underdeveloped area where we could do much towards preventative care, towards primary care and I certainly intend to exploit this area. The health education item in the budget certainly in so far as 1995/96 budget of the Health Authority is under-used, though I think an item of £4,000, specifically for the assignment of particular matters of health education and only a few hundred pounds was of that sum used. Certainly it is an area I intend to look at. I think we need a vigorous policy of health education to assist the community in dealing with preventative measures that need to be put in place by the family unit. People need to know how they have to react to the situation. People have to have more access to information about prevention in health matters. People need to have more access to first aid lectures and information generally about how they can prevent the most damning illnesses of the twentieth century, coronary diseases and other diseases such as that.

Passing on to environment if I can now, I have to say personally that.....

HON J BOSSANO:

Would the honourable Member give way? Can I ask him two things? One is, am I right in saying that one of the things that is not under consideration is the possible reintegration of the medical services into the Appropriation Bill as such as it was in 1987, that is, in the things that are under review, that is not one of them? The Health Authority, is it intended to continue as a separate body? And the other thing is, can he say who has been appointed to conduct the two reviews that he has mentioned?

HON CHIEF MINISTER:

If I could just deal with the first question which relates to the restructure of Government finances, he should not assume that the restructuring of Government finances will not result in more information about how the GHA subvention will be spent than is presently contained in the Estimates. The delivery of the resources will still take the form of a subvention by the Government of the charge on the Consolidated Fund to the Gibraltar Health Authority but that does not mean, that the Government will not give

departmental-type information in the Budget, in the Estimates of Revenue and Expenditure.

HON K AZZOPARDI:

As the honourable Member opposite is aware, in the ordinance there is a reference to the accounts of the Health Authority that are audited and then later laid retrospectively before the House, I will just add that by way of information to what the honourable the Chief Minister has said in that respect. In relation to the other matter that the honourable the Leader of the Opposition mentioned, certainly that information is available. A circular was sent to the staff, it should have gone out yesterday evening, perhaps it went out this morning, stating that information. The administrative and medical matters review will include a local GP, a local consultant and an external person with experience in administration. Those particular members are Roger Stokoe, Sam Benady and Patrick Nerney. Roger Stokoe of course has substantial experience in Gibraltar to the extent that he was a member of the old review board. Sam Benady is the most senior consultant at the hospital who is permanent and pensionable and the same can be said of Patrick Nerney. The other members of the nursing review are the Director of Nursing Services, the Deputy Director Mr Catania, the Nursing School Tutor Mrs Land and then two representatives of the Union that represents most of the nursing staff. I asked them for a couple of nominations and they sent me the nominations of Mr William Marsh and Mr Michael Netto. That review will also include Mr Albert Finlayson of Personnel. The reasons for that composition is obvious. The reason for that is to provide a balance between staff members, between nursing management and between Personnel and I think that information should be of some use to the Members opposite.

Passing on to environment as I prefaced just before, I have to say on a personal note, that I am glad that environment has been tagged together with health. I think there is an inextricable link to the health services with environment. Indeed, I say that, because there is much public health monitoring that is done. It is enforced through the Environmental Health Agency now privatised by courtesy of the Members opposite. There is much Public Health Ordinance duties that must be performed. There is also a link with tourism and the provision of finances to the Government revenue in that respect. If the heritage aspects of the environment policy of the Government are indeed expanded,

there is much touristic value in doing that. Let me say just before I go on to deal with other matters of environment that certainly it is Government policy to have an overall continuation of services that are already conducted through the Environment Department and I say that in relation to Litter Control, though we must look at the issue of enforcement because I understand that the Police Department have removed, due to some manning level concerns, much of their unit that dealt specifically with litter enforcement. We certainly intend to pursue the cleaning services, the collection of refuse, all of that. Overall control, the Public Health duties performed all of those duties as part of the overall continuation of services that the Government are going to perform. But, of course, then there are other issues that have been highlighted in the Manifesto on which we were elected, which we intend to enact by legislation some of it and that will have an effect on the performance of the Environment Department.

Planning is one of those areas, we are very much in favour of an open planning process. This certainly will require legislation, I believe. We need to strike a balance between the rights of the public to a fair hearing between the developers' interests, the developer who wishes to develop that particular project. We also need to strike a balance between adjoining persons interest, adjoining to the specific project that is proposed and the general economic interest of Gibraltar. Perhaps there has been much confusion and misunderstanding in the past precisely because there is not an open planning process. We certainly intend to address that by legislation if necessary to provide for an open planning process.

Another area of concern, on a more day to day concern, is of course this issue of noise pollution. Many members of the community mention to me that there is too much noise in Gibraltar. Indeed, there was a reference to it in the QE2 tourism survey conducted by the last administration. People coming to Gibraltar seem to mention that as one of their heavy concerns in Gibraltar. We intend to address that issue. The legislation that exists does not adequately cater for system, for a mechanism that can address concerns of noise pollution and we intend to look at that.

Passing on to the east side reclamation, what I call the purposeless, unnecessary dumping and the systematic erosion of the natural coastline on the east side, that I think has been the ruination of much of the natural coastline in that area. We certainly intend to stop the dumping, the unnecessary dumping and beautify that area especially in the

Catalan Bay area and that hideous amount of erosion of the coastline that has been conducted down at that side of Gibraltar.

We also of course have to deal with the inheritance of a transposition of much new legislation without a provision for a structure for enforcement. I was given a long list of EU Directives that have been transposed into local regulations and in many of them, and I mention that I have a list of twelve or thirteen, in many of them either no competent authority has been appointed to endorse those regulations or indeed no resources have been provided to the particular competent authority that has been appointed to deal with the enforcement of that. There has been much nominal enforcement and that is a matter that we really must review because we have inherited a European legislative burden from the previous administration in that regard.

I wanted to leave the issue of heritage for last when I considered the issue of environment. It is because I believe it to be possibly one of the most important areas of the environment policy of the Government. I think it is a cornerstone of environmental policy purely because it can be a mechanism that we can use to generate much employment and much income for Government coffers which then, we can redeploy in a climate of more economic prosperity into other areas of Government. It is clear to us, and we said so during the last few months, that there is a need to set up a Heritage Commission. The Heritage Commission that previously had been attempted by the last Government collapsed. Certainly we intend to create a statutory Heritage Commission. It will have an advisory role. The overall responsibility for preservation and promotion of heritage projects will still be with the Government but we certainly intend to enact legislation to set up a Heritage Commission which will allow us to be advised by the experts in the field and allow us to channel a proper programme of heritage projects. With that in mind, once the commission is set up, that commission will be allowed to discuss with Government the development of an overall strategy. I think it is important that we do so because if we only consider specific projects, then we are moving on a day-to-day, hand-to-mouth basis. I think we need to have at least a four-year plan over the first term of office of what we intend to have as a strategy for heritage matters. The existing legislation survey needs amending. The Gibraltar Heritage Trust has no teeth, it is well known that that is a criticism that they have voiced over the last few years. They need to have their powers enhanced. Many of the sections are obsolete because it refers for example to

references to the Gibraltar Tourism Agency, which is now defunct, and indeed makes references to the appointment of Museum Curator that is not conducted by them, or indeed makes references to other issues which relate, for example, to the collection of revenue from the Nature Reserve, again which is not done through them. So there is much in the Ordinance that needs to be addressed. Much of the sections are obsolete, the whole structure needs to be reorganised and the Heritage Trust needs to be given teeth. There also needs to be fresh legislation in the Government's view, towards the protection of buildings and the natural assets of Gibraltar. Many people say Gibraltar has nothing to envy any other part in the world. We are sitting on a natural oil field, if I can put it that way, of resources and we are doing nothing about this, or very little about it. In the Ordinance, apart from the fortifications and the other monuments that were protected, only seven particular buildings were protected under the Gibraltar Heritage Trust Ordinance. The SAVE Report, conducted many years ago, recommended that at least four hundred and eleven buildings be listed. Certainly the discrepancy between the two figures and just a walk around town will lead any Gibraltarian to the conclusion, that more than seven buildings would need to be listed to be protected and certainly we need to look at that and we will look at that and pass legislation towards the protection of a great number of buildings. All of that I use to preface my final comment on heritage and I say that I reiterate that I think it is extremely important that we use the natural resources that we have to generate employment and revenue for the Government coffers. We have, according to the statistics, five million people crossing the frontier, the land frontier, in the last known statistics but I understand that only twenty thousand people have visited the museum last year. We are wasting our assets. That statistic is symptomatic of the staggering misuse of the heritage industry that we need to exploit and we certainly shall. All cities around the world are exploiting their heritage and we intend to implement a more vigorous policy to generate employment, revenue and indeed to beautify Gibraltar.

On a final unrelated note, Mr Speaker, I hope you do not think me out of order when I say, that this being my maiden speech, I am glad that I have not followed the precedent in other Houses of Parliament where other more illustrious people than me have led to a more unsuccessful conclusion. Indeed, I recall the words of Benjamin Disraeli in the House of Commons in 1837 when he said those unforgettable words, after being heckled constantly that he sat down now but one

day he would be heard. I certainly thank the House for the courtesy that has been shown in my maiden speech.

HON J J HOLLIDAY:

Mr Speaker, as Minister for Tourism, Commercial Affairs and the Port, I would like to outline Government policy on my areas of responsibility. I shall start with Tourism, which Government believe can be developed into a major concern of our economy to ensure growth and create employment opportunities. The Government have the commitment and determination to develop Gibraltar as a quality tourist destination. Unfortunately, due to the lack of an adequate tourism policy by the previous administration, I believe we have lost valuable years in the development of the industry. We must look forward with confidence. Government policy includes the improvement of the product and a comprehensive carefully targeted adequately-resourced marketing strategy. Government plans the creation of a total Gibraltar experience based on a sensitive exploitation of our heritage and historical sites. We have exciting plans for Casemates which have already been aired in the House at the last sitting, which will be converted into the focal point for tourism. We also have a programme of urban renewal to restore our old town and plan to redefine various other areas. The Main Street beautification scheme is already becoming a good example of a project that will enhance our environment both for visitors and residents alike. We plan to beautify our points of entry into Gibraltar. the frontier, the port, including the Waterport area and Sir Winston Churchill Avenue. We also wish to improve Europa Point and the east coast which was destroyed during the last eight years. Additionally, the beaches will require major works in order to bring them to acceptable standards in terms of preservation and facilities offered.

I am delighted to report that the Cruise Liner Terminal should be completed by November 1996. The ferry terminal and coach park project have now been initiated but these have been long overdue for upgrading. These two schemes are vital to our tourist industry. Gibraltar has suffered problems of access by air, land and sea. This has been detrimental to the industry for many years. The Government has a commitment and indeed the determination to improve air access to Gibraltar and are actively encouraging increased scheduled and charter flights. I believe that this will improve our hotel occupancy and enable us to promote overnight stay tourists. I am confident that major

developments in this area will become a reality in the very near future. Recently-published research shows that the fastest growing holiday market is the cruise sector and predicts that more than 350,000 British citizens during the period 1996/97 will take to the waters of the Mediterranean and the Caribbean. This figure is expected to double by the year 2000. Gibraltar, has immense potential as a port of call for cruise liners and we intend to develop this sector of the industry. As I announced in the House in the last sitting, a Conference for Cruise Liner Companies is planned for August 1996 where all major operators have been invited. I am confident that we will succeed in increasing the number of cruise liners calling at Gibraltar. The main objective of this Conference will be to increase cruise liners calling at Gibraltar but at the same time promote our port as one where cruises can start and finish their programme. This would automatically increase our overnight stay in hotels. Additionally, I would like to see cruise liners arriving in Gibraltar in the afternoons and staying in Gibraltar until the next day. This would mean that we would have to offer adequate night entertainment and late night shopping and our restaurant trade would benefit from this as well.

Hotels have been under severe pressure in order to maintain standards of service. Government recognise that it must work with this sector of the industry and therefore I intend to open discussions with the Gibraltar Hotel Association to consider options to improve the current situation as soon as possible. However, the main objective will be to improve standards of facilities and the quality of service. Advertising and marketing is important in the development of any product and this is not different in tourism. Our marketing aims and targets will include increasing the number of overnight visitors, positioning Gibraltar effectively amongst this target market, creating for it a strong image and identity for the destination, and motivating Gibraltarians to sell their resort, fostering within our own community a sense of local pride of what we have to offer our visitors. We plan to work more closely with the private sector to improve our marketing and improve accessibility and the price proposition by adding value to the destination. Over the years the composition of Gibraltar's tourism market has been changing. The decline in the package tour market from the UK, competitively priced cruise packages and an increased influx of excursionists from Spain, mean that we have to upgrade our offer and marketing efforts. Our research points to a more targeted approach in term of types of holidays available. Consequently, our plan is to move away from the generic marketing of the destination and adopt a more segment

orientated approach. We will be undertaking in-depth consumer research on specific target markets and plan to focus our activities on five main general interest groups: the short break market, conference and incentive travel, cruising and yachting, the excursionists and dual centre holidays. This will be coupled with specialist activity directed at specific market segments which will offer history, heritage, culture, wildlife and leisure. Gibraltar has no defined resort image and identity in comparison with other destinations which is a motivating factor for prospective visitors. Differing message, logos and literature exists which may, as solus items, be strong but collectively, are confused and often conflicting. As a consequence, our positioning is unclear and consumers suffer from not understanding what we are offering. Our strategy is to introduce a strong, consistent identity for Gibraltar with a recognisable graphic style that will feature on all our promotional literature. The marketing budget, previously overstretched and insufficient to achieve any real impact on chosen markets or counter adverse media comments which, has been increased to £600,000. In fact, this means that this budget has been doubled when compared with the funds allocated by the previous administration. This will allow us to be more pro-active to the trade within our major source market mainly being UK, Spain and Morocco. The daily ferry service will commence between Tangier and Gibraltar later this month. We will also be exhibiting at the main travel fairs such as the World Travel Market and specialist exhibitions like Sea Trade for cruising and the London Boat Show for Yachting. In addition, our promotional strategy for this year will include a comprehensive, international advertising programme. Space will be taken in the UK national and regional media, specialist press and trade travel media to promote winter sun holidays, early bird bookings for 1997, holidays supplements and we will be supporting our participation in exhibitions. In Spain, we will be undertaking media advertising in key titles and we will also be placing poster signs in key cities in Andalucia and along the Costa del Sol to promote Gibraltar during the summer holiday period in conjunction with the Chamber of Commerce. This is due to start next week. Our strategy for added value packaging of the destination will feature comprehensive events calendars. Investment in the development of a high profile calendar of events will increase the potential of Gibraltar. Events will stimulate interest and encourage repeat visits in addition to providing a range of recreation activities for visitors, potential to create packages around an event and the opportunity to convert day trippers into an overnight stay. This is a brief overview but highlights how we will be

moving forward and what our vision is for the future of tourism.

HON J BOSSANO:

If the honourable Member will give way. Can he clarify for us whether he is saying the additional marketing budget is out of the £800,000 provided in Head 13, Subhead 14? Or that in fact it is intended to make supplementary provision to increase that amount?

HON CHIEF MINISTER:

Mr Speaker, it is intended to make supplementary provision so that that is the amount spent on tourism as opposed to the other things that are presently met out of that Head, widely described as it presently is.

HON J BOSSANO:

So are we being told that it is intended to increase that figure to £1.1 million?

HON CHIEF MINISTER:

Mr Speaker it will be necessary to increase that figure to the figure necessary to deliver £600,000 for tourism promotion alone.

HON J BOSSANO:

Yes, Mr Speaker and.....

HON CHIEF MINISTER:

.....presently spent on tourism.

HON J BOSSANO:

I accept that but the Member has said that they are going to spend £600,000 and that that means doubling the existing provision, I must presume that out of the £800,000 they think there is £300,000 and if they are going to double from £300,000 to £600,000 and that is going to be new money, am I right in deducing from those statements that it is the intention to increase from the £800,000 to £1.1 million because if not, the statements that are being made are not accurate.

HON CHIEF MINISTER:

Mr Speaker, it is much more likely to be nearer the £1.1 million. In other words, when we have analysed exactly how that figure is arrived at and what expenditure is charged to that figure which is not pure tourism promotion, that aspect of it will be increased to £600,000 and the honourable Member's calculations would sound right, it probably will go up to a figure of about £1.1 million.

HON J BOSSANO:

But in fact then, am I right in thinking that if the figure of £800,000 already contains more than £300,000 dedicated for tourism, then it is not intended to double, it is only intended to double if only £300,000 is for tourism?

HON CHIEF MINISTER:

Indeed, what the government wishes to spend on tourism in this financial year is £600,000 but of course, our definition of tourism is much narrower than it has been in the past for the purposes of targeting expenditure.

HON J J HOLLIDAY:

Mr Speaker, dealing with the second area of responsibility, commercial affairs, today the role of the private sector in the economy is of major importance. The reduction in expenditure by the Ministry of Defence will continue to have detrimental impact on our economy. Government look to growth in the private sector to ensure economic prosperity. The Chamber of Commerce, trading conditions survey during 1995, showed deteriorating trading conditions. Government are now determined to create a cost effective environment to ensure real growth and increase job opportunities. We will be tackling areas like import duties to create a more favourable business condition.

My third area of responsibility is the port. Government are committed to exploiting the enormous potential of the port as a major asset in the development of our economy, bearing in mind the needs of trade, leisure and touristic activities. In all these respects, Government plan to have a well-resourced and motivated Port Department workforce

within the public sector, which we believe to be essential. Government will be providing investment to ensure that the installations and facilities at the Port are up to the required standards. Working closely with the shipping industry, our aim is to ensure that Gibraltar prospers and grows as a price competitive port in services such as bunkering, water, chandlery and agency work generally. Government seek to establish Gibraltar as a centre of shipping related finance and insurance businesses as well as for international ship management companies. A well regulated and adequately marketed ship and yacht registry is a vital aspect of this promotion. There is much interest in exploiting Gibraltar's special geographical location to establish cargo and container transshipment and bulk cargo break-up and distribution operations. We are currently considering various proposals in this field. We believe these port developments to have great potential for the establishment of industrial jobs. Mr Speaker, Government are committed to promoting such schemes.

The House recessed at 1.00 pm.

The House resumed at 2.30 pm.

HON MISS M I MONTEGRIFFO:

Mr Speaker, it is the usual practice of most Parliaments to congratulate Members on their maiden speeches. We have already heard two, Mr Speaker, that of the honourable Mr Azzopardi and that of the honourable Mr Holliday. Therefore, I wish to extend to them my congratulations.

I have listened very carefully, Mr Speaker, to what the Minister for Health and the Environment has had to say about the Gibraltar Health Authority. Now, of course Mr Speaker, being in Opposition and being a constructive one, we need to await the results of his reviews and changes to the structure and we will then be in a position, Mr Speaker, to monitor the situation to see whether he will be able to deliver everything he has stated. But of course, Mr Speaker, I wish to place on record a very brief expose of what the GSLP inherited in 1988 and what the GSD Administration have inherited eight years later. My description of the health services then Mr Speaker is a far cry to what the Minister has described today. Then, Mr Speaker, the whole of the health services were in an appalling condition. There was even Mr Speaker, a lack of basic medical equipment. Today the reality is, that I have handed over to the Minister two completely transformed hospitals including the Health Centre, which have been

refurbished to very high standards and all are provided with modern equipment. When you take into account, Mr Speaker, the fact that it takes about nine months to fully refurbish a ward to the standards we set, it is unquestionable that during our two terms in office we have done a lot for medical services. Before we left office, there was only the kitchen left to refurbish and Lewis Stagnetto Ward, which is presently housed in the Private Corridor. Since last year, we have also started, in conjunction with the DTI, looking at the possibility of building on the top floor in order to provide larger areas for a number of departments. We were also looking at the possibility of building a second theatre on top of the new wing and we had started discussions with the medical practitioners to employ more doctors. These discussions, Mr Speaker, were conducted by my colleague the honourable Mr Perez whom I understand gave a commitment given the explanations they put forward to agree to their request. I trust, Mr Speaker, that the Minister will continue with the standards we set and maintain the levels of progress we initiated. Of course, Mr Speaker, there is a limit on how much can be done in two terms we were in office. What is unquestionable is the level of spending we have allowed to increase which stood at £8 million in 1988 and £21.4 million in 1995.

Moving now to sport, Mr Speaker, I can only go by what the Minister the honourable Mr Britto has said during Question Time, and I am glad that he has just arrived. I would like to say, Mr Speaker, at this point in time, that when we constituted the Gibraltar Sports Advisory Body the members therein were elected to advise the GSLP administration on any matters related to sport. I also gave details in this House, not only of their terms of reference but also of how the money for financial assistance was being allocated. I look forward Mr Speaker to knowing the composition of the members of the new Government intended Sports Council, how they are elected or appointed, details on its function and who is going to chair it, Mr Speaker, if anyone. Here, Mr Speaker, as in all other areas we need to see what the Minister does in relation to sports generally. When we were elected, Mr Speaker, much required to be done and we moved at a very fast pace. We quickly upgraded facilities at the Victoria Stadium, Hargrave's Court and the John Mackintosh Gymnasium. We also introduced community use at all the schools' sporting facilities. This, together with the realisation of the new indoor and outdoor facilities at the Stadium, meant that the GSLP administration increased allocatable hours by an extra 350 per week, Mr Speaker. If it had not been due to all of our efforts, Gibraltar would not have been host to so many international events held at

the Stadium, and of course, the new resources we provided have helped enormously to the development and improvement of many sports. We have also kept to our commitment of encouraging sporting entities to run their own facilities and we provided sites to a large number who today can boast of having very good facilities. These associations, Mr Speaker, are Rifle Shooting, Pistol Shooting, Squash and Swimming, and the new excellent Calpe and Med Rowing Clubs, have also seen an improvement, with their new clubs and this again has been at the initiative of the GSLP administration. And, of course, Mr Speaker, what many people were predicting would be a failure was a tremendous success and that was an event, that took place nearly a year ago, and which the whole of Gibraltar will remember. I am referring, Mr Speaker, to the Island Games. I have always described them, Mr Speaker, in this House and publicly, as a concerted effort between the community and the GSLP administration. As soon as Gibraltar's bid was accepted to hold the Games in 1993, I gave a commitment, that facilities required for the eight course sports would be in place in time for the Games to be held, both to the International Committee of the Island Games, who came to Gibraltar to meet me, and to this House. The support and financial assistance that we provided exceeded the expectation even of the Gibraltar Island Games organising committee. The GSLP administration, Mr speaker, then had only one commitment left and that was the provision of premises to sporting associations. Here, we performed a huge exercise in identifying areas to house all the sporting entities, plus cultural and charitable organisations. As and when we started off in premises, Mr Speaker, more entities started to apply but we were able to offer the staggering amount of 76 premises. The reason, Mr Speaker, why the Minister said, that a number of organisations had received no offers, is either because they had applied at a later stage, or because the elections had caught up with us. We started off, Mr Speaker, with Jumper's and then moved on to Town Range and then we started offering other areas in town and in the south district. The GSLP, Mr Speaker, when in office, did give a commitment to the Gibraltar Rifle Association, that we would provide financial assistance for the building of an indoor rifle range. The Minister has said, during Question Time, that the matter is waiting a policy decision and I trust that he honours that commitment, Mr Speaker. I now wish, Mr Speaker, to clarify the question of the roof at the Victoria Stadium. I have checked with my records Mr Speaker and works were indeed carried out in 1991. Further works were carried out well over a year ago and a survey was also carried out and we were then told, that the roof would require replacing in about three to four years time.

Unfortunately, Mr Speaker, last year we had torrential rains which affected the whole of Gibraltar and then we were advised that the roof would need to be replaced. I can assure the honourable Members, Mr Speaker, that we had every intention to place the roof. Of course the works could only proceed during the summer. The fact, Mr Speaker, that the Minister said during question time that no provision was made in these Estimates, does not mean, that the Government are unable to carry out the works. The Minister is able to use the money out of the vote from the Refurbishment of Government Buildings. We also, Mr Speaker, intended to replace the floodlighting of the Stadium's outdoor main pitch. The Minister again has stated, that his Government is actively considering this matter and is considering also the matter of the floodlighting of the second pitch. I was advised, when I was in office, Mr Speaker, by the person in Government Department, that this was possible and had received CAA approval. I trust, that it now receives also, the approval of the Government, Mr Speaker.

Finally, Mr Speaker, I cannot end my contribution in Opposition without thanking all those Government employees who helped me in my difficult task throughout the years that I was in office. Thank you, Mr Speaker.

HON H CORBY:

Mr Speaker, my contribution in this our first budget speech as a Government Minister, will base itself on the commitments to the people of Gibraltar, as identified in our 1996 Manifesto. We have said publicly that we will honour all existing 50/50 schemes entered into by the previous administration, and encourage further developments of this nature if necessary, for those who have the financial ability and resources to buy their own homes. However, we are also committed to the provision of low cost housing for rental, for those people in our community who, for whatever reasons, are unable to finance home ownership. With this in mind, we will utilise family units handed over by the Ministry of Defence, to boost our housing stock. These flats, will be allocated to Gibraltarians on the housing waiting list, who will in turn, release vacant flats for further allocation. Residents of Government dilapidated Estates, will be glad to hear, that we will embark on a programme of external beautification and a more efficient way of carrying out internal repairs and maintenance. Residents, will be encouraged to form Tenants Associations, whereby, through the creation of a centralised unit for complaints, they will be able to voice their opinions as to

the quality and service and maintenance provided by the relative departments.

On the question of drugs, Mr Speaker, this Government is 100 per cent committed to the fight against drugs, as was the previous Government, when in office, and will pass whatever legislation and take whatever steps are necessary to eradicate this activity from our society. It is also our view to end all fast launch activities which relate to organised contraband. This practice, is very harmful to Gibraltar's image abroad, and poses serious obstacles to the establishment of Gibraltar as a leading and reputable finance centre. But perhaps, the most damaging result of this activity, Mr speaker, is its effect on our youth and to our community, and how support for this activity, led to the riots of July 1995 where Gibraltar was held to ransom by a few and where lawlessness was the order of the day. In order to avoid a reoccurrence of this sorry state of affairs, we will increase police resources for fighting all drug pushing and importations by further strengthening the court's power in establishing, tough minimum sentences for drug offences. However, for those who fall victim of drugs, this Government will establish a well resourced rehabilitation centre in Gibraltar to provide rehabilitation and counselling, not only to those who fall victim of drug abuse, but also, to their families who have also been affected by the drugs problem entering their home environment. I have also talked with my friend, the Minister for Education, and we will pursue a sustained educational campaign based on school lectures, pamphletting and advertising, which will give us a firm basis of knowledge and understanding for children who, when confronted with this dilemma, will say no to drugs.

On the question of the prison, we have undertaken some works which was promised by the previous administration. We have upgraded the water supply to the prison and we are also looking into the electricity side of this, because the electricity side forms part and parcel of all the systems, that are geared to monitor prisoners etc. We are looking at that, and also on a paging system, which I know, the Member opposite obviously was also looking into.

Finally, Mr Speaker, the Government will remain fully committed to the financial and social well being of Gibraltarian elderly citizens. The technical issues and challenges that this Government faces, are the same ones, faced by the previous Government. Our commitment remains the same.

Thank you, Mr Speaker.

HON R MOR:

Mr Speaker, it would appear that I did not do my job very badly, since it does not appear, much of what I had done or was going to do, is being taken up by this Government. Talking on the general principles of the Bill, Mr Speaker, what I am proposing to do, is go into some background, historical background, so that the policies, which were taken at the time as a result of the situation then and which is what is currently being reflected in despatches, so that it is more understandable. It would appear, Mr Speaker, that on that side of the House there are some fans of George Orwell. At least there is one particular Member there and it is said, about George Orwell, that he would not blow his nose, without moralising in conditions in the handkerchief industry. It appears, that that is catching, because an honourable Member on that side of the House, would not open a nursery without moralising on conditions of the nappy industry, or talk about the disabled, without moralising on the disabilities of everyone. The reason, Mr speaker, why I am referring to George Orwell, is because, he wrote the book "1984", and that was being used, to draw a parallel, with what we were trying to do in setting up area committees under the chairmanship of the Mayor of Gibraltar. If I remember rightly, what the honourable Member was saying, that the book is about a society which is entirely controlled by an administration, I think he used the phrase "Big Brother is Watching You" or something to that effect, but what I have to say, Mr Speaker, "1984" was in fact, a very important year for Gibraltar, because it was the year when the GSLP came into politics. If we consider, that as the honourable Member was saying, that "big brother is watching you", I think he watched over us extremely well. He provided housing for our people, he provided investment for Gibraltar, he has done a tremendous lot and achieved a tremendous lot for Gibraltar and not only that, but he has left you with over £130 million of reserves.

Mr Speaker, if I can go now into some of the problems we found in 1988, and there is one particular problem which is still with us today, or it has not been entirely settled yet, and that was the problem of Spanish pensions. The situation we found, when we came in was, that since 1986, the Spaniards were being paid revalued pensions, and the story behind that problem is, that between 1955 when the scheme started and 1969 when the frontier was closed and the Spaniards were forced to leave their work here, they had contributed a total of £37.45 each during those 14 years,

towards their pension rights. That entitled them, for a married couple, to about a £1 a week, a pension worth about a £1 a week. In 1986 when they were paid revalued pensions, a married couple came to collect around £70 per week. That increased the bill, the Pensions bill, to what was estimated then to about £7 million a year more and the situation we found was, that the British Government had provided £16.5 million worth of aid which, together with the £4.5 million, which was the accumulated Spanish sub fund, they had a total of £21 million which covered during the years 86, 87 and 88. The problem we found was, that before the end of 1988, the money was running out, and we had to start negotiations with the British Government, because our commitment was, that we would not pay a single penny towards the cost of Spanish pensions. But before that, we did take an urgent measure because as the law stood at the time, the Social Insurance Fund, if the Social Insurance Fund became short of money, there was a connection with the Consolidated Fund and then the Consolidated Fund would have to crop up whatever money was needed to pay pensions. So immediately we came into office we actually isolated the Social Insurance Fund from the Consolidated Fund by amending the law. There then followed a long process of negotiations with the United Kingdom, which eventually resulted in our reaching agreement, that the United Kingdom Government would continue to provide funding to pay the Spanish pensions until the end of 1993 and, that then, the Pensions Fund would need to be wound-up. There were other things, Mr Speaker, which we also introduced very early on during our term in office. That was the problem with those men, who retired at the age of 60 but only had to rely on an occupational pension if they had one, or and until, they reached the age of 65, where they could then get a pension. They did not have any income whatsoever and it was therefore, our policy, that we would introduce a scheme which would provide some income during the ages of between 60 and 65 for those unemployed, and we also provided, that they would get social insurance credits for as long as they were registered unemployed.

We also introduced a training levy, which was at the time, and I think it is still, £2 per week for each employee, and that also enabled us to start a lot of our youth training schemes. Originally it was started for school leavers under 18 years and then extended to those under 25. In December 1990 we were also successful in getting European aid, for the first time ever in Gibraltar, although we had been led to believe that that was an impossibility by the previous administration. We managed to get those training funds, which were then extended to other areas, and today as we

know, we are getting a considerable amount of money from the European Union. We also introduced a minimum wage, which does exist in Gibraltar, and there was also a need to repeal the Family allowance, which stood at the time, and that was mainly for the reason that a person, once a person worked here and claimed Family allowance, if he became unemployed it did not necessarily follow that he would lose that. As long as they kept registering, they would keep on receiving the Allowance, and we could foresee, that a huge problem would be caused if we had, with a turnover of outside labour that we had, we would have a tremendous problem, so we therefore also took action in safeguarding that area.

We also introduced something, which had been pending since 1973, and that was, the sex discrimination legislation in Gibraltar, it has been introduced during our term of office. It is interesting to note, Mr Speaker, that when I looked at the records of persons who had contributed to our Social Insurance Fund, since it started in 1955, I found that there were around 100,000 contributors. When I looked at the records, there was a big massive room there all full of records and paper files, and so, we decided to microfilm the records, and that is something, which is already available and it has proved that it is much easier now to follow up records with the microfilm equipment that you have at The Haven.

We also had a problem, Mr Speaker, which had been a long standing problem with the previous administration, and that was, those male persons born before the year 1910. That was because in 1975 they would have been 65 and when they opened the Social Insurance Scheme to everyone, they were then too old to apply and to get in, and that was a long standing claim. So I took that up and we managed to introduce a retirement allowance which catered for the needs of that particular group. Mr Speaker, we have also done a lot of work and made considerable investments as regards the mentally and physically disabled, and that can be seen in the Dr Giraldi Centre, which I think is an excellent facility for the disabled and which has shown the commitment that the GSLP have always had towards the care of the mentally and physically disabled. We have also taken the necessary measures to also provide some interim care, in cases where parents needed to have a break or to be away, so that they could place those persons under care in the Centre. Mr Speaker, I think that very briefly covers a lot of the things that we have been doing and which has led to the Budget, which is presently before the House, and which reflects a lot of the policies that we had taken.

HON DR B A LINARES:

Mr Speaker, we are fortunate that our educational system is marked by very high standards in every respect. For this, credit is due to successive generations of teachers and educators, especially since the World War II, when the state education system was put into place and modelled on the British educational system. This has been complemented over the years by the valuable contribution made in a spirit of collaboration by the private schools, particularly the Christian Brothers and the Loreto Nuns, who have won the love and the gratitude of our community. We are indeed proud of the success being achieved today by our present educational institutions at all levels. Government believes that any investment in education, is an investment in our future as a civilised, worthy and prosperous community. Our commitment in this respect, Mr Speaker, has been already demonstrated in a very tangible manner only a few weeks after our coming into Government. We have already increased the complement of qualified teachers, which had been static for the last eight years, by five more teachers. This has not only enabled us to offer employment to all qualified teachers returning to Gibraltar this year after graduation in UK, but we are now able to attend to children with special needs in a more effective manner as I will explain later.

For the first time in the last eight years, we have also been able to offer places in Government nurseries to all children from the ages of three to four whose parents have actually applied to us for pre-school education, and this has been done, as announced earlier by the honourable the Chief Minister, by creating a new nursery unit in the north end of town for sixty children. Thirty in the morning and thirty in the afternoon, and offering jobs to a qualified school-teacher to be in charge of this nursery, together with a nursery trained nurse and a classroom aide. But because we value the contribution made over the years to pre-school education, and today as well, by excellent nursery schools in the private sector, we will also offer incentives in the form of tax allowances to parents who opt to send their children to fee-paying nurseries. These measures, have been explained already by the honourable the Chief Minister and we will soon give public notice of practical arrangements to be made to process applications to this effect.

No educational system is worthy of their civilised and caring community if it does not attend to the special needs of the academically weak and the physically handicapped. We

have in our electoral manifesto a firm commitment to look after the interests of these children and we have again demonstrated the genuineness of our commitment by already establishing a new special unit at Westside School to cater for the needs of secondary school children with special needs. This has been done by selecting and appointing a specially qualified teacher over and above the existing complement and an additional classroom aide. At this point, Mr Speaker, I would like to explain to the House a particular aspect of the staffing arrangements made this year to provide adequately for our schools in the next academic year. Three years' ago the GSLP Government agreed with the Gibraltar Teachers' Association to establish teacher/pupil ratios of one to twenty in first schools and one to twenty five in middle schools. This was a specious agreement, since these reduced groupings, were not matched by a corresponding increase in the teacher complement. Hence, the agreement has been sustained over the last three years only by encroaching, increasingly every year, into what is called the floating pool of teachers provided in every school mainly to support classroom teachers attending to children with special needs. This year crisis point was reached and I am pleased to state that it has been avoided through a heavy investment by this Government increasing the complement, as I announced earlier, by three more teachers, thereby as a side effect, as I explained, providing also extra jobs for our graduates returning from the UK.

Another crisis inherited by us, has been, the lack of planned schooling provision for the increase in population in the Westside area. The crisis has been avoided by moving Bishop Fitzgerald Middle School and the reception year of Governor's Meadow to the New Camp complex, until now occupied by the College of Further Education. The College will in turn be moved to Bishop Fitzgerald premises in South Bastion. It would have been impossible, in September, for St Anne's Middle School and St Paul's First to have accommodated all the children now living in this catchment area. These moves are being successfully managed by the Department of Education, thanks which I want to acknowledge, thanks to the co-operation at all times of the teachers and head teachers involved and indeed the children themselves, who have enthusiastically shared in the exciting experience of moving home, and the parents where in all our consultations with them have shown understanding and readiness to co-operate. I must also put on record the support given to us by the GTA, the Gibraltar Teachers' Association and the Transport and General Workers' Union with whom we have consulted constantly. Our technical officer and the contractors are currently engaged in

tireless efforts to ensure that all the premises will be adequately refurbished in preparation for the start of a new academic year in September.

It is right, that I should put on record, Mr Speaker, that our traditional examination results at GCSE and at 'A' levels, place our schools among the most successful schools in UK, and two points have to be made in this respect. One, we will maintain the scholarship system on the present mandatory basis, funding students who obtain places in UK colleges and universities, and two, we will review the present procedures for assessing parental contributions which at present are quite inequitable. We also have to take note that there are many children in the post-14 year groups who are not suited to academic studies at this level. We will support and resource the efforts currently being made in our schools and the College of Further Education, to make more adequate curricular provision for these students in job-related and vocationally-oriented courses. We will also support, wholeheartedly, the magnificent work being done by the Youth Office and their dedicated team of voluntary leaders, youth leaders, and I am happy to announce that we will soon start work on the construction of a new Youth Club at the Adventure Playground in Laguna Estate. Something that was long overdue.

As regards consumer affairs, Mr Speaker, another area of my responsibility within my ministry. Citizens advice and consumer protection will of course continue to be an objective, a serious objective of this Government. The operational structure of the present unit will be reviewed within the general review of the Gibraltar Information Bureau, which the honourable Chief Minister announced earlier, and indeed, in the context of European Directives which I am currently studying.

Finally, Mr Speaker, as Minister responsible for the disabled, I have pledged the Government's full support for the magnificent work being currently done with care and professionalism by St Bernadette's School, the Dr Giraldi Home and, indeed, the Society for Handicapped Children, with all of whom I have held discussions and obtained briefs. Mr Speaker, it is in this area that we have the weakest of our brethren who merit our very special attention. It is an honour for me to hold ministerial responsibility for their interests, their aspirations and their welfare.

May I thank you, Mr Speaker, and the House, for the courtesy of your attention.

HON J GABAY:

Mr Speaker, first of all I would like to make some comments on the question of Heritage, with reference to the remarks made by the honourable Minister for the Environment and Health. Needless to say, I share his sentiments with regard to the conservation of our heritage. I have in the past been chairman of the Gibraltar Heritage Trust, for three years, and I am aware of the difficulties of conservation. This is why I start by saying that I share these sentiments, but I would like to comment on the difficulties as well. It is absolutely vital to steer a middle course between two extremes. On the one hand, you have the absolutists that want everything preserved, everything paralysed and when you touch anything which is old, hands are raised in horror. And at the other extreme you have a different mentality. Those who, in the concern for development, can degrade themselves into some form of vandalism. Returning to the sentiments that you heard expressed, all I can say is, that we would all like to see these ideas put into practice. Nevertheless, they are costly and difficult to institute and because of my special interest in the subject I will monitor the developments as closely as I can. The second point of reference is, when you actually mentioned the word "maiden" speech, I thought you were going to treat us to some witticism or the pun about the more felicitous maiden occasion that I believe you are entering into tomorrow, and therefore, if it is in order, I would like to congratulate you and to wish you all the very best, after all, the cliché says that a man is incomplete until he is married and then he is finished.

Turning to the field of education, it is true that we have had a fine system generally going back to the days of the Loreto Nuns and the Christian Brothers, to whom we owe an enormous debt, but coming closer to the present, I think it needs to be said, that when the GSLP Government came in in 1988 the scenario, in comparison to what we have today, was rather bleak. There was definitely a deteriorating infrastructure. There were limited opportunities and there were also insufficient resources. Today, the fact that perhaps the education field is the least controversial in the political arena is a tribute, in fact, to what has been achieved and praised by the honourable Minister in some other capacity constantly, and I think, with justification. We have a system and a standard at the moment, of which we can feel truly proud. Needless to say we must not become complacent. We need to study, as we mentioned in Question Time, the ongoing debate in the United Kingdom, but to remain selective as to what is important within our context.

One cannot deny, that physically, we have witnessed new schools at South Barracks, and particularly, the South Barrack schools, represent a marvellous project of conservation. We have seen the thorough refurbishment of the Minister's former school at Bayside, and the realisation of a project of works and extensions, that have enhanced the global pattern of our schools. In the pursuit of educational progress, the College of Further Education was reorientated to meet the changing needs of our community in the economic field. There is now a stress on the information technology, business and finance, accompanied by computerisation of the learning process. A very important and indicative fact is, the number of scholarships awarded. What a far cry from the days, when perhaps the hon Minister and myself were at school, when there were only two scholarships a year - one given by Government and one given by the Mackintosh Trust. In any case, in 1989 thirty scholarships were awarded and last year over 200 were awarded, and this reflects, a concern for education and the political will to spend wisely and generously in this field.

The Estimates for Expenditure introduced for 1996/97 is £11,692,900, and, if we are to compare this Estimate, with expenditure in the past, we shall see that it is typical of an increase of expenditure, in this very important field. I remind you again, that with regard to what happens in the UK, important as it is, and subject to a large extent as we are, because we are geared to the same examination system, that we have the privilege and right of course to depart from decisions which may not be in our better interest. I think that there are some interesting examples. Whilst in the UK the Government has embarked on student loans and kept grants, we in Gibraltar, have increased student grants annually, and again, whilst in the UK, housing benefits for students were abolished, we have introduced access funds, to help those who are most in need. I think, that it is not presumptuous on our part to take some credit for what has been achieved, which will make possible, for the Government of the day, to proceed to an enhanced system that is firmly established. This may well account, for the fact, that the section on education in the electoral manifesto, was rather thin, because it must have been rather difficult to single out matters of importance, since they were being suitably covered. Therefore, we in the Opposition, will be on our guard against financial curtailment that might check the progress made. After all, it would appear, when we contrast the statements during the election and the reality of our financial position, that the coffers after all, are not as empty as was imagined or propagated by some.

Let me end by saying, that it may be a maiden speech but what with the heat, and so on, the briefer the better. Thank you, Mr Speaker.

HON J J NETTO:

Mr Speaker, after seven weeks of a GSD Government, I would like to make a statement, so as to describe the state of our Buildings and Works and the Employment and Training Board, as it is today. Following from there, I will be outlining the Government policies for the future, in that particular order. As soon as I walked into my new office, I asked my administration, in Buildings and Works, for various analysis and reports in the functions of the Department, and these are currently being compiled and considered. In general terms, the Government's view is, that the customers of the public sector are entitled to value for money and efficient services. Employees are also entitled to proper conditions of work, that will allow them to deliver the high standards of services the community deserves to receive from its public servants. The Purchasing and Monitoring Section was created as a result of the audit review of 1993. However, I am far from satisfied as to the terms of reference being given to scrutinise all purchasing and monitoring functions. The irony of the case is, that we now have materials and various other items which are going out to tender for all Government Departments, except our own department in Buildings and Works, even though the purchasing section is within my department. We have a situation where a few managers of Buildings and works can actually purchase items themselves through the Local Purchase Order books and for which in most cases, we already have such items in consigned tenders at a lower price. In a recent report prepared for me by the Purchasing Section, from the Local Purchase Order books which are carried out by the Operational Management, has shown an over-expenditure of £74,501, divided into different categories, although part of these items are held in stock and while some good reasons can be attributed for the over-expenditure I, as Minister responsible for the public purse am happy about this arrangement, which will be reviewed. In any case, it is the policy of the Government to centralise procurement by all Government Departments, Buildings and Works will not be an exception.

Mr Speaker, I spoke earlier about the need for the public sector to deliver efficient services. It appears to be the case, that little was done, by the former administration in this area. The basic philosophical approach of the

Department, in the area of maintenance of housing estates, is that tenants should have a say in the on-going beautification and maintenance of their estates. Judging from the many letters received from tenants, there is great frustration on their part for the delays incurred with the repairs, while some of the reasons for this is to do with the undermanning of the complement which I will refer later, we have at the moment a Warden Section in Town Range, where reports from tenants arrive. However, we have no way of monitoring details of man hours and materials per job entered in the job requisition paper work back to the administration computer system. Additionally, we also do not have as a Department the views of tenants in relation to the job done. This is something I am committed to reviewing in order to create a partnership between the service user and the staff.

Soon, the Union will be approaching Government with a view to discussing manning levels and whilst I do recognise that there are at present imbalances among the trade groups, to provide a better service, we are conscious of the fact that the resources of the Government are not infinite, therefore a balance will have to be struck between the two above mentioned issues. Mr Speaker, it is our aspiration to deliver success in the partnership between the Government and its employees by giving them security in employment in return for providing quality services for the user and value for money to the taxpayer. In a phrase, it is a strategy for survival and success.

Mr Speaker, the Employment and Training Board, ETB, is a unit established from within the Gibraltar Development Corporation. Members of the Gibraltar Development Corporation Board are appointed by the Governor and there is an empowering Ordinance stating that, the purpose is to regenerate the economic base of Gibraltar government and Ministers sit in the Board. The Employment and Training Unit committee consists of three members. Since the ETB inception, those appointed have been on a partisan approach. It is clear that this committee has not fulfilled any purpose whatsoever. We intend in line with the relevant International Labour Organisations to invite representatives from both employers and unions in such committees. The GSD subscribes to the European philosophy of consultation and participation at the place of work with genuine independent and professional organisations. The ETB appoints staff who make up the Employment and Training Unit. Most of these staff are seconded from the GIB office and some in turn previously seconded from the defunct GSL. There are 21 staff in all in the Employment and Training Unit who carry

out a range of segmented duties in separate offices, at the non-purpose built, Duke of Kent House. The Director of the Employment and Training Board is given considerable powers which cannot be appealed against in court. Yet, there is no organisational chart of the ETB or ETU which shows an appointed director. In fact, there is no organisational chart or job profile for any of the 21 staff at the Employment and Training Board. Indeed, the more one looks into the legislative and functional role of the ETB, the more one is astonished, that it could have continued to grow. The ETB does not produce an annual report and employment statistics are only published in short details to answer House of Assembly questions. Running employment totals, vacancy numbers, placement records etc., are not in the public domain. The Gibraltar Development Corporation accounts are professionally audited, but the last seen to date, are the ones of the 31st of March 1994. Large sums are paid in admin charges to pay up to 500 vocational cadets by sub-contracted work. It is the intention of the Government to carry out a major review of the functions and purpose of the ETB. It is essential that an accountable system be created and continuously developed which shows a. efficiency, b. equity, c. effectiveness, d. empowerment, and e. ethical conduct. The ETB will have its own budget with a controlling officer and will allocate costs to all segmented functions.

Mr Speaker, throughout the election campaign and in our election manifesto we have committed ourselves to the removing of the 1st of July law and that every Gibraltarian under 21 to have an apprenticeship or other training opportunities. We believe that the 1st of July law discriminated against British subjects in Gibraltar by giving them less rights here than all other EU nationals. Therefore, this law will be repealed before the end of August of this year. The delay in repealing the law is the need to review and restructure the workings of the ETB. Over the next three years Gibraltar will go through important changes in its labour market. On the one hand, we have the MOD redundancies to cope with, and on the other, the Government policies to boost the economy and create the right conditions for business to prosper. No doubt the new reformed ETB will play a vital part in the channelling of human resources to meet the new demands of the future.

Thank you very much.

HON J L BALDACHINO:

Mr Speaker, before I go into the responsibilities I have in this House as the Opposition spokesman on housing and employment and training, I would like to clarify a few points which have been made by other Members in their contribution. One of them I am referring to is, Mr Speaker, the contribution that was made by the honourable Mr Holliday, who is the Minister for Tourism, when he stated, and I heard him on radio today, when he was asked about the ferry that will be operating from Gibraltar to Morocco, I want to clarify that this is not something that has come about because of the new measures that he has recently announced. This was something that was there prior to the 16th of May and I know that this is so because the manager of the company came to see me precisely to see which jobs could be taken up by local employees. I hope this is not something of the new measures that he has just announced and the new measures that he has announced will have to be valued at the end of the period. I wanted to clarify that point.

The other point I want clarification on, and which was not very clear, was the announcement made by the honourable Chief Minister on the allowances for people who have their children in nurseries. The question is, as I understand it, and maybe some of the honourable members can clarify the point, is that the age group of three to four is only based, I suppose because there is the same age group which applies to Government nurseries, and that the allowance, will be given to people or to families who cannot find a placement in Government nurseries, which has conditions attached and therefore, will have to seek that service elsewhere, because there is no facility there and therefore, the £500 allowance will be given to those people, immaterial of their income.

HON P C MONTEGRIFFO:

I can confirm that the £500 allowance will be available to every parent, in respect of every child that is seeking placement in nurseries outside Government nurseries, that because as a result of the Government nurseries being full, vacancies cannot be taken up.

HON J L BALDACHINO:

Three to four, I think I have clarified that three to four is because it is the same age group that Government nurseries have.

HON DR B A LINARES:

That is true, if you will allow me Mr speaker, but also because, strictly speaking, pre-school education as such, in the educational concept, is the three to four age group. Two to three, is really more of a stay and play, more of a playgroup type of attendance. In terms of pre-school education, where diagnosis and all that can take place, is really the three to four age group, that is also a consideration.

HON J L BALDACHINO:

So it brings me to the point, Mr Speaker, that being an allowance, and after hearing the honourable Member's explanation, is something to do with part of education and also part to help families to put children in our nurseries, having given it as an allowance, and due to our income tax structure, it means that people who are better off will get more back in allowance than people who are worse off. Therefore, if somebody is for example in a 50% bracket he will get £250 allowance for each child that he has in the nursery, while if somebody is in the bracket of 20% he will only get £150, even though both are paying the same. So I think it is a measure really that benefits more the persons who are in a higher income bracket than those who are in a lower income bracket. I do not know if that is something that the honourable members are taking into consideration but I think it is something that should be taken into consideration if the whole idea is to help apart from education to help those who pay to put people in nurseries.

HON CHIEF MINISTER:

If the honourable Member will give way, I can put his mind at rest, at least in so far as it relates to the nursery allowance. The fact of the matter is, that the cost of the give-away is such that the administrative cost of a means test, not that in any case we have any ideological fixation with the points that the honourable Member has just made, but in any case, the cost of operating a means test would simply not be worth the amount that might be saved by denying the benefit to some people in what he calls the better off category of our community. In this particular case that is the reason why in any case it would not make financial sense to subject the Income Tax Department to the administrative burden and cost of saving £10,000 or £15,000 by simply choosing people from whom to deny what is not a particularly expensive give-away.

HON J L BALDACHINO:

I understand that the Government members after the explanation of the honourable Chief Minister, did give consideration to the fact that this could be happening.

Mr Speaker, moving now to housing, I welcome the announcement of the Minister for Housing, because I have my reservations that during their election campaign he was giving the impression that he was against home ownership. I welcome that he will be keeping the 50/50 which is a commitment that he gave for the two projects, being Montagu Crescent and West Side Park. What he has not made very clear whether this will also be considered and extended to other projects in the future. He says that they will provide housing for those who cannot afford to buy. I suppose that the formula that they will use, if somebody can afford to buy or not, will be the base on the leading institution if they will give a mortgage to a person or not. That is the safest, I personally think that you can use, because lending institutions, especially building societies are regulated by an Act of Parliament in the United Kingdom and therefore they are limited to whom they can lend or to whom they cannot lend. Nevertheless, having said that, I suppose that the Housing Waiting List will not be changed in any way or form and therefore, that people, even though they can afford to buy will still be able to get rented accommodation if they so choose, even though it is subsidised. There is a contradiction between what the honourable Member for Trade and Industry gave me in an answer to question and to what the honourable the Housing Minister has announced today and what is clearly in their manifesto. I am referring to the answer I got when I asked whether Prince George's Block had been returned to the Government and if it had been returned to the Government what use it could have been made of. The answer I got by the honourable Member was, that Prince George's Block had not been returned to the Government but in the supplementary, in the last supplementary I made was, if he could confirm that my assumption that when it was returned, it would not be used for residential purposes and for Government rental, and he said, that my assumption was correct. That is not clear, there is a contradiction in what he has said and what the honourable Minister for Housing has said and it is a matter of fact under housing, housing for rent in what he stated in the manifesto in paragraph D. Housing for Rental, which it clearly states that every flat that comes back to the Government from the MOD including Edinburgh House and Chilton Court as part and

I will read it Mr Speaker for the benefit of the House, "used flats handed over by the MOD including Edinburgh House and Chilton Court as part of Government rental stock" and it is clear, more clear it cannot be. So I would like confirmation from that side of the House, who is right? The honourable Minister for Housing and their Manifesto or the Minister for Trade and Industry.

HON CHIEF MINISTER:

Mr Speaker, the position of the Government is clear. It is our policy to use the properties transferred over by the MOD for rental purposes for those on lower incomes. That is not to say that there may not be exceptions to the rule. It depends very much on the characteristics and the nature of the property, whether they can be put into rentable use and for what amount of money. Whether, perhaps the whole building may need to be demolished and redeveloped. I do not have a list of all the properties in front of me but the honourable Member can be sure that the policy commitment is in so far as it is possible and practicable to use single unit dwellings, apartments, transferred by the MOD for use for the Government rental stock. That is the generality, and anything else, of which there may be examples, would certainly be the exception and whenever there is an exception, I am certainly willing to stand up in this House and justify and explain why a particular property is being made an exception to the general rule.

HON J L BALDACHINO:

Mr Speaker, but I hope that the honourable Member understands that I needed clarification on that point because there was a contradiction in what is in their manifesto, in what the Housing Minister has said and what actually the Minister for Trade and Industry actually answered in one of my questions. Nevertheless, Mr Speaker, in housing, actually the honourable Member is in a better position than what I was in 1988. In 1988 when we came into office there were 2126 applicants for housing whilst he has now got 265.

HON H A CORBY:

If the honourable Member will give way. There are at the moment not 200 and something but 459.

HON J L BALDACHINO:

That is not the information that I have, that I actually got from the honourable Member opposite. 400 and odd from 2126 is still a great difference. In medical cases he has only got 13, I am correct in that one I suppose?

HON H A CORBY:

He knows better than I do that the question that he asked in the House was for applicants and not for people who are in the medical category on an A, B or C which are currently well housed but are still on the medical side of it.

HON J L BALDACHINO:

I am correct that he only has 13 because once he provides adequate housing according to the medical history of the person that is waiting for an exchange, he will still get a flat back. So I am right in that he has only got 13. 13 to find houses for, the others already are well housed, all there needs to be a change so he will get a house back if he is on the waiting list, so there is no loss in the waiting list, that is what I am referring to even though I understand that the problem of finding alternative accommodation is greater, I accept that, but nevertheless there is no loss to the housing stock as such.

I hope that the honourable Member will also take into consideration when we were in office we were the first ones actually to build for people who were disabled. I suppose that if ever he finds that he has to build houses he will take that into consideration. I also would like the honourable Member to take into consideration that the houses in Scud Hill, some of them were actually built for that consideration, to be taken into account.

HON H A CORBY:

All the houses that are geared to disabled persons will be actually allocated to disabled people.

HON J L BALDACHINO:

He also has to understand that he has inherited from us, or what he has not inherited from us, is that there is no longer North Gorge and no longer White Rock Camp which was also there in 1988 and that even though the pre-fabs which I think there are only about 11 families which have been given offers by the previous administration, by us, the only thing

is that they did not want to move because they wanted to negotiate to go to a different location or a different area when they were offered those allocations. I suppose the honourable Minister for Trade and Industry will be very pleased to see that the pre-fabs only has 11 families and that soon it will be able to be demolished, which was something that he was saying here in the 1989 and 1990.

Obviously the Minister for Employment and Training has said that he will be providing job opportunities and to get his statistics, which he reckons are not sufficient to what he already has in the ETB. So therefore, even though he has not spelt it out clearly, what are those measures that he intends to introduce. One is in a very difficult position to judge how effective those could be. Nevertheless, I suppose once he has made up his mind what measures he intends to introduce then we will be in a better position to judge the effectiveness of what he intends to introduce. Obviously, what he cannot do is link the revision of the 1st July law with the restructure of the ETB. He must know that to repeal the 1st July law all he needs is a stroke of a pen and to gazette it, and therefore, he does not need any restructure unless what he intends to do is replace it with something else. And if he replaces it with something else and the 1st July law only restricts new British entrants who come to look for work, then obviously if the intention is to introduce new measures in that area it must be that there must be a certain restriction in that area as well, because otherwise, he should repeal it and that is it, and he has not said that. He tried to get away with it by saying that the restructure of the ETB had got something to do with the first of July law, and I was waiting patiently because when I asked him the question and I did it as a matter of fact, even though the honourable Chief Minister took it differently, when I asked the question of the job vacancies that had been registered with the ETB and what nationality had been employed, I was trying to impress that the past administration, and I am sure this administration is, that the ETB as an institution does not send other people like other nationalities across the border to vacancies that have been opened there, that if anybody is employed there then it is because the employers have chosen to employ somebody and not because somebody has been sent there. That was the gist of my question at the time and I suppose that is what still is in the ETB, that was the reason why I was asking because sometimes people do criticise the ETB because they think that any nationals other than Gibraltarians who is employed is that they have been sent by the ETB, which is totally incorrect and I suppose it was totally incorrect then and is

totally incorrect now and I hope that he still maintains that policy.

When the honourable Member says there will be a budget, there will be a budget for the Employment and Training Board and the honourable the Chief Minister said in his remarks or in his contribution this morning, that his colleague the honourable Minister for Employment and Training, will have his own department, I am not too sure if it is going to be brought back as a Government Department or will it remain as it is. But there will be a budget and something showing the expenditure just to show, well, I would like clarification on that, because it was not very clear.

The honourable Member has not mentioned training, even though he did mention training in passing and he said it was over 420. I recall that when I was there, there were 420 trainees, I think he mentioned the figure of 500, it might be that 80 more have been given jobs training with employers. Let me say that he has not mentioned where he will make changes to the agreement that I did with the Chamber of Commerce, as a matter of fact, with the agreement that I did with the man that now sits on his right hand side, which I think was beneficial both for employers and for trainees because the trainees were being trained to NVQ levels. He has not mentioned the Employment and Training Board that was set up. The intention of the previous administration was to extend training to other craft grades, I do not know if that is still the intention, like electricians. We also had offers, as a matter of fact I had negotiations or discussions with the MOD, they were also prepared to provide training in the mechanical trades. I do not know if the honourable Member is going to carry on with that. I think it is advantageous that people.....

HON J J NETTO:

If the honourable Member will give way, I can confirm that tomorrow there will be an advert in the Chronicle in which we commit ourselves to a further intake in the Training Centre in Harbour Views which is of 56 new trainees in various disciplines and as well as the honourable Member opposite was saying the six trainees that the previous administration was committed with the MOD itself, so yes, I can confirm that that will go ahead.

HON J L BALDACHINO:

Let me get it right, he mentioned that in the Business Centre, there will be an extension to the Training Board

which is situated at the Business Centre. I suppose that what the honourable the Minister for Education mentioned of the youngsters that are 14 years but are not academically orientated, which was something that I also discussed with the headmaster of Bayside but I did not want to commit the new administration, to look at the possibility of those youngsters which today are placed with employers and then they go to school for two days because the law provides that they have to be in full time education. I do not know if by what the honourable Member implied is that some of those youngsters will be placed in the Training Centre or whether those youngsters will be made provision for in the College of Further Education to carry on from there because if some of them may not be very academically orientated and therefore you place them in the College of Further Education probably they will not be able to, how can I put it, better themselves academically. Anyway I think it would be better if they would be put together in the Training Centre. I do not know if the honourable Member is going that way or going to the College of Further Education, for them to be provided education in that area, or whether it is a mixture of both.

HON DR B A LINARES:

When we speak of job orientated vocational courses or the 14 plus year group, we mean something wider. Definitely some, within that age group would be of themselves geared to apprenticeships when they come to school-leaving age, some, a very small minority, will be entered as traditionally for a one-year course waiting, marking time for the fifteen year birthday when they will then either go into employment or perhaps into training. But job orientated vocational courses as envisaged in the Dearing Report in UK, and a lot of work has been done by educators, is something wider than that. It is really courses which are educational full-time courses in the school for these children but which are not so academically weighted as the GCSEs and the A level courses, they are much more related, as defined job-orientated vocationally orientated courses but still within the school curriculum.

HON J L BALDACHINO:

So probably more on the GNVQ qualifications in that area? Therefore, Mr Speaker, I suppose that if the honourable Minister for Employment and Training has not criticised in any way the training schemes that have been put in place, I suppose he will be carrying on in the same lines, even though he might have other ideas in different areas.

HON J J NETTO:

If the honourable Member will give way, no, he should not presume that, that is to say that we will, in conjunction with all the functions and duties within the ETB, actually review the training of all different aspects.

HON J L BALDACHINO:

And what I am saying to him is, whether he will keep it on as an employer-based thing, or whether the Government will be putting training centres to cater for all trainees that is required in the economy and if he is not doing that, then obviously it follows that he will carry on the policy that we had.

HON J J NETTO:

It does not necessarily follow that, as he is well aware there are various training programmes in place which we have inherited. We are looking at each and one of them and we will keep obviously what is useful for the Government economy and what is not obviously it will have to be either amended or something else in place.

HON J L BALDACHINO:

And I accept that, and I accept that he might change some of the training in areas where he thinks that there should be no training but nevertheless he will still keep to the principle of work placement with private employers rather than put a big system or a big system where the training is given by the Government, that is what I am saying.

HON CHIEF MINISTER:

It will be a mixture of both. The honourable Member knows, if he has read our manifesto that there is indeed a commitment to enhance the apprenticeship training opportunities within the public sector as well, so the answer is that whilst we will certainly keep as the mainstay of our training initiative, partnerships between the private sector and public sector funding, there will also be a degree of training opportunities within the public sector itself.

HON J L BALDACHINO:

I accept that Mr Speaker, but I hope the honourable Member takes into consideration what I am about to say, and I say it not as a criticism but as advice, what I am referring to is, if you have a training centre which caters for craft training and if you put a parallel system within the public sector on apprenticeships, obviously you are saying the whole idea of having the training centre, as it is, was to provide craft-trained persons to the public sector as well as the private sector, because if you have two, then you are condemning the people who are today in the construction centre not being able to have an opportunity.

HON CHIEF MINISTER:

What I am saying is that there will be apprenticeship and training opportunities within the public sector, that does not refer to where the training is delivered, it means for whose benefit the training is taking place. In other words, if the private sector will sponsor certain amount of apprenticeships with a view to engaging a trained apprentice eventually within the public sector.

HON J L BALDACHINO:

Fair enough Mr Speaker, I will leave it at that. I will keep a watchful eye on the measures that have been announced by the Government and how effective they are. Therefore I would like to end my contribution Mr Speaker by thanking, during my eight years in office, I need to thank the persons that were, the staff that was with me in the Housing Department, the persons that were with me in the Buildings and Works and obviously, even though I was only a year in the Employment and Training Board, I also would like to thank my staff there which is now their staff, which have been loyal, for their efficient advice that they have given me and I am sure that the same advice and the same loyalty that I received, will be given to honourable Members opposite. Thank you very much.

HON LT-COL E M BRITTO:

Mr Speaker, as Minister for Government Services and Sport my responsibilities cover a wide area. I have five Government Departments that answer directly to me plus a number of subsidiary areas, so I hope the House will bear with me if I make what will in effect be five different contributions rather than one coherent speech as others have done.

To deal first with the Electricity Department, this department is charged principally, but not solely, with the provision of electricity supplies to the civilian population. It specifies, procures, operates, maintains, repairs and installs almost all items of plant, equipment and cables used for the generation and distribution of supplies of electricity. The Distribution Section of the Department is additionally charged with the design, installation, maintenance and repair of street lighting and traffic light signals. Following a decision of the previous administration there has been no further expansion of the Waterport Power Station. King's Bastion has been phased out and the power purchasing agreement was entered into with the Omrod Electricity Supply Company in August 1989. The Electricity Department staff currently operates from three locations - from King's Bastion Power Station, from Waterport Power Station and from the Orange Bastion Depot. King's Bastion provides accommodation for the Consumer Services Station, the Meter Testing Sections, some facilities of the Electrical Technical Section and workshops for the blacksmith and carpenter facilities. The conditions of the premises are very poor, being prone to damp and to the ingress of water. Waterport Power Station houses the three generating sets and the control room and is where the administrative section and the offices of the senior staff are located. Orange Bastion Depot is the location from which the Distribution Section operates. It is notorious for inaccessibility, being situated at the northern end of Irish Town, and its proneness for floodings whenever it rains heavily. The Depot itself is ancient, some of the facilities are home-made and rudimentary and the access to the site is so restricted that a change of location is warranted. The site of the ex-Public Works Department Central Stores in Rosia Road has been identified as a possible new site to accommodate the services being provided from King's Bastion and Orange Bastion Depots and this is being actively considered by Government.

There has been a reduction in the numbers employed in the Department over recent years. This trend began during the term of office of the previous administration and was influenced by their decision to close down King's Bastion Power Station but it was also affected by the early retirement of the Moroccan labour force. The money in certain sections has been reduced to a greater extent than in others and has given rise to some concern in regard to inability to expeditiously meet all requirements and commitments. Thought and planning now needs to be given to the future beyond the year 2000, as an appreciable number of the present labour force will be much closer to retirement.

The current complement of the labour force is 80 non-industrial and 39 industrial personnel. In looking ahead to the future the Electricity Department will need to make a reappraisal of the needs of the electricity supply in relation to the full development of the reclaimed land and also to any needs which are identified in future to supply to land and property at present occupied by MOD. Current development plans mainly involve the high voltage distribution network and has two specific aims. Firstly to be able to import power from the OESCO Station in line with their planned programme and secondly to re-arrange our distribution so that increased demand from both new buildings and existing supplies is met as economically as possible. To achieve this, a new Distribution Centre is currently under construction at the site of the old sewage plant at Orange Bastion and this will be linked to the Distribution Centre in the old Dockyard area at Jumper's Bastion, and also to the main switchboard at Waterport Power Station. This will allow all high voltage equipment at King's Bastion to be withdrawn from service. This withdrawal, and the relocation of facilities previously mentioned, will release King's Bastion complex for development and other use. The procurement of the remote control system using the latest electronic technology which will enable all main circuit breakers at Jumper's Bastion and Orange Bastion Distribution Centres to be monitored and operated from Waterport Power Station, is currently under investigation. Such a remote control system will serve to improve the supply of electricity in terms of enabling quicker diagnosis and restoration of supply after a fault. For example, after the recent power cuts it was found necessary for personnel from Waterport to deploy to various locations in Gibraltar to be able to do this. With this new remote control system this will not be necessary.

I now turn to the City Fire Brigade. The obligations and responsibilities of the Brigade under the Fire Services Ordinance are as follows:

1. To ensure the safety of the people of Gibraltar by providing an efficient and effective emergency service capable of responding and dealing with all kinds of emergencies. This facility also extends beyond the shoreline to ships that may request our assistance.
2. In addition there is a requirement to provide advice, both formal and informal, on fire precaution and preventions; and

3. The Department is also responsible for emergency planning, civil protection and defence at national level.

During 1995 the Brigade attended a total of 1,196 calls of which 248 were actual fires and 354 emergencies for special services. About half of these fires were in vegetation and refuse but 31 were in kitchens and 29 in motor vehicles. About half of the special services provided were lift rescues and attending requests for entry into locked premises. During the course of the year no injuries were sustained by any member of the Brigade in execution of their duties. The City Fire Brigade is an efficient unit, which is well led, well equipped and well trained. It has proved this in its record of performance. Looking into the future, the Brigade is currently engaged with extra commitments arising out of the problems being experienced on the Harbour Views Estate. It is seeking to improve and develop its marine fire fighting plans and also it is planning to deal with emergencies arising on the Spanish hinterland. Plans are also in hand to develop and improve the command and control room of the City Fire Brigade.

Coming now to our Postal Services. The Gibraltar Postal Service is an independent postal authority governed by the provisions of the Postal Service Ordinance and the convention of the Universal Postal Union. All accounting for the exchange of mail is carried out direct with the countries involved. The main Post Office in Main Street houses the administration, the Savings Bank, PO Boxes, the Letter Sorting Office, Postmen's' Room, the Wireless Section and the main counter, and there are sub offices in the north and south districts. A Philatelic Sales counter is located at the main Post Office and is operated by the Philatelic Bureau which also caters to the needs of about 6,000 overseas philatelic subscribers. The actual production of stamps is undertaken by the Philatelic Bureau which was privatised on the 1st April 1994. The Post Office also operates the Savings Banks in which there are currently 6,420 ordinary accounts. The Wireless Station is responsible for the issue and renewal of transceiver licences and the issue of ship wireless licences. Looking into the future, the general Post Office building in Main Street is badly in need of repairs, although the Sorting Office and the main lobby have been refurbished in recent years, major works are required to the roof and all public and working areas from the first to the top floor. There has been a lack of refurbishment and repair to this building in recent years and there are substantial problems of water penetration and deterioration. In order to comply with our international commitments and in line with the decisions

taken at the Seoul Congress in 1994, which laid down maximum and minimum guidelines, our postal rates need to be increased. In particular there is a need to bring them in line presently in force in the United Kingdom and thus do away with existing anomalies. Whilst every effort is being made to delay such increases, there will be a need to bring them into force some time in 1997. The previous administration had made a commitment to the Unions to install letter boxes in all Government-owned dwellings. The majority of these were provided during the term of office of the previous administration but at present there are some 200 such dwellings without letter boxes. Following representations from the Union the Government is currently taking steps to provide these dwellings with letter boxes. Current legislation requires that all new buildings and housing projects should have letter boxes installed at the entrances at ground level. The Personnel Department of Government has been approached by the postal workers asking that Government request landlords of all private dwellings to install letter boxes at the entrances to private dwellings in Gibraltar. Just as the previous administration could not accede to a similar request in 1994 the Government has advised that they are unable to meet such a request now. There are also European Union Directives which will effect the future of the postal services in Gibraltar and their effects are being currently studied.

Turning now to the Support Services Department of Government, which is not really a department in the accepted sense of the word, because it does not have its own complete structure of administrative command and control. It is made up essentially of six sections and each section has direct access to myself as the Minister. The Senior SPTO in the Department is the Controlling Officer but was not made a head of Department under the previous administration and therefore does not have such duties in an official capacity. The present situation is unsatisfactory from a number of points of view and a study needs to be made with a view to restructuring to obtain a most satisfactory situation. I will deal, very briefly with the main problems facing each Section. Firstly, the Highways and Sewers, which I am combining into one, the labour force of this Section was considerably reduced under the previous administration mainly due to the repatriation of the Moroccan labour force. This has led to contractors having to be engaged for certain types of work other than that work for which specialist contractors would have had to be engaged anyway. It has also led to the workforce having to work extra long hours. In short, the workload requirements of these Sections are in excess of the resources that they have to carry them out. I

will digress briefly, to mention the works that these sections are currently carrying out in Main Street, in the area of the Convent where, as Members no doubt know, a number of holes have appeared in the road and also to a similar situation in the reclamation area. Firstly to say that the two incidents are separate and distinct, that the reclamation area incident is apparently a subsidence of sand which has been dealt with and the road has now been re-surfaced but the problem in the area of the Convent is of a different nature. There are, as I speak even now, investigations being carried out but it seems that the old sewers in that area along Main Street, there has been a problem and that the roof of those sewers has collapsed in more than one place. Investigations are being carried out at the moment, these are very old sewers, as Members know, over a hundred years old, investigations are being carried out to establish the extent of the damage and work is already in place to repair the damage that has been located and identified. But we are not sure whether there are other collapses in other areas that have not actually shown up on the road itself. But we have technical equipment inside the sewers carrying out the investigation.

The Garage and Mechanical Section, once again has suffered in manpower losses under the previous administration and once again this is mainly due to the repatriation of the Moroccan labour force but also to transfers of personnel to other Departments and to commercial companies. With the exception of the Police Department and the Fire Brigade this Section provides maintenance, breakdown and repair service for all Government vehicles. In order to carry out the same service as before but with fewer resources the workforce has been required to work extra long hours. The Electrical Section of Support Services has also suffered manpower losses again mainly due to transfers to other Government Departments and once again extra long hours have been worked by the reduced workforce to maintain the same level of service with reduced resources. This Section carries out all electrical repair work in Government-owned buildings, including lifts.

The Licensing Section is the only remaining Government unit still housed in the old Treasury Building. Within the overall study of resiting of Departments currently being considered by Government this Section is one that is expected to move into premises more suitable to the requirements of staff, to improve security and to provide a better service to the general public in improved surroundings. Consideration is also being given to ways to improve the Section's capabilities to store and manage its

driver records. Finally, the Vehicle Testing Centre is situated at Devil's Tower Road and is responsible for all vehicle testing and examination of drivers before the issuing of driving licences. The main problem facing this section is dealing with the requirements of EEC Directive 77/143 relating to road worthiness tests for motor vehicles and trailers which have to be implemented by the 1st of January 1988. Formal proposals have been made by the staff side for the privatisation of the Motor Vehicle Testing Centre and these will be considered by Government.

I now turn to the fifth and last Department under me which is Sports and to reiterate Government's belief that investment in sport and leisure lies at the root of providing facilities to enhance the quality of life in Gibraltar. We have therefore accepted in principle the commitment made by the previous Government to provide sports and cultural associations with premises suitable for their needs. The allocations and works being carried out on such premises were temporarily stopped by the Government shortly after coming into office to allow it to make an assessment of the situation. The committee allocating such premises has now met once again and work that was already on-going has been resumed on most of the premises which had already been allocated. The Government will continue the process of allocation and refurbishment of such premises following consideration of the recommendations made by the Premises Committee of each individual case in turn. It is the intention of the Government to replace the current Sports Advisory body by a democratically elected Sports Council. For the benefit of the Opposition Member who asked a number of questions earlier on, I will just briefly say that the main differences are intended to be, that the new Council will be elected, democratically elected, by the sports associations themselves and not as was the previous case appointed directly by the government and the second difference will be that such re-election, such election, will be subject to periodic re-election probably at yearly intervals.

HON MISS M I MONTEGRIFFO:

Mr Speaker, I would just like to clarify a point on what the member has just said. The Members of the Sport Advisory Body that were constituted by the GSLP administration were not elected by the Government, they were elected by the associations themselves.

HON LT-COL E M BRITTO:

It goes too far back for my memory, if that is what the honourable Member says I accept it, but I think the basic principle that I am trying to make is that the present body has been there, given or take, some members changing, in essence the same people have been there for eight years. I am trying to introduce a system where there will be a changeover at shorter intervals and they will be democratically elected by the associations themselves choosing their own representative from within themselves but I will give the Members more details at a later date. In fact, this will happen once suitable consultation has been carried out with all the sports associations and is expected to take place some time in the autumn of this year. The new Sports Council will have responsibility for advising the Government on capital expenditure priorities and allocation of grants.

A matter of considerable concern is the state of the Victoria Stadium Sports Hall roof. This started to deteriorate some six years ago, during the tenure of office of the previous administration and although some remedial work was carried out, deterioration has continued and has reached its present unacceptable state. The situation is such that the future sports programme for the coming season cannot be guaranteed without interruption due to water ingress and possible injury to persons using the Hall and damage to property. Although the previous administration had indicated intentions to carry out repairs no actual provisions have been made in the Estimates of Expenditure for this or for the improvement to sporting facilities. The Government is now committed to carry out a replacement of the Victoria Stadium roof and work is expected to start before the end of the year. In order to maintain standards a programme of minor works and repairs is being identified and when agreed the necessary supplementary funding will be approved.

In conclusion, Mr Speaker, my portfolio is, as I said at the beginning, a wide one and it also includes responsibility for a number of other areas which I do not intend to cover in any detail but merely to mention. I have also responsibility for the supply of potable and salt water and as such I am Chairman of Lyonnaise des Eaux Limited, which is a Government joint venture company. In respect of my responsibilities for communications and telephone services I am chairman both of Gibraltar Telecommunications Limited and Gibraltar Nynex Communications Limited, once again, both joint ventures of the Government. My remaining

responsibilities include the Gibraltar Government Lottery, Traffic and Broadcasting.

Thank you, Mr Speaker.

HON J C PEREZ:

Mr Speaker, I shall be as brief as possible but I would like to just mention or point out, that I am glad to see that the honourable Member has taken a leaf of the previous administration and may I say more than one leaf, and it is now not objectionable to be a director and chairman of joint venture companies whereas six or eight weeks ago it was a very objectionable thing for all Members of the Government to do in the election campaign. But these things happen and I agree that more of these things will have to happen. Indeed, if one looks at the contribution fully of the honourable Member one will see that in all the Departments and all the things that he has mentioned are things which were already there and which the Heads of Department have informed him of what works were being carried out, what was under review and he has come here and spelt out policies which were already there. I am glad to see that the commitment to move King's Bastion and Orange Bastion is today greater than it was at the time of question time when I asked Members to give a categorical commitment that they would keep to the commitment given by the Personnel manager to the workforce when we were in office and by myself to the workforce directly. They said that they could not give a categorical commitment because they did not know whether the stores area was to be used for another development or for another use. But I see that the honourable Member is now inclined towards actually using the stores area to move the personnel of King's Bastion and Orange Bastion which is a commitment that the previous administration gave.

Before I go into the general aspects of the thing, I would like to congratulate the honourable the Minister for Education for how rapidly he has moved, correct him as well and say that he did not find, when he came into power, a crisis on the movement of schools, but all the plans for the moves had already been arranged between me and Mr Lester and agreed with the former Chief Minister and that we were only waiting for matters, for the election to pass, so that in the event as it happened that we were not elected, the honourable Member had the freedom to take the decisions himself, but that the physical moves did not have to take until the end of the summer season and that therefore the plans and part of the consultations had already taken place and that there was a plan and that there was not a vacuum

there without nothing prepared for the honourable Member to take over when he came into office.

HON DR B A LINARES:

If the honourable Member will give way. The plans were there but there were plans to meet a critical situation. A critical situation could only have been avoided by planning well ahead when the developments in the Westside area were taking place to foresee the development, the increase of population there and then plan as from then but not planning just at the last minute. That is what I mean by a critical situation.

HON J C PEREZ:

The honourable Member is not very long in this House and if he had been perhaps he knows that questions had been asked on the subject and that the Government then did not know the composition of the people that were moving in the housing estates and we had to wait for the moves to take place in order to know what the compositions, the family compositions of people and the age groups of the children moving in this area before we took over the decisions for the schooling and those decisions surfaced during 1995 and were ready to be implemented prior to the honourable Member coming into office. But be that as it may, Mr Speaker, we have heard, as the honourable the Leader of the Opposition said, that the honourable Members are reviewing the studying and forming committees to review several aspects of the administration and several aspects of their Departments. Mr Netto wants to see structures and hierarchical charts, so that it is clear in his mind who is who and what is what and the Government have committed themselves to study a wide range of things and we shall have to wait for those studies and those reviews to take place in order to judge whether they are going to do something about it or whether they intend to just form committees to look at things which is one of the things that often happens in reviews and then nothing gets done about it. My contributions during the Budget session, when I have been Minister for Government Services in the past have been one where I have myself pointed out to the prudence of the then Government on public expenditure which is one thing which all Governments in western Europe are cautious about and where we succeeded in being able to contain public expenditure whilst at the same time maintain a high level of services to the public.

Mr Speaker, when we came into office Gibraltar was ripe for osmosis. When we came into office in 1988 you had to wait

half an hour for a dialling tone on the telephone. The first thing we had to do in the first month in office was to order a tanker of 600,000 tons of water because there was insufficient water to meet the demands of that year and the generating station in King's Bastion was in a shambles and we had the three engines in Waterport as our only source of capacity of electricity which was around 17 megawatts all in all and King's Bastion was dangerously being kept open to meet the demands then available.

The incinerator was usually working out of service more than in operation. Refuse was being dumped in the sea and that is what we inherited in 1988. The massive investment in infrastructure that we needed in order to provide the great expectations that we had given the people of the provision of housing and on other matters that we had committed ourselves meant that we could ill afford to ourselves invest money in these very much needed areas. Had we not been innovative, had we not taken, like the French say, the bull by the horns, Mr Speaker, and gone out and contracted OESCO to provide the electricity needs for Gibraltar and gone out and done the joint venture with Lyonnaise and gone out and accepted with difficulty a scheme for the incineration which would provide water, today we would be vulnerable to the exigencies of our nasty neighbours who in the same way as they provide filters in the frontier could well have been providing filters for our water supply and our electricity supply and even the burning of our refuse. Mr Speaker, the achievement of the previous administration in that field is second to none. We were able to provide, Mr Speaker, sufficient capacity for electricity to the year 2010 and there is a contract in force that if the Government of the day needs to expand its electricity needs which it does not in the foreseeable future, it has OESCO there with a commitment to provide it at a fixed sum of money which is the cheapest source of electricity that we have today. It is cheaper than what it costs us directly to provide. Mr Speaker, on the water front it is a source of pride for Gibraltar that when the crisis of water in the south of Spain last year hit every single port in the Mediterranean and in the Atlantic coast in Portugal, we were the only port before Barcelona being able to supply water to shipping as a result of the foresight of the previous Government in providing infrastructural support. Mr Speaker, we were able to provide without having to invest directly an incinerator which burns refuse with the complications that it has today and in this context perhaps I wonder, once the Minister for Tourism who is now leaving, and the Minister for the Environment get together and eliminate the eyesore of the dump in the east coast I wonder where it is that

construction rubble and the ash of the incinerator is going to be dumped in the future. I hope they do not intend to throw it in the sea, but certainly somewhere is needed to mix it with rubble and to create the landmark that is being created at the moment as a result of the need that there is for having a site for dumping. We did not create that site, it was previously in the area of the Marina Bay, when we came into office it had already moved to the site of the old distiller and the reason there is a mass of rubble and ash in the area which is now mixed is because during our term in office there was a lot of development and a lot of construction and there was a mass of rubble to be rid of and that was where that landmark and that mix took place. It is not that we decided to open it there has always been a site where people have been able and the Government itself has been able to dispose of rubble and to dispose of ash from the incinerator. Certainly the ash from the incinerator, of the old incinerator, was so raw that it used to be thrown into the sea at the chute rather than mixed with rubble because that was what the previous administration, prior to the GSLP, used to do.

Mr Speaker, it is a reflection of the political propriety of the last Government to be able to come today to this House and say "you have money to spend because we left it there" and we did not use that money politically and we did not give out goodies to people to win an election. It was the right thing for Gibraltar that that money should be there to secure the long term viability of the economy of Gibraltar and the self-sufficiency of Gibraltar, because that was the first step to a mature road towards a decolonisation of Gibraltar which is something that Members on that side and Members on this side and the general public at large will have to face sooner or later, because whoever professes and makes believe to people that it is possible to continue being a British colony for evermore, is doing a disservice to the people of Gibraltar and to themselves. Mr Speaker, it is with pride that I say that if the honourable Members there have a spending programme it is because the finances of the Government were in a very strong position and because the economic activity of the Government was one where already there is recurrent income to the Government as a result of the success of the running of the economy. I am glad to see that honourable Members are continuing with projects that we started, particularly in my field the one which is telecommunications where I can see the development of the telecommunications as an industry apart from the fact that it is a very important aspect of the backbone of the economy as a service, because what was coal to the

industrial revolution, telecommunications and technology today is to an expanding, developing modern economy.

Had we been on that side of the House during the next four years, Mr Speaker, we would have continued to invest on infrastructure because the more you continue to invest on infrastructure the better and the stronger your base to attract new businesses to Gibraltar and to create new jobs in the private sector, where they ought to be created, and not give a false sense of security to people by opening up jobs in the public sector for the sake of doing away with unemployment. I take the point that it is a matter of judgement whether honourable Members think that departments are in need of more manpower and whether they need to employ more people and more experts. We think that what we need in Gibraltar and we are thinking today in the same way as we thought it when we were on that side, is an efficient, modern, well-equipped, well-trained administration able to respond to a private sector environment which moves very quickly for a red tape civil service to be able to respond to it. Therefore, the honourable Members have their own policies, have their own manifesto and are committed to increasing in certain areas, although one wonders whether it is civil servants or not, because the honourable the Chief Minister was not too clear whether this Director of Tourism was going to be recruited into the civil service or whether it was from the civil service ranks or from elsewhere, so we wonder whether all these studies and all these reviews will come up with the commitments that the honourable Members have given or with other answers to problems which some of their followers might not be very pleased about and let us leave these committees and these reviews to go on and we will judge them by their results later on.

Mr Speaker, in the next four years we would have invested very much in roads, because touristically that is important for the tourist product and certainly one we have to keep is the day tripper and the liner terminal one and the coaches and everything else, and we would have invested in roads and I urge Members, when they review the study of the Upper Rock, that it is of fundamental importance to try and divert traffic, touristic traffic, from the Upper Rock away from the centre of town. That the tunnel project is one which has to be given a lot of attention because it is one which is of fundamental importance for the tourist programme and it is of fundamental importance for the traffic flow in Gibraltar as well. We would have invested as a Government in telecommunications, per se, over and above any investment that Nynex or Gibtel might have for their business projects. Connection of a fibre optic submarine link with Morocco is

of fundamental importance for the performance of Telefonica and other companies in Spain in how they look and how they service Gibraltar and it is of fundamental importance for the attraction of new telecommunications business to the Rock. The restoration and the confidence that that gives people coming to Gibraltar is one which is valuable in itself. I know that honourable Members will look at it in the context of the Apscon project and in the context possibly even of Flag being able to do some restoration here. That is something that was on the cards all the time but a connection per se and a relationship with the Moroccan administration is a matter which is fundamental to the future of telecommunications post-1998 when liberalisation comes in. That is something we would have invested in, it is something we would have looked at.

HON LT-COL E M BRITTO:

Would the honourable Member give way. Mr Speaker, perhaps the honourable Member would clarify whether he is giving a personal opinion or whether he is basing himself on a technical advice other than from Nynex or Gibtel, both of whom have the advice that I have from them is not in line with what the honourable Member has just said.

HON J C PEREZ:

Mr Speaker, I not only took advice from people. I took my own decisions and I not always took the advice of my managers and I sometimes gave my board of directors guidance and leadership. When the honourable Member has been there sufficient time, he will be able to perhaps himself give the kind of leadership that I used to give to the joint venture companies, particularly in telecommunications. At the moment I can understand he is a new boy in the matter. In the telecommunications field, Mr Speaker, is something which has been discussed with Nynex and where Nynex US were prepared to bring in some very sophisticated new products to be looked at in Gibraltar, but it needs an investment or a part investment directly of the Government which is what I mentioned during question time, of wiring up every single household with fibre optics in order to be one step ahead of the rest of the world in telecommunications. In the telecommunications and technological revolution that is going to come, which is going to change and is going to affect our society generally and because Gibraltar is so small it is relatively cheap to be able to be pioneers in fields where as a result we shall attract people who will be able to come to Gibraltar to test their own products and we would be able to attract a lot of businesses to Gibraltar,

business as the honourable Member said at question time which is not dependent on a flow through the frontier and which Spain would no doubt try and attempt to stop, and it attempted to do in Geneva when we had a representative that was sharp enough to be able to see that the two words that the Spanish representative wanted to change actually got Gibraltar excluded from the ITU and was able to take the matter up quickly and correct it. We have to be all the time at every level aware that the Spaniards will not stop at anything to harm our economy and that they are at every level briefed to do these things with Gibraltar. But, Mr Speaker, the investment in telecommunications, investment in roads, the investment in new facilities for reservoirs, projects that had been submitted so that we have sufficient capacity of reserve of water, which today I think, I am not quite sure but I think is two weeks or four weeks and we wanted to be able to have reserves of water for at least two to three months in order to be able to have a contingency in case of problems. These are a lot of things that needed to take place and things which generally the general public do not see but it is investment in things which are needed in order for Gibraltar to continue to strive and to make good in the international world. Mr Speaker, honourable Members will no doubt have their own views, that we will believe in having a modern, a well-equipped, an efficient trim administration relative to the size of Gibraltar, a modern, a well-equipped, an efficient and a trim police force relative to the size of Gibraltar and one which is not out of proportion to the size of Gibraltar or of the role that each of these have to give to Gibraltar. Honourable Members should not fall into providing services which are not defined domestic matters and paying for them and which are ultimately the responsibility of the United Kingdom which has international responsibility for Gibraltar and where they need to provide facilities and they need to provide finances in areas where they have to provide services. We have to cater for what is our defined responsibility and we continue to believe that that is done more efficiently in the way we used to do it. There were, let me say, very advanced talks with the Police Association, at the time when we were in office, and where they to be able to count with the number of policemen that there were in the complement fully at all times that they would all be operational, it would have been a very big step forward, something which was being looked at. We believe in having that, it is a reflection of the size of Gibraltar and of the role that each have to perform for the community in Gibraltar, the administration and I think that honourable Members like the honourable the Leader of the Opposition said this morning, might regret some of the decisions that they are taking but

they have been elected to do that and we shall be here to judge them. We are telling them that in the same way that we were prudent when we were in Government on public finance, we continue to be prudent today from the Opposition benches. We urge them to be prudent today because we love Gibraltar and we want Gibraltar to succeed and because regardless of the fact that we have gone back eight years in our development towards decolonisation, we want to be able to be returned into office and continue the role of decolonising Gibraltar whenever they feel that they have to leave office or when their term finishes. Thank you, Mr Speaker.

The House recessed at 5.00 pm.

The House resumed at 5.15 pm.

HON P C MONTEGRIFFO:

Mr Speaker, I regard my task in this Government to really being involved in spearheading the economic development that Gibraltar requires to bring about in order indeed to ensure our viability in both commercial and political terms. That role is one which, together with my colleague the Minister for Tourism, will involve a strategy for the development of the private sector in particular because I think all Members recognise and indeed the Trade Unions and the Chamber of Commerce and all representative bodies, that it is the private sector rather than anything else that is going to lift Gibraltar out of the economic difficulty in which we believe it currently lies. The present situation, Mr Speaker, as far as Government is concerned, is that there is difficulty in the development of the private sector. Costs are high, trade in some areas is weak, I accept the point made by honourable Members on the opposite side, that trade is obviously always more inclined to complain rather than to celebrate publicly that they are doing well, but nonetheless I do believe there is a genuine need for further investment in Gibraltar, for further training of our people and that many local businessmen have not perhaps invested as much in Gibraltar as we would have liked over the last few years. There have been exceptions to that, but by and large, the position in the private sector is that we believe it needs encouragement, we believe it needs assistance at political and other levels in order to ensure its growth.

At the very root of the difficulty that we believe Gibraltar has suffered are two issues. Firstly, the issue of

competitiveness and, secondly, the issue of confidence. On the question of competitiveness honourable Members will know that it is Government policy to review the degree to which there is scope for ameliorating the cost of business being transacted in Gibraltar. Rates, import duties, are the sort of areas that have been focused upon as areas where through adjustment we might be able to increase the attractiveness of Gibraltar and thereby the viability of certain parts of trade. Competitiveness, of course is not just about costs, it is also about performance, and as a Government and certainly I as the Minister for Trade and Industry believe, that the efforts that we make in improvement in the productivity of individual employees in every sector in the community, the improvement of productivity in the private sector, is a development that has to continue. I recognise that this is something we have not discovered, something that is a recognised necessity and which we will be keen to try to make people understand is a necessary ingredient of Gibraltar really being able to retain business which is being attracted by other centres, by other locations, as vigorously as us. With regard to confidence, we strongly believe that there has been a dented confidence in Gibraltar. I am not going to go into all the reasons why that might have occurred, those have been recorded, if nothing else, during the last election campaign, and I know there is a degree of disagreement between Members in this House as to the effect which some of those issues have or have not had on the issue of confidence but nonetheless whatever the historical analysis, it seems clear, certainly it is clear to me that there is a need to regenerate confidence internationally and locally. Locally, for example, banks have effectively dried up finance for Gibraltar projects, it is very difficult to seek finance from local banks. Internationally, the position of Gibraltar, largely as a result of unjustified propaganda, one must be fair there, has been dented and there is much work to be done, Mr Speaker, in re-establishing Gibraltar's credentials as a place where it is safe to invest and where there is a prospect of good return and in this respect, taking the point that the honourable Mr Perez was making about infrastructure, I think we recognise the contribution that has been made by the previous administration in the development of the infrastructure of Gibraltar in certain key areas; telecommunications is a good example, but we do believe, Mr Speaker, that the present priority is not frankly more roads and more infrastructure of that type, important as though an element of that will still be in certain areas. Where Gibraltar has frankly not got it right has been in attracting those customers which that infrastructure has now been able to serve for some time. It

has now been some time since we have had the office accommodation, the telecommunications set up, indeed the electricity capacity and all these other things, it has now been some time since that has been in place but for a whole variety of reasons Gibraltar has not had significant success in attracting the sort of sustainable investor interest in Gibraltar to provide long term jobs.

Mr Speaker, I also believe that it is indeed the MOD rundown that is the single biggest challenge in economic terms that Gibraltar is facing in the next four years and, frankly, and I tell you honestly I think it is a daunting task, I think that what we are being asked to absorb is an extraordinary pill for Gibraltar to swallow. In sheer number terms, I do not have to repeat this, the figures are well known to members of the community, but figures like 700 jobs which will be lost entirely, another figure of about 500 jobs of uniformed personnel, Service personnel that will not be replaced, will have an enormous impact inevitably in the purchasing power of the community as a whole and even indeed in revenues which will be available to the Government. There will be a major impact. We are confident, of course, that we will be able to create activity to offset that degree of loss but it is undoubtedly the major economic challenge facing this community. As Members opposite know the Deloitte Report was commissioned before they left office, when I got into office I requested that the Report, in whatever state it was, should be made available to us as a preliminary document and I can inform this House that that is a document in our hands now. It is not even a draft document in a formal sense, Mr Speaker, in as much as I said it was purely what was available at that stage, the Government takes the view that we want to have an input into the information that will be considered by the consultants, just like the previous administration no doubt would have had, so that when the Report is finalised it will take on board the Government's current thinking.

As has been our policy in explaining our electoral position, we look forward to consultation with the Trade Unions and with all interested parties in the question of the MOD rundown and the impact on the economy generally. We have already, as Members know, had initial consultation with the TGWU, that will be on an on-going basis and will be accelerated once the Deloitte Report is finalised. We do not want to delay that process, it is important, bearing in mind the time scale to which the MOD and the British Government seems bent on maintaining, it is important that we should not delay the process of getting round the table and discussing the way ahead with those who are affected.

To this end, Mr Speaker, we therefore intend to reactivate the joint economic forum as that report is ready, there is little point frankly in doing so until then and that forum, as the Chief Minister, at question time, last week indicated, will be a forum which we see will be primarily responsible for looking at the MOD rundown and tackling that issue rather than the broader economic issues and the development of Gibraltar's commercial development. We think that is a matter that really falls outside the competence of the JEF. The rundown of the MOD in Gibraltar as Members also know, will also involve significant hand overs of property. There is still, as Members may also know, some degree of uncertainty as to the timing and indeed precise details of the property. That is not helpful and we will be doing our best to extract as much detailed information in advance as is possible. To this end, Mr Speaker, we intend to establish a committee chaired, which will be Gibraltar Government/MOD as an interface to ensure a good flow of information. It seems to be the case that recently that degree of communication with the MOD on some of these issues have become, ad hoc, rather than formally structured.

In the context of consultation, and as I have indicated, the JEF will not be dealing with economic matters generally, we shall shortly be proceeding to establish the Economic Advisory Council which is another election manifesto that is contained in our plans and that will have representation from employers and trade unions and it will be that body that the Government will consult for the general process of dialogue on economic matters and matters affecting jobs and the commercial viability of this community. In general terms, Mr Speaker, the strategy that we are going to adopt, and I do not think it takes a great degree of insight to come to this conclusion is a combination of two main factors - one, of enhancing Gibraltar's existing economic activities, spending money, money that needs to be spent and improving the legislative and other framework, to enhance those things Gibraltar already does. In those areas, of course, we have primarily tourism, the finance centre and the port. There is a great deal to be done, Mr Speaker, in enhancing those aspects of Gibraltar's economic activity and this Government is committed to investing time, energy and money in that venture.

The second aspect, Mr Speaker, is the question of diversification. This economy has to diversify, this economy, in our view, cannot just grow with the existing economic dealers, it has to find other things to do and in that respect I see as part of my particular responsibility to continue the efforts which I think up to now have not

been terribly successful, not for want of effort but for want of other matters and to continue the effort to diversify the sort of activity that is undertaken from Gibraltar. To this end we therefore see a three-targeted approach - firstly, the general reduction of costs, this is something which we will look at the benefits of commerce in general, rates, import duties and that sort of area which we have highlighted in the past. Also there is a need to remove impediments to business in Gibraltar. The ETB is a good example, whilst on the one hand we are keen to ensure the efficacy of the ETB we are also very keen not to ensure that it becomes an impediment to speedy business development and we have certainly the impression, it is more than an impression, it is information from those that use the ETB, that unfortunately in the past it has become an unnecessary obstacle in effective, in either protecting labour and in encouraging economic development. The first strand of the strategy will be simply to try and make Gibraltar an easier place to do business in, both from a cost-effective point of view and from the point of view of being able to get things done with greater speed. Secondly, the whole question of small and medium-sized enterprises, in looking in particular at the MOD rundown and the extent to which people will be looking perhaps for private sector commercial opportunities, there is a need to encourage small and medium businesses. This is specially so in the context of the forthcoming EU Objective II programme, the European Union is very much focused on the question of encouraging small and medium businesses and we look towards using some of the funds recently announced in the context of EU objective programmes 1997/99 in encouragement of diversifying small and medium business enterprises.

Thirdly, is the whole question of inward investment. The need to better co-ordinate a coherent policy for people wanting to come into Gibraltar to manufacture and to do other sorts of activities of that type. The current incentives are not insignificant, Mr Speaker, there is a structure which if properly utilised should give rise to significant advantages which should have attracted business to Gibraltar. I think, however, that effort is not co-ordinated. I think there is a lack of proper focus in selling the package of measures that Gibraltar can put together. I do not think frankly they are often understood by investors when they come in. Our view is that we have to co-ordinate those different incentives. We are to improve on them, we have views in terms of training subsidies, that sort of incentive which will make more easy the initial attraction of such business to Gibraltar and it has to be done in a better co-ordinated and has to be marketed in a

better way than we believe has been the case in the past. The financing of these measures will be a mixture of EU funds, as I have said before, and Government of Gibraltar funds. EU funds by definition are matching funds, they are required to be matched, so to the extent that that is the case, obviously Gibraltar Government funds will be made available but in addition to that, the Government has an obligation to assist Gibraltar materially in the diversification of its economy, just like the previous administration identified infrastructure deficiency as one barrier towards inward investment we believe that this economy is in such a need of stimulus that we would like to target assistance for projects that would diversify our commercial base and which would provide employment. The overriding concern of the Government, Mr Speaker, needless to say, is the creation of sustainable employment, the creation of a situation where we can match as much as possible those skills that are becoming redundant in the MOD and other sectors with new businesses coming in. That may not be easy, indeed if the experience of other equivalent territories is to be considered, there will be a mismatch, it is inevitable that there will be a mismatch and we will have to invest in training even if it means mid-life training for those who are willing to move from what was one career, one job, into another.

My colleague the Minister for Tourism has highlighted some of the areas in which investment can be undertaken in really infrastructural terms in the context of things like tourism, beautification of certain parts of Gibraltar, an urban renewal programme, the east side area. It is our view, Mr Speaker, that in areas such as tourism there is a need to invest in that infrastructure, in the tourism infrastructure, not just the roads, but in our heritage, in our old town and that that will make Gibraltar a significantly more attractive place to visit not just for the tourist but for those coming here to do their business, business of any type is not just driven by incentives of a tax or other nature, it is also driven by when the people are comfortable and happy where they spend time and the better that Gibraltar can accommodate people, the better welcome we can given them in terms of the facilities, the more likely people will be happy to establish their businesses here and make a commitment to this place. It is human beings, Mr Speaker, that make commercial decisions and human beings want to enjoy themselves after they finish their board meetings at six o'clock.

In the context of urban renewal, as we speak there are representatives of the DTI and the Town Planning Department,

the Town Planner, in Oporto at the invitation of the Oporto authorities, Oporto is one particular city which has benefited from an EU urban renewal programme. The Government was invited by the Oporto authorities to attend a conference on their experience. It is the sort of parallel situation, Mr Speaker, from which we think we can learn and from which Gibraltar can also seek to draw parallels in the exploitation of the advantages of heritage.

We attach great importance Mr Speaker in the development of our economy, in everything I have said, to the question of access to Gibraltar. We attach as much importance to that question as we do to other questions of trying to build up an economy which is not entirely dependent of course on access. Telecommunications in the finance centre, are examples of areas where there is either no or less vulnerability on the question of access, but it would be foolish, Mr Speaker, not to highlight the vital importance of securing access to Gibraltar at the frontier, and this House knows, this Government's view on seeking expanded use of the airport. It would be foolish not to highlight those issues as ones that are pivotal to the degree to which we can be successful. These are views we have made well known to the British Government, we regard it unacceptable that Gibraltar should be asked to stand on its own two feet without ensuring this basic requirement of people being allowed to get in and get out because without that the task that we will face will be greatly more difficult.

I was talking before in the area of funding of these projects of the European Union contribution that Gibraltar receives. This House will know that there is a current programme, the Objective II 94/96 programme still in place. We are conducting also a review on the various projects that have been initially or had been earmarked from unspent funds and whether they will proceed these projects, Mr Speaker, require to be decided by the end of the year, the Government requires to take decisions by the end of 1996 as to which projects it will pursue in the context of Objective 94/96 and all monies will have to be expended by 98. One project that will proceed, Mr Speaker, is the widening of Sir Herbert Miles Road. Part of our plans for the east side envisage as my colleagues have indicated the containment of the east side project such as it is at present. We will complete the bund in the reclamation, we will surface and landscape that area, this is the area between Eastern Beach and Catalan Bay, and we will at the same time as we widen Sir Herbert Miles Road make secure the area and beautify what is a walkway which should be attractive to visitors and tourists alike.

Objective II project, the 97/99 project, the main focus there should be job creation and job creation of a more sustainable type than is often the case with money spent on infrastructural works. This is one of the areas, Mr Speaker, where the assistance I was referring to, to small and medium sized businesses, we think money can be targeted to offer help. As this House knows the amount of money allocated is £5.5 million. Reservations have been expressed from Members opposite as to whether this and other measures are generous enough. Well, I have not shied away from agreeing that the prospect facing Gibraltar is daunting but nonetheless we are confident, Mr Speaker, we are confident that given a fair opportunity Gibraltar will have the capacity to generate economic activity to take the impact of these MOD reductions and the EU grant is an important contribution that will help in that respect. We are keen, Mr Speaker, in the context of EU funds to invite private sector participation. The experience in the past has really been that the EU funds have only been matched by Government funds. There is nothing to stop such funds also being matched by private investor funds or indeed a combination of them. There is no reason why we cannot have a three way relationship, a three way equation where Government, private sector and EU come together to invest in job creating opportunities. It will be our priority to try to commit the private sector to investment, to try and interest it in investment, to try and stimulate employment opportunities by joining them in funding operations of the type that I have described. We also have, Mr Speaker, the Conver II funds, which as Members will recall are funds specifically dedicated to the diversification of the economy in the context of the defence run down, of the rundown of military sites in particular and we think that fund which is in fact at present completely unspent, there is unallocated funds, there are a number of projects that have been considered but there is no committed funds, we think that that has a role to play in the context in particular of course to the MOD rundown. There is also, finally, in the context of EU funding inter-rate funds which are currently envisaged for investment with regard to projects involving Morocco. We believe, Mr Speaker, that with the sort of project interest which we believe we can generate and with the level playing field that reference has been made to in the past so that Gibraltar can access markets and can be accessed to, that Gibraltar has a very good opportunity to absorb the economic impact of the MOD rundown and indeed provide a secure private sector dominated economy for the year 2000 and onwards.

Turning now to the finance centre, Mr Speaker, our strategy in the finance centre is to effectively bring it to its fruition, to really make it operate in the way that seems to have evaded our efforts in the past. Although we will be giving priority to the implementation of EU Directives, and this House knows that the Insurance Directives were passed shortly after we took office, we will not forget the work which has nothing to do with the European Union, work which is aimed at markets outside the European Union and where Gibraltar has fallen behind most other equivalent centres. As is known the Insurance Supervisor will shortly be appointed and come to Gibraltar. A Controlled Activity Supervisor is also being sought and we believe that there is now a need to look for an Investment Services Supervisor to complement the full workings of the Commission. The Finance Centre, it must be said, will require initially in our view, the importation of an element of outside expertise. The Government believes that nonetheless we will create significant job opportunities for graduates, secretarial services and others and that the spin-offs of an improved Finance Centre will bring very real commercial benefits to the hotel industry, to the transport industry and to every other sector of this economy which depends on people coming in and coming out. In the question of the finance centre we are very keen to re-establish that confidence which I was talking about. We believe we have got off to a good start in that respect. The press that Gibraltar has been able to generate as a result of the intervention of the Chief Minister and various other Ministers, in the context of the change of Government we think has been positive, we think there is a recognition that Gibraltar wants to get this right and we very much look forward to working with the United Kingdom to make sure that the delays that we have suffered do not go on for much longer. The problem that might have existed in the past, Mr Speaker, with regard to the resourcing of the Commission is a problem that we are determined should not become an obstacle to the Finance Centre's development. That will require the Government forming a judgement as to the degree to which Government funding in terms of subsidy for the Commission is appropriate at any particular stage. It was the view of the previous administration I believe that further funding for the Commission in terms of subsidy to it was conditional upon the Commission obtaining the passporting of a particular service or a particular product into the European Union and I suppose it would be correct to say that the position was born out of a certain frustration at the perceived lack of progress in achieving passporting over a number of years. This administration, Mr Speaker, will not take that same view. We are not going to take a sort of a

make or break approach but that does not mean that we are not looking towards a performance time-table which will justify the degree of energy and money which we are led to believe, indeed which I recognise, it is not as though I need convincing of this, that that commitment will have to be measured by the tangible results and the tangible time-table of performance which we are going to hopefully be able to work out so that it is not money that is being spent in an open ended project without clear guidelines of when and how we are going to achieve the goals we set ourselves out for.

Mr Speaker, in conclusion, the message that I would like to transmit with regard to those people that may have an interest in what I have to say, which I will expect to be private investors and even employees in Gibraltar that are conscious and worried about long term employment prospects is, that we have to create in Gibraltar, Mr Speaker, the politics of economic success, what I would call the politics of economic success. There is a need to focus on economic success as the primary objective of the next four years. The honourable Leader of the Opposition in his contribution, talks about the importance of paying your way, making your way, paying your way, well, nobody will disagree with that, Mr Speaker, but in paying your way what is important is not just that the Government should pay its way, but that Gibraltar, the private sector which we recognise is the sector that will be the engine for future prosperity should also pay its way and it can only pay its way if there is a commitment from all sectors of the community to ensure that we behave in the way we resolve disputes, in the way we interact with each other in a fashion that does not prejudice our economic viability. I give an example of the ORIANA incident the other day, not in any way to enter into the merits of the position with regard to either the shipping agents or the taxi drivers, indeed there are long historical issues there that it will be quite out of place to try and analyse today, but as an example, Mr Speaker, of how a community cannot afford, to turn itself if we are at all serious about being competitive and about really winning a future for ourselves in industries which nobody has any special need for in Gibraltar. Gibraltar is not a unique product. There are many other places that can compete with Gibraltar and nobody is going to put up with that sort of situation and I urge that there is introduced into our community at all levels that attitude to service, that attitude to productivity, that attitude towards realisation, that we just have to put our economy and our commercial viability above squabbles of the type that do not resolve issues but simply make headlines in Newswatch that evening.

In conclusion, therefore, Mr Speaker, we as a Government believe that given the chance we are going to be successful in making our Finance Centre work, in promoting tourism and in diversifying our economy through the introduction of new businesses and projects. We look towards a partnership with all those involved. We went to an election seeking partnership with the private sector and with employees. We call for it again today. We need that partnership if we are going to weather this storm successfully. Thank you.

HON A ISOLA:

Mr Speaker, from this side of the House we wonder if it is the same people across the floor today who have been opposing for the last four years with venom and more often than not misrepresenting facts for political purposes. That is the one item in fact that the Learned and honourable Member the Minister for Trade and Industry omitted to mention when discussing the various ingredients of the need for political and economic success.

Mr Speaker, in dealing with financial services first, I agree with obviously the aims of marketing and bringing people in. It is a vital part of the sector. However, as we have believed for a very long period of time the importance of a level playing field, the importance of fair opportunity is, in our view, the major factor in allowing the finance sector to explode and bloom as we all expected and we all hope it will in the future. We certainly hope that the Government will grip with enthusiasm the need for that level playing field, the need for the Directives and for the passporting into the European markets to take place. It is an area, Mr Speaker, where more and more Gibraltarians have sought and obtained employment and we would certainly hope that this is an area in which that can also continue. The only word of caution I would urge on the question of Directives and financial services, Mr Speaker, is on the question of the Fourth Directive. The honourable Member knows my own views and I hope that he will consult widely with the sectors involved and take their views on board before coming to a final decision on how the Fourth Directive is to be implemented.

Turning, Mr Speaker, to tourism, having heard the honourable Minister for Tourism, I am tempted to think that it is a bit like a holiday, I am not punning on the word 'holiday', a holiday brochure with lots of pretty pictures and promises which do not materialise when we actually get there. We certainly hope, that the initiative which he has taken in

the last few days when announcing the programme is successful. We do hope that he does manage to increase the one sector particularly where we recognised and dealt with in our manifesto, the question of overnight stays for the hotel industry which has had a rather rough time. In terms of the day market and the cruise liner market, Mr Speaker, the figures which my Learned friend gave me in a question just last week show that indeed the previous administration had been very successful in terms of cruise liner, ships and passengers on cruise liners coming in, it was the highest since 1969. In terms of passengers coming through the frontier that too has been the highest since records started. A total of 5.5 million people, 138 cruise liners and over 10,200 coaches came in in the year 1995. We certainly hope that the Minister will be able to come back to this House in a year's time and tell this House that the increases from 1996 over 95 have been in the regions that we were able to achieve from 1995 over 1994. Access has been identified, Mr Speaker, as the main problem, the access of people coming into Gibraltar either by air, by sea or by the land frontier. At the land frontier the queues and the problems that can come there are beyond our control. By air, there is a sole operator and as we indicated in our manifesto we gave a commitment to give financial and political support to ensure the opening of new links. We hope that this Government will carry on the initiative that we had in attracting or attempting to attract new services, scheduled and chartered, to Gibraltar. By sea, the cruise liner terminal, another initiative of the previous administration, Mr Speaker, is a welcome boost to an industry that is taking more and more of the brunt of bringing tourism of a good quality into Gibraltar.

Mr Speaker, insofar as the honourable Minister for Trade and Industry referred to the need for investment, clearly there is a need for investment and clearly there is a need to attract investment and in that regard, Mr Speaker, the record of the previous Government I should say, will be a difficult act to follow. The programmes that are in place at the moment and which I am pleased to hear will be continuing, particularly the Haven Shipyard, the Powder Drums factory, the initiatives of my colleague on telecommunications, the Gun Wharf Superport, are all programmes that will give sustainable employment, which are the words that my honourable friend used carefully. The Opposition welcome, Mr Speaker, the willingness of the present Government to continue those initiatives and we wish them certainly well in that.

Mr Speaker, in tourism the items which my honourable friend the Minister for Tourism has mentioned are very much more of the same and we welcome the initiative, but we welcome it with slight hesitation in the sense that we have been criticised for not providing for the overnight market, by doing exactly what he intends to do. The conferences, the short breaks, two centre holidays, are all initiatives that we have taken in the past with degrees of success. The Main Street beautification Mr Speaker, we also welcome the continuation of that project, obviously it is in hand and we await to see whether in fact the benefits for shop keepers and property owners on Main Street, who were going to get a tax relief if they provided to refurbish those properties will proceed. We will wait and see what happens there. Mr Speaker, as the honourable Leader of the Opposition said this morning, they have been there on the other side for two months and it is short we will have to wait and see this time next year what progress has been made and how many of the promises that have been given and detailed during the course of today have been accomplished. Until then and perhaps, my colleague has reminded me, we will see by the next budget the arrival of what was claimed as Donald Duck in relation to the theme park and the Gibraltar Experience by a member in a debate on television, arrives by that time, if not, I am sure we will be up to criticise.

I end with a final observation, Mr Speaker, that before the last election we kept hearing the words "heavyweights" when talking of the line up of the GSD. The only thing I have seen to date is that the heavyweights have had to pull up another chair on the Government benches to enable them to sit more comfortably and I hope they are comfortable for the next four years. Thank you, Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, may I start by reciprocating the kind sentiment of the honourable the Opposition spokesman for health services, Marie Montegriffo, who reminded the House of its tradition in congratulating the makes of maiden speeches. On behalf of myself and the Government I would like to congratulate all the ones that have not yet been congratulated. I think it augurs well for the quality of debate in this House, the performance that we have seen so far during this first meeting of the House from its new Members.

Mr Speaker, in reply I wish to be brief and I wish to deal with certain of the observations made by the honourable the Leader of the Opposition in his intervention. He noted that

I would discover, when I implemented my financial restructuring plan, that there will be much less that I can do and he speculated, wrongly, that I would not want subsequently to admit it. Mr Speaker, it really does underscore the difference in political philosophy between the Members opposite and the Members who now form the Government in this House, can really not be summarised any more succinctly than by that observation made by the Leader of the Opposition. His political philosophy is that the end justifies the means, that because this is a system that he had established gave him, to quote his words "flexibility", that he was not interested in methods but in results and that way more gets done. Well, Mr Speaker, I have no doubt that, that way more gets done. I have no doubt that more might even get done quicker and even more cheaply but we subscribe to the view, Mr Speaker, that democracy comes with a price tag and one of the prices that we pay for wishing to live in a democracy is that it is not just the means that matter, or rather, it is not just the ends that matter it is indeed the means and of course in dictatorships things can get done more quickly and more cheaply because they have to account to nobody, there is no rule book and they can do things as they please, when they please, to whomever they please, without accounting. Well, I would rather preserve the democratic transparent traditions of our system of Government even if it means that the taxpayer has to pay a bit more for it. I can think of no better investment to make on behalf of the people of Gibraltar than to protect the quality of its democracy even at some expense to the taxpayer so there is no question of my not wanting to admit it. I will readily admit it to him now, or does he not think that when I restructure public finances to put a 100 per cent in front of him and to come to this House with the need to ask the House's permission to spend a 100 per cent of Government revenue and not just to 65 per cent that he presently asks permission to spend. Does he not think that I do not understand that I am curtailing my powers in relation to the ones that he has been exercising for the last eight years? That will not stop me from doing it. He said, that the present financial disposition of the Government can, with the information available, be tracked. Mr Speaker, in a democracy it should not be necessary to engage in a process of tracking in order to see what the Government finances are. It should not be necessary to have a degree in advanced arithmetic or economics and certainly it should not be necessary to have access to the private and secret records of the Gibraltar Savings Bank to know what the account balances are of particular Government owned companies and Government owned special funds to know, which you would need to know, what the reserve position of the

Government is. Certainly, in respect of special funds eventually, in respect of some of the special funds, we eventually through the accounts that are filed in respect of all Special Funds in the Public Accounts of Gibraltar we get a picture of sorts and as a sum because in some cases you get a statement of the actual liquid resources position of the Special Fund, in other, for example, such as the Gibraltar Investment Fund all you will get is a statement of the share holdings and their value in each of the companies and an exposure to the financial position of the companies owned by the Gibraltar Investment Fund. Therefore, Mr Speaker, I do not accept the observation of the Leader of the Opposition that it is possible even with the information that eventually becomes available because the Public Accounts of Gibraltar come two years' later, but even then it is not possible to track the financial position of the Government. It will be possible for him to track the financial position of the Government in future.

Mr Speaker, the honourable Member I think makes mischief when he suggests, that notwithstanding that we had always supported in Opposition the Social Assistance Fund concept and the need for secrecy, a secrecy let me say that the honourable Opposition Member Mr Mor with responsibility for social affairs on that side has not respected here today, but what the honourable the Chief Minister was saying, that notwithstanding that we had always supported the concept of social assistance in the past that now the restructuring that I was signalling meant that I would find out that I would have to pay more in benefits to people to whom, we are not presently having to pay. That is absolute nonsense. The fact that we alter the process of accountability, the fact that we alter the information and we give it earlier than it would otherwise have had to be given does not determine who is entitled to receive the benefits, so that for example, the fact that this House votes because the money will be in the Consolidated Fund as opposed to in the Social Assistance Fund, therefore the fact that this House votes in the Appropriation Bill, for example, to make a grant to the Community Care Trust or to make a grant to the John Mackintosh Home Trust or to make a grant to the Doctor Giraldi Home Trust, that is not going to determine who has statutory entitlement to anything. All I am saying is that the entitlement to receive which is not an entitlement, it is a decision made by the Government, but the delivery of the assistance is not going to be changed by virtue of the financial restructuring that the Government proposes to do and certainly it would be absurd for the honourable Member to think, as indeed he has assumed, it is inherent and implicit in his statement, that because we are going to

change the financial structures, that there is going to be a departure from the system of non-statutory discretionary benefits back in favour of a system of statutory benefits of the sort that would be entitled, or rather in a way, that would entitle persons who are not presently entitled. It is absurd for the honourable Member opposite to infer all of that from the fact that instead of accounting for some of this expenditure to a Social Assistance Fund, for example to a Special Fund, that from now on to be accounted for to the Consolidated Fund which simply means that I have got to come and ask the permission of the House to make that grant. It is just a matter of mechanics and transparency and it has nothing to do with who would be entitled to benefit ultimately from those funds.

Mr Speaker, the honourable Member opposite, as is not unusual, tries to obfuscate the points that I was making on the question of the assets and the income streams of the various Government-owned companies. It is not an issue in which I feel any great necessity to debate with him at this moment in time because when we put the accounts of these companies in the public domain, people will be able to judge for themselves what the income and activities of these companies were. It is as simple as that, let the documents speak for themselves. The issue is not rationality of his system of finances, as he says. The issue is transparency and I am not willing to purchase rationality at the expense of transparency because if you take that principle to its logical conclusion, well there is much more that could be done in the name of rationality than has already been done if transparency is not a concept in which we are going to attach any inherent value. He spoke about nettings and again I have to disagree with everything that he says. It is not logical that nettings is, I think the words that he used were, that it was a distorted picture. I think that the kernel of what he was saying was that because the costs of collections were not fixed you could give an estimate of the cost of collecting income tax because the wage structure of the Income Tax Department is fixed and therefore you can give an estimate of it, but that you cannot give an estimate of the cost of collection, for example, of rates or of income PAYE arrears because the cost of that is not fixed in the sense that it is a percentage of the amount collected in favour of the contractee. Well, Mr Speaker, that is not logical. It does not prevent the fact that none of these costs in these Estimates are fixed. The fact of the matter is that many of these estimated expenditures are not actually turn out in an out turn sense eventually turn out to have been either over estimates or under estimates. The fact that a cost cannot be fixed at the beginning of the

financial year does not mean that we cannot estimate what it is going to be just as we estimate what the Government is going to collect in income tax at the beginning of the year, we have no way of knowing whether that is what the Government is going to collect, so the fact that an item is not fixed is not a reason for not estimating it. I accept that the less that an element of cost can be established by reference to fixed factors, the less likely the estimate is likely to prove accurate at the end of the year. It is easier for me to estimate the cost of collecting income tax because I know how much the personnel in the Income Tax Office is going to earn during the year, than it is for me to calculate how much I am going to have to pay in commission to the Gibraltar Information Bureau for collecting PAYE arrears because I do not know how much they are going to collect. That does not prevent me from making an estimate of revenue and an estimate of the expenditure which may turn out to be an over estimation an under-estimation and if it is an under-estimation I will have to come back to this House with a Supplementary Appropriation Bill in order to have the leave of this House to exceed that estimated expenditure. I do not regard that as an obstacle to putting the information in the public domain. Mr Speaker, of course, he fails to draw the distinction in terms even of the principles of transparency. He fails to draw a distinction between two different kinds of netting. There is the netting which is recovered in the sense of information. For example, the netting of the cost of import duty collection, which as he quite rightly says, is accounted for through the Consolidated Fund as a collection charge and the information is in the public domain, so that it simply becomes a matter of accounting mechanics as to where the entries are made. That does not raise issues of transparency and accountability, because I could stand up when I was in Opposition last year, I could stand up and say, why is it costing so much to collect import duty, because I could see what the figure for the collection of import duty cost would be, but that is very different to the nettings which are not recoverable, which are paid to a private contractor and which are not reflected in the public accounts of Gibraltar and which are not reflected in the Estimates because of the devise of netting. Why does he think it is important to put in the public domain how much the Consolidated Fund recovers from the Social Assistance Fund in terms of the cost of collecting import duties and why does he not think it equally important that to put in the public domain how much is paid to the various contractors, contracted to collect such things as rates and housing rents? It is just a question of concealment of information. I believe that if the Government engages a

contractor to collect housing rents, why should it not be put in the public domain how much that contractor is receiving? I think it is a matter of importance in relation to the administration of public affairs. Certainly there are those two different kinds of nettings which is answered if not adequately distinguished between. In so far as the Public Accounts Committee is concerned, Mr Speaker, it indeed was discontinued between 1984 and 1988 when he was in Opposition but it was discontinued whilst he was in Opposition, and let us be clear, this was not something that the Government of the day imposed on him. He was not the victim of a decision by the Government of the day. The Government of the day discontinued the Public Accounts Committee between 1984 and 1988 because he as Leader of the Opposition signalled that he did not want it and I can only assume that he did not want it because he anticipated that he would win the next election, and having taken the moral of high ground by having asked for it to be removed from Opposition, I can see how morally it strengthens his hand not to introduce it either when he is in Government. So, let us be clear, the honourable Member has certainly been consistent in his view since it was removed that he did not think a Public Accounts Committee was a good idea but it was originally removed at his request, whilst he was in Opposition and it was not a decision that was imposed on him by the Government of the day.

Mr Speaker, the honourable Member says that the style of Opposition that they are going to deploy is going to be very different to the style of Opposition over the last four years and they say, in effect implying that civilised Opposition had been lost. Well, Mr Speaker, the form of Opposition that they got was the form of Opposition that was required for the first time in Gibraltar's political history arising from the fact that they tried to reinvent the wheel of transparency because certainly prior to 1988 it was not necessary for Oppositions to have recourse to the debates that we had to have recourse to because no previous Government tried to remove 35 or 40 per cent of the public finances from the scrutinising domain of this House. It was in response to that and in response to their erection of sophisticated and extensive company networks and structures that it became necessary for the Opposition, in the discharge of its responsibility, to ensure the democratic process in Gibraltar, to make a political issue of the honourable Member's proclivity for lack of transparency and propensity for lack of transparency and, frankly, we consider, that we did a considerable service to the democratic process in Gibraltar by so doing and by so doing

it persistently and consistently and without fear of the consequences.

Mr Speaker, I hope that the honourable Mr Mor's knowledge of the state of Government finances, after eight years in office, is not limited to what he reads in weekly newspapers. His statement that the Government Reserves amount to a £130 million is as foolish in fact as it is irresponsible politically because the only way that the Reserves of the Government of Gibraltar could conceivably approach the figure of a £130 million, which in any case they would not, but the only way of even bridging the gap between the reality of the actual Reserves and the nonsense of the suggestion that the Reserves are £130 million would be, if the £60 million which are in the Community Care structure were Government reserves. He must understand, having implored from the Opposition benches constraint in this area during the last four years, he must be aware of just how damaging and indeed how irresponsible such an assertion is to the interests of Gibraltar. If it were true that the £60 million form part of the Government reserves, which of course we all know is not true, then we must forgive the honourable Member opposite for making that statement in ignorance. Mr Speaker, the honourable the Opposition spokesman for Government Services speaks of the fact that the current Minister for Government Services is the Chairman of the Utilities Joint Ventures. At all times, Mr Speaker, whilst in Opposition we were careful to put the three Joint Venture Companies, the utility joint venture companies, in a very different category. Certainly the honourable Member opposite must know that it would not serve the interests of Gibraltar well for the influence of the Government in those particular joint venture companies to be diminished and he cannot take cover in respect of the wholly-owned Government companies by virtue of what we do in respect of the utility joint ventures. What we have been criticising, Mr Speaker, over the last four years is the fact that in respect of companies which were 100 per cent Government owned by boards of directors comprising Ministers of the Government, that the affairs of those companies should not be transparent and that those Ministers who controlled those wholly-owned Government companies as their sole board of directors should refuse to answer in this House for their conduct as such directors and for the affairs of those companies. That could not be further from the situation that prevails in respect of the three utilities joint ventures. Mr Speaker, the Government certainly will not be irresponsible with the question of public expenditure. It is not that we intend to go out and raid the piggy bank and put Gibraltar in a position where we

would be reserveless and therefore defenceless. What we are saying is, that the combination of the reserves that exist and the budgetary position in terms of the surplus income over recurrent expenditure which, if it can be maintained and we hope to improve that ratio, gives a degree of scope for Government whilst preserving prudence in matters of expansion of public expenditure whilst preserving prudence in the preservation of a safe and adequate level of reserves still creates the opportunity for Government to invest in some of the objectives that the honourable the Minister for Trade and Industry has highlighted. He can rest assured that I am not proposing to sell the family silver and we are not proposing to go mad with the expenditure of the much smaller sum of £130 million that they left in the kitty when they were removed from office. I commend the Bill to the House, Mr Speaker.

Question put. Agreed to.

COMMITTEE STAGE

Clauses 1 to 4, the Schedule and the Long Title were agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to report that the Appropriation 1996/97 Bill, 1996, has been considered in Committee and agreed to without amendment and I now move that it be read a third time and passed.

Question put.

The Appropriation (1996/97) Bill 1996 was agreed to and passed.

PRIVATE MEMBER'S MOTIONS

HON J J BOSSANO:

Mr Speaker, I would like to place on record that in moving the motions separately I have done so after you expressed the view that it would be better to have two separate motions but that in fact the original notice consisted of one motion covering the two individuals in question. The reason for that was that in moving this motion we are concentrating, as far as we are concerned, not on any particular element of public service but on the contribution

to the process of decolonisation and the process of self-determination which started a very long time ago and in which in fact of the four options, three as it was four at the time, four as we all know now, of the four options that were available we have two particular figures, one of whom was spearheading the suggestion of self-determination being exercised by free association with the United Kingdom and the other one was spearheading the concept that self-determination should be exercised by integration with the United Kingdom.

There can be no doubt that it was the AACR that started Gibraltar on the road of self-determination after the war and that that road leading to decolonisation was, if not actively being encouraged by the British Government, at least was not being discouraged. I have no doubt that when the matter was raised in the United Nations Committee of 24 in 1963 and 1964, virtually at the very start of the work of the decolonisation committee of the United Nations, the statement that was made by the elected members of the Legislative Council prior to the 1964 Constitution and reaffirmed by the Members elected on the 10 September 1964, Gibraltar's National Day, as I hope it will continue to be called, represented a drive for decolonisation expected to be completed by 1969 and led by Sir Joshua Hassan and the AACR. There can also be no doubt, we are very clear that this is the case, that the arguments and proposals put to the UN in 1964 were supported by the United Kingdom who told the Committee of 24 that they rejected the Spanish view that there was a conflict between the Treaty of Utrecht and the right to self-determination, and that this is no longer the position that is being taken. That is the route on which Gibraltar and the predecessor of the House of Assembly, the Legislative Council, embarked upon unanimously and if post-1969 there were divisions, the divisions were between those that considered the AACR to be leading Gibraltar towards semi-independence and those that wanted to bind Gibraltar to the United Kingdom primarily with the argument that that was the one option that the United Kingdom could not reject under the Treaty of Utrecht. In looking at this point in our history we feel very strongly, in the GSLP, that after having resumed the drive for decolonisation that should be given continuous impetus over the next four years and that in recognising the contribution that Sir Joshua Hassan has made I am repeating the exact words of the Motion originally given notice of in this House.....

MR SPEAKER:

No, no, the Motion before this House, which you have not read, according to the rules you have got to read the Motion and then speak, would you read it now and then you can refer to the original one.

HON J J BOSSANO:

"That the honorary Freedom of the City of Gibraltar be conferred upon Sir Joshua Hassan in recognition of the outstanding part he played in obtaining self-government for Gibraltar."

MR SPEAKER:

That is the Motion before the House.

HON J J BOSSANO:

That is the motion before the House. That is a motion which is the exact repetition of the motion that was moved, or rather notice of which was given by a previous Member of this House last year and then, before the motion was actually proposed he removed it from the agenda which, of course, under the Standing Orders he could do without requiring leave of the House. Had he not done it like that, from our point of view, he would have got leave of the House because we would have voted against the motion being removed at that time and we would have proceeded with it. The contribution is linked to the part that he played in obtaining self-government for Gibraltar. There can be no doubt that the level of self-government in Gibraltar today, on paper, is no more than what was achieved in 1964. The 1969 Constitution makes clear that it is giving effect to what was already there in 1964 and spelling it out. In 1996 we have got a Constitution which bears no resemblance to the reality of the responsibilities of the Government of Gibraltar, and therefore the further measure that was anticipated in 1964 and which was expected to lead to the completion of that process of self-government which was then seen under the leadership provided by Sir Joshua Hassan and the AACR as putting us on the threshold of full self-government, never materialised. The expectation as I said in 1964 was that this would be done by 1969. The Referendum that was held in 1967 led to constitutional proposals being formulated in 1968 to decolonise Gibraltar. The only element of those proposals, which were decolonisation proposals, to which the United Kingdom Government paid lip service was that instead of Gibraltar being known as the

Colony of Gibraltar it should be known as the City of Gibraltar, but of course that proposal was made on the basis that it would cease to be a colony and therefore it would not be known as the Colony of Gibraltar any more. They just changed the label but left the status. In analysing how it can be that we have got stuck for so long in that position, we think that the history of the intervening period, the very hostile reaction of the Spanish Government to the 1967 Referendum and indeed to the limited constitutional progress that was achieved in the 1969 Constitution as a result of the Constitutional talks of 1969 which was to impose a blockade by land, sea and air on Gibraltar, that was Spain's response to the decision of the Referendum, a Referendum which in turn was in the United Nations opposed even before it was held. The United Nations passed a Resolution telling the United Kingdom not to go ahead with the Referendum and another Resolution telling the United Kingdom that, having held the Referendum, the Referendum was in breach of UN Resolutions. The Spanish position, which is still being defended and maintained today in the different fora of the United Nations, is an exact repetition of the arguments that were used then. The United Kingdom Government is not actively refuting those arguments. The sequence of events and the reason why today we are no further in completing that process of self-determination and self-government than we were when we were taken to that point by Sir Joshua Hassan and the AACR is clear in the contacts that shortly after the 1969 Constitution, shortly after the imposition of the blockade, started the feelers that started being put out between the Foreign Office and the Spanish Government even at the time when there was a fascist dictatorship in Spain. It was in 1973, not so long after the Referendum and not so long after the Constitution came in and not so long after, there was still a drive for further constitutional development. There was a Constitutional Committee that was set up here because in fact the attempt by the AACR Government continued after the 1969 Constitution in trying to press for further constitutional change. Yet at that time the process of trying to produce resolutions in the United Nations which were not resolutions promoted by Spain but resolutions drafted by consensus between the two sides were going on. Much of this without the knowledge of the Government of Gibraltar. The Government of Gibraltar only being informed when things surfaced, and therefore, that development of self-government was always placed in front of this House, in front of the Government of the day, as something that was round the corner. It was something that in principle the United Kingdom Government was prepared to discuss and to consider that they would listen to any proposals, that they would study the matter, but that the

timing was not right. Well, Mr Speaker, Members opposite were using the argument about the right timing in the elections of the 16th May, the timing will never be right, the timing will never be right if we do not place the reality of the situation, that having been taken to a particular point by the AACR with the drive for self-government and self-determination under Sir Joshua Hassan we have, de facto, been switched off in a situation where the British Government has consistently put to us and indeed to Sir Joshua Hassan and his Government at different periods in time, that it would rock the boat, it would not be the appropriate time to do it, that we had to await. We had of course the infamous Hattersley Memorandum of 1976 where after three years of a constitutional conference, or rather of a constitutional committee of this House chaired by Sir Joshua Hassan, formal constitutional proposals were put to the United Kingdom which was the result of a compromise of the views of the AACR and the Integration Party in Opposition. The response of that proposal was to come back and tell us that there was no way that the United Kingdom would agree to integration, even though integration had not been asked for in those proposals, and that there was no way of us being given the option of seeking independence even though nobody has suggested that we should seek independence at that particular point in time. I think my hon Friend Dr Linares at one stage belonged to the limited group of people who thought that at the end of the day, and there was a certain logic in that I think, Edwin Yeats was the one that used to argue most coherently that at the end of the day the only thing that the United Nations would accept as real decolonisation and real self-determination was full blooded independence and anything short of that they would reject as not being the real McCoy and that it would continue to be seen as little more than a smoke screen for continued colonialism and I think that was probably true in the 1960s. Certainly, I can tell the House that it is only very recently that the Committee of 24 has come to terms with the reality that if the United Nations, Resolution 1541, provides for a number of options to achieve self-government, then it is a matter for the colonial people without external interference either from the colonial power or from an aggressive neighbour or for that matter from the Committee of 24 itself, because it is as much an interference with the will of the people if the Committee of 24 is going to dictate to the colony that either they have independence or they cannot be decolonised, otherwise the United Nations should have said so in its Resolution.

HON DR B A LINARES:

Would the honourable Member please give way. There has been a direct allusion to me in his speech and I would like to say that that is based on a purely subjective interpretation of historical events going back a number of years. The attempt to identify me with a constitutional position that he has referred and identified with certain people, is based on no evidence of any statements or activities on my part except my friendship and relationship with those people. It is therefore a valued judgement which I have to reject categorically.

HON J J BOSSANO:

Let me say, Mr Speaker, that I have a very clear recollection of the Minister's views before he got to the position that he is now, and let me also say that I do not think there is anything to be ashamed of in wanting or thinking that independence is the solution. It is a perfectly honourable position to take and Sir Joshua Hassan whom we are mentioning in this resolution and honouring with the Freedom of the City, has defended that in this House. He has defended in this House of Assembly that as far as he was concerned, he had always argued that the people might not want to opt for independence but that the option of independence itself was an option that had to be available, people had a right to consider it and that in fact was the view of Sir Joshua Hassan. Let me say that, a study done in the 1960's by a UK professor of International Law commissioned by the AACR Government, came to the conclusion that in fact the Treaty of Utrecht did not deprive people of being willing to advocate the independence option. There is no doubt that today we are not in a situation, realistically, to consider that any more for the very simple reason that it is clear from our membership of the European Union that we can only achieve self-government and remain in the Union if we do not opt for independence. Opting for independence might give us full self-government in the fullest and widest sense of the word but it would remove us from the European Union membership and therefore, it is not really, irrespective of all the other constitutional and moral and political arguments that can be put in favour of it, it is not an option open to us. So self-government today really is constrained in practical terms by either free association or a variant of free association which might be what has been called the fourth option by us and now by the governing party but which in fact since it has never been made use of, we are not very clear what it would.

MR SPEAKER:

I do not want to stop you, but I think we have come to praise Sir Joshua Hassan, not to attack the Foreign Office or anything else. Carry on in your line of thought but.....

HON CHIEF MINISTER:

Mr Speaker, on a point of order, I was certainly about to rise to make the point but of course just as there is a rule about anticipation there is a rule about relevance and that you may only speak to the motion on matters that are relevant.

MR SPEAKER:

Thank you.

HON CHIEF MINISTER:

To convert a motion to grant the Freedom of the City on Sir Joshua Hassan on a dissertation which we only recently heard from him not more than three months ago in this House into a thesis on the various options for self-determination is in my opinion straining the rule of relevance.

HON J BOSSANO:

Let me say, Mr Speaker, that if you care to read the Hansards of the last four years you will find that I will have to go a very long way before I come anywhere near imitating the degrees to which the Members that were then on this side of the House strain the rules of relevance. But of course the motion that I am moving, and it is certainly not criticising Sir Joshua Hassan because it is in recognition of the outstanding part he played in obtaining self-government for Gibraltar, and what I am saying is the only level of self-government in Gibraltar that we enjoy is the one that he obtained. Regrettable as it may be that he was not able, although he tried on a number of subsequent occasions, to take us further down the route of decolonisation and those of us that have tried it since have not been successful in taking us down that road, and therefore there is no doubt this is why, as I mentioned in my opening remarks, in looking at the other Motion on the Order Paper it was really in the context of recognising that the two persons that have been most intimately involved in Gibraltar's constitutional process, and certainly Sir Joshua Hassan to a greater degree in terms of success rate than

Colonel Peliza, have been the people that we think are worthy of being honoured precisely for that. If we were here to criticise Sir Joshua Hassan then we would need to be saying we did not agree with his fight against parity, we did not agree with the Brussels Process, but this is not what we are saying, what we are saying is we see that we have got an obligation to bring to fruition what was started, undoubtedly, by the post-war creation of the AACR. It was without a doubt that period which caused, it was a period that covered the whole process of decolonisation everywhere else in the Empire, and that should not..... it would be in our judgement far greater a memento to the work that Sir Joshua did in taking Gibraltar forward constitutionally and in a decolonisation process, far greater a memento to his work to actually achieve it than to give him the Freedom of the City. Because at the end of the day, the Freedom of the City for having taken us so far is an important recognition that so little has happened since but if we really want to see that work completed then we need to understand what were the obstacles in his way subsequently to the 1969 Constitution and clearly the obstacles in his way were, the fact that the British Government, having first encouraged, or at least not actively discouraged, the path Gibraltar had undertaken under his leadership, then got cold feet. The attempts, as I have said, were made before the constitution that created this House, the proposals were then consistent with the statement made in 1964, but the UK would not wear it. In 1976 when the second attempt was made and that was the point that I was making before, Mr Speaker, the constitutional proposals were constitutional proposals in terms of producing further levels of self-government but not the final stage of decolonisation proposals and even that was rejected lock, stock and barrel by the United Kingdom where we had a situation where the House set up a Select Committee because the United Kingdom view was to say to this House "look, if you want to have more self-government than you have today....." and that is no different twenty three years later from what they are saying now "if you want more self-government than what we have got already then you just come to us and say 'we want self-government', you have got to sort out amongst yourselves what it is that you want and then come back when you have achieved it". Well, the constitutional proposals that Sir Joshua Hassan, as Chairman of the Committee, a Committee which consisted of Sir Joshua Hassan, of the honourable A P Montegriffo, of the honourable A J Canepa, of Maurice Xiberras and Peter Isola, produced a report which had the support of both parties and which was put to the United Kingdom, and the United Kingdom turned round through its Minister of State for Gibraltar, Roy

Hattersley, in what one might have expected to be a Labour Government not committed to decolonisation and said "you have to await developments in Spain". That was in 1976, we are now 20 years later and in obtaining the self-government that he did in that original constitution in 20 years we have not moved one inch. In practice we may have been given greater responsibility simply because of the United Kingdom's lesser involvement in its facilities in Gibraltar and in its contribution to the economy of Gibraltar and therefore the responsibilities of the Ministers in terms of self-government has grown de facto between 1976 and 1988 when we were elected and we have continued with that same de facto process. But I believe that the AACR would have pressed ahead with pushing for greater self-government than was already there in the actual written constitution and indeed the honourable Mr Montegriffo was the mover of the 1986 Conference asking for this to be included in the 1988 manifesto of the AACR and it was included in a watered down form saying all the implications of it should be studied. There can be no doubt that the concept of the right to our land is a concept that was born in the AACR and defended by Sir Joshua Hassan as the natural aspiration of the Gibraltarian people. The slogan of the AACR defended by Sir Joshua Hassan was that we wanted to be with Britain and not under Britain and there were some misguided people who thought that that made him anti-British, which is not the case, of course, in his case or in anybody else's case. But that concept of pushing forward along a route, is something that we owe it to him for the contribution that he made to make sure that it is maintained alive with the original spirit that led to the feeling of being a Gibraltarian. The sense of identity of our people, which we in the GSLP believe needs to be constantly added to and strengthened, was what created the AACR when the repatriation of our people after the evacuation was one of the major issues where Sir Joshua was one of the major figures and you yourself, Mr Speaker, were closely involved in those battles and indeed the fact that our people were dispersed, and if they had not been a real people, as the Spaniards have tried to make out, if we were simply British expatriates stuck out in a military base in the Mediterranean and not a real people with our own real identity, that would have been reflected in people settling wherever they had been dispersed to, but in fact there was a drive and that was one of the elements that led to the political development of Gibraltar in a way which was very significant. The history, of course, of obtaining transfers of power to Gibraltarian-elected leaders goes back to the City Council days and indeed the level of self-government in some respects prior to the 1969 Constitution which was achieved, we are talking

about something that was achieved 32 years ago, was in some respects greater than it was as a result of the 1969 Constitution. The 1969 Constitution, which was intended to take us forward, actually by merging the City Council, gave the elected representatives in a big area of public expenditure, less control from the paper controls of the colonial power than were produced as a result of the merger. We have to recognise that those solid foundations that were created in the 1960s and the difficulties that have been put in the way of successive governments in taking the matter to completion means that there can be no doubt that without that original contribution and without the role played by Sir Joshua Hassan in pushing us to the limit of constitutional development in terms of local self-government we would now be fighting an almost impossible task. Without that having been done at that time and if more had been achieved at that time I am sure that we would not now be needing to do it ourselves with the difficulties we have now. In those years the vision and the clarity of where Gibraltar needed to finish got a much more sympathetic hearing, I think partly because of the unacceptability of course of the regime that ruled next door and partly because we were part of a movement that was really a movement taking place in many other colonies. It was the thinking, the terminology, the idea and the vision that we had here was the counterpart of what other colonial leaders were doing elsewhere and Sir Joshua belongs in that era, in that period, with those colonial leaders, leading us in a direction which many of us since have tried to pursue and follow and develop and bring to where we would have been but for the obstacles that were put in the place of the Government of Gibraltar which were not put in the place of other colonies. Other Colonies did not face the difficulties we had, a problem of obtaining self-government in the fullest sense of the word in Gibraltar which no other colony has met because in other colonies it was imply the resistance of the colonial administration which was worn down and the progress that Gibraltar obtained under Sir Joshua Hassan was precisely a process of wearing down that resistance and getting transfers of power from a colonial administrator to an elected leader but it was subsequently that we faced a totally new situation and had that not happened I am sure that we would today have been decolonised and that indeed we would have been decolonised whilst Sir Joshua Hassan was still the Chief Minister of Gibraltar because that was the target that he set for the AACR and for the philosophy and the direction in which we had to go as a colonial people in obtaining self-government for our country.

Let me say, Mr Speaker, that we would have supported the Motion when it was brought at the time had it been moved and that in moving it at this time we are doing it in the context of the emphasis that we are placing because we particularly see this as an important juncture in our history as to the emphasis that we put on self-determination, on self-government, on decolonisation as opposed to any other year in recent history. I have been asked by the media how come we did not move this Motion before? The reason that we have given for moving it now are related precisely to the importance we attach to self-government and self-determination and decolonisation and to the key role that Sir Joshua played in that which we consider to be of paramount importance at this particular point in the history of Gibraltar. Obviously, at any time after Sir Joshua retired in 1987, it would have been open to anybody else and not just to the GSLP to bring a Motion to this House. The AACR could have brought it in 1988 or 89, the honourable Mr Caruana could have brought it when he won the bye-election in 1991, the GSD Opposition could have brought it any time after 1992 and it was not until Mr Cumming brought it in 1995 that anybody thought of doing it. We are bringing it at this time because we are linking it to the crucial period in the term of this House with the target date of the United Nations Resolutions for the eradication of colonialism by the year 2000, and to achieve self-government for Gibraltar and to properly recognise the outstanding contribution that Sir Joshua made in obtaining the self-government we now enjoy. It seems to us no better timing than in the House that will see a period of time where the UN is saying, by the end of the century colonialism should not exist anywhere anymore, and our commitment to try and be consistent with that UN Resolution to participate in the action plan, to show our determination, must reflect in our judgement the determination that Sir Joshua and the AACR showed in getting us, so long ago, as long ago as 1964, to the point of self-government that we have today and to make up for lost time by marking his contribution first by giving him the Freedom of the City and, second, by achieving what he would have wanted to achieve 32 years ago. I commend the Motion to the House.

Question proposed.

HON CHIEF MINISTER:

Mr Speaker, when we received notice of this motion we formed the view that this was an act of political engineering on the part of the mover. Frankly, having heard him during the

last hour I have to congratulate myself on the astuteness of the analysis that I made on simply receiving the notice of the motion. It really beggars belief that a Chief Minister of Gibraltar during the last eight years who has not had the political generosity to recognise the outstanding achievements of his predecessor whilst he was in a position to give it to him from the Government benches, should now be able to speak for an hour on a motion to grant Sir Joshua Hassan the Freedom of the City and have spent 55 minutes repeating the same point about the methods of decolonisation and made one, for example, one passing reference which took no more than 15 seconds to the main role in the repatriation of the Gibraltar evacuees. That does not seem to me like the motion brought by a man that genuinely wants to recognise Sir Joshua Hassan's contribution to this community. How can he speak for more than an hour about Sir Joshua Hassan's contribution to this community and not have mentioned that he has been Chief Minister or otherwise political leader of this community for 40 years? As if these were inconsequential punctuation marks in the man's political curriculum vitae and all the lecturing that he has given us on his views and not Sir Joshua's views on the direction for Gibraltar constitute the citation for Sir Joshua's entitlement to the honour of the City. Frankly, what it proves is the political manipulation to which he believes this House is going to allow itself to be subjected and it is not. He brings this motion not because he thinks Sir Joshua Hassan deserves it but by his own admission because it is an important juncture in Gibraltar's quest for decolonisation. In other words, he brings it as a matter of timing, not related to Sir Joshua's rights which is self-evident from the fact that he has not brought it during the last eight years, but because for some extraneous reason, namely, Gibraltar's self-determination agenda, and that he brings the motion not in recognition of all the number of things that Sir Joshua has done, and I have never been a member of his Party or any Party of which he has been the leader or even a member, but as a citizen of Gibraltar. To suggest that Sir Joshua Hassan's entitlement to receive the Freedom of this City answers to the fact that he took us so far on self-determination is frankly a distortion, and if there had been a stranger, a visitor to Gibraltar, I urge the House to subject the honourable the Leader of the Opposition's performance by this yardstick, if there had been a visitor to Gibraltar, a stranger, sitting in the Public Gallery here would he have gone away with the notion on the basis of what he has heard so far, that this was Gibraltar's parliament debating the bestowment of the Freedom of the City on Sir Joshua Hassan in recognition of everything that he has done for Gibraltar? The answer to

that question must be no, and I do not know what makes the honourable Members think that this Government is not committed to the principles of decolonisation. It is the approach to achieving decolonisation that has been endorsed by Sir Joshua and now here he is trying to bestow the Freedom of the City on Sir Joshua, hijacking the man's views as if to suggest that they coincide more with his than with the Government's. He must know that that is not the case and the reason why I have not brought this motion at some time during the last five years is because Sir Joshua Hassan always asked me not to do so because either he wanted it from the Government of the day in recognition of his services in a non-partisan political fashion or he did not want it at all. As the honourable the Leader of the Opposition studiously and premeditatedly declined that act of generosity to a man who has done more for Gibraltar than he has so far been able to achieve himself, it is for that reason that I respected Sir Joshua's wish not to bring the motion because he wanted it from you, moved by you and supported by the whole House.

Mr Speaker, this Motion, even compared to the other one of which Notice has been given, is at the very least mealy-mouthed in its recognition of Sir Joshua Hassan's contribution and, frankly, this Government is not willing to support a motion granting the Freedom of the City to Sir Joshua in terms which suggests that all that he has done is played an outstanding part in obtaining self-government for Gibraltar as if he had done nothing else for which he might deserve the Freedom of the City. Mr Speaker, it is for those reasons that I give notice, that I move an amendment to the motion presently before the House. Mr Speaker, the amendment is that all the words after the words "That" be deleted from the motion as it presently stands and replaced by all the words appearing in the notice of motion that I myself have given and which I now read so that the motion as amended would read:

"That this House:

1. Acknowledges the long and distinguished political career of Sir Joshua Hassan;
2. Applauds his outstanding international representation of Gibraltar and his tireless promotion of the rights of the Gibraltarians;
3. Recognises the extraordinary contribution made by him in the achievement of self-government, the progress in

constitutional advancement and in the shaping of the modern day identity of our people;

4. Pays tribute on behalf of all Gibraltarians to his life time dedication and commitment to the interests of Gibraltar;

5. And in recognition thereof resolves to bestow on him the highest honour that this House can bestow on a citizen of Gibraltar, namely the honorary Freedom of the City of Gibraltar."

Mr Speaker, a motion and I presume that I am now speaking to the amendment.

MR SPEAKER:

You are speaking to the amendment.

HON CHIEF MINISTER:

Mr Speaker, a motion in these terms is in our view long, long, overdue. Gibraltarians of all political persuasions have long expected that this, who is recognised in Gibraltar's Constitutional List of Precedence as a leading and distinguished citizen ought to have that status bestowed on him and recognised by this the Parliament which he was instrumental in creating, in which he served both here and in its predecessor's representative assembly. As I have said, Mr Speaker, Sir Joshua has occupied the position which I now occupy and which the honourable the Leader of the Opposition has occupied before me, in its current form or in its previous form, almost continuously for 40 years. He spearheaded the Constitutional development from which this very House came into existence. A far cry from the colonial situation which he and other pioneering citizens had to contend with when he started his political career during the war years. Internationally, Sir Joshua Hassan is regarded as the father of the Gibraltarian identity and this I do not think is an exaggerated statement. The motion, Mr Speaker, as amended, opens by acknowledging his long and distinguished career. A career dedicated to the service of the people of Gibraltar in all respects and not just in relation to our aspirations to self-determination. A career which started when the young, Salvador Hassan volunteered to help the evacuation authorities during the war years, compiling lists of families involved, assessing their needs and their means. It was in this way that he met a large

cross-section of the population and more importantly from his point of view they got to know him. In fact, his first major contribution came in this connection when he helped in drafting the rules and constitution of the Party that was later to become synonymous with himself, the Association for the Advancement of Civil Rights which was born within the Trade Union movement, conceived by prominent workers' leaders at the time, such as Albert Risso and Emilio Alvarez. This was initially formed as a protest group concerned about the plight of the Gibraltarian evacuees in London, Jamaica and Madeira and I think that the recognition that Sir Joshua played in that process deserves to be recognised in slightly more expanded and expansive terms than the honourable the Leader of the Opposition alluded to in his own address on his own motion. Mr Speaker, having ensured the return of Gibraltar's evacuees, the next phase in Sir Joshua Hassan's political career took the form of the constitutional development period, a process which lasted in effect 26 years and was crowned with the successful enactment of the 1969 Constitution giving the Rock almost complete internal self-government, an achievement which Sir Joshua regards as one of the most important in his political life. The second phase to which the honourable Member opposite, the Leader of the Opposition, has not even alluded in passing is Sir Joshua Hassan's participation in the United Nations initiatives between 1963 and 1969. Mr Speaker, it is not also appropriate to ignore the role played by Sir Joshua Hassan and his political colleagues in the domestic and internal government of Gibraltar during the closed frontier years, during the fifteenth siege of Gibraltar. Mr Speaker, Sir Joshua Hassan has throughout his career received, apart from the accolade of being continuously and continually re-elected by the people of Gibraltar as their democratically-elected political leader, he has received other accolades during this time. He has received the Knight Grand Cross of the British Empire, the Knight of St Michael and St George, the Knight Bachelor, he is a Lieutenant of the Victorian Order, he is professionally of course a Queen's Counsel, and a Justice of the Peace. Mr Speaker, as from today's date he will no doubt be proud of perhaps the next most worthy recognition, after the accolade of repeated election by the people of Gibraltar, namely the granting of the Freedom of his City, the City that he has been so very instrumental in creating in all its facets. Mr Speaker, in commending the motion, as amended to this House, I know that it will be warmly welcomed not just by the Members of this House but by the people of Gibraltar as a whole as a more comprehensive balance and fair recognition of what has been Sir Joshua Hassan's outstanding contribution to all the affairs and interests of Gibraltar

since the war years and the people of all political persuasions, even those who were not political supporters of Sir Joshua, whilst he was politically active, will recognise that this is an accolade to which, if he is not entitled in these generous terms, then it is difficult to conceive who else might be.

I commend my amendment to the House.

Question proposed.

HON J BOSSANO:

I will certainly need to speak, Mr Speaker, in response to the introduction that was made to the amendment. The hon the Chief Minister, since he arrived here, has converted almost every occasion into a censure on the GSLP Government and clearly intends to continue with that methodology now that he is in Government and we are in Opposition. Let me say that the only time we have had a similar situation was in 1987 when just before the General Election, the AACR moved a censure motion against us which we thought was a complete inversion of the roles of this House. Mr Speaker, when I was originally moving my motion, the hon the Chief Minister, at one stage interrupted to say that I was departing from the text and that I had to be relevant. He now moves an amendment because he argues that by limiting myself to obtaining self-government I have not mentioned the things other than self-government that Sir Joshua Hassan did throughout his long and distinguished political career. But of course that is because the motion that I was moving was only looking at that one aspect and it was the same motion that was brought to the House by Mr Peter Cumming who often claimed in this House to have regular meetings with Sir Joshua and look him straight in the eye. I am sure the Member will remember that. So I do not know whether it was, that Mr Cumming did not seek to discuss the text of the motion that he brought in 1995 to this House with Sir Joshua, and that the Member opposite has in fact consulted him on the drafting of this and maybe even on the drafting of his defence of the amendment. Who knows? All I can say is that we have revived a motion that was brought here originally by somebody who claimed to be a fervent admirer to Sir Joshua and who could not be possibly considered to have been doing him a disservice in the way the motion was drafted. We have a typical situation here of the double standards of the Government that when Mr Cumming brought the same motion with the same wording nobody started imputing sinister motives to him. I come along three months' later and do exactly the same thing and the Chief Minister

immediately says that the moment he saw the motion he came to the conclusion that there was some ulterior motive behind it. Why did he not come to that conclusion when Mr Cumming gave notice of his motion in the first instance which is word for word? In fact, I asked for the motion that he had produced to make sure that I was not deviating one iota from it, and since we owed Mr Cumming's presence in this House in the previous legislature to the fact that he was sponsored by the Member opposite as one of his candidates in 1992, then presumably he must know him well enough and know his thinking well enough and know of his admiration for the long and distinguished political career of Sir Joshua Hassan to know that in moving the motion without mentioning all those other things, Mr Cumming could not possibly have been wanting to do anything to hurt Sir Joshua's feelings. Of course, nobody in this House in the time that Sir Joshua has been here has ever questioned the tireless promotion of the rights of the Gibraltarian and his outstanding international representation but he did stop going to the United Nations a very long time ago and I do not know whether he stopped going to the United Nations, Mr Speaker, and stopped his outstanding international representation of Gibraltar after 1967 because he felt that there was no mileage in going there or because he was discouraged from going there by the British Government as indeed they tried so forcibly to discourage me in 1992 from taking over from where Sir Joshua had left off in 1967. But given that the representation that he made of our interests and the defence of self-determination that he made, which the second point in the amendment of the Chief Minister presumably refers to, the outstanding international representation of Gibraltar I imagine refers to, primarily, the hon the Chief Minister has not pointed out whether this is in fact in reference to the promotion of the right of Gibraltarians which presumably means the right to our land and the representation and the defence of the right of self-determination before the UN, before the Committee of 24, before the Fourth Committee. Obviously the representation of Gibraltar within the negotiating process that was started with Spain is not something that could have been all that effective, because the hon the Chief Minister, in his recent participation in Papua New Guinea described us as being a mere interested onlooker. He said that is what it was, that the structure made him a mere interested onlooker. I do not think we are going to jump for joy because we have got the Chief Minister of Gibraltar as a mere interested onlooker, so that cannot be the international representation of Gibraltar that we are talking about, and certainly, we tried to persuade Sir Joshua in 1984 and failed, let me say, but we did try to persuade him in this House, not to endorse the Brussels

negotiating process. That did not mean that we thought in accepting it he was doing anything other than doing what in his judgement was in the best interests of the people of Gibraltar. We thought that he was making an error of judgement which we can all make and we tried to persuade him to act differently and therefore I have to say to the Chief Minister that I certainly was not aware that Sir Joshua Hassan felt that if he was going to be given the Freedom of the City it ought to have been moved by the GSLP Government and not by anybody else in this House. If that is what he wanted, then obviously it may well be that it had something to do with Mr Cumming withdrawing the motion the last time round before moving it, because he did not want Mr Cumming to be the mover, he wanted it to be me, last year. Had I known that we would have taken steps to re-introduce it at a subsequent meeting of the House. Recognising the extraordinary contribution made by him in the achievement of self-government is in fact a repetition of what is in my original motion and I think the achievement of self-government is not complete but that what we have is what he achieved. That is precisely the main thrust of the point that we have been making in moving the Chief Minister, in the third point of his amendment, in talking about the progress in constitutional advancement and in the shaping of the modern day identity of our people, well, I have no doubt that the modern day identity of our people that Sir Joshua Hassan was shaping was the identity of people coming out in the national colours on National Day, that is the kind of modern day identity that the AACR stood for and that Sir Joshua stood for and not one where people started writing letters to the paper saying why are we not on National Day waving the Union Jack. Well, the Scots do not do it on their national day and the Welsh do not do it on their national day. But certainly the modern day identity of our people that Sir Joshua is to be congratulated for and the contribution that he made in that was the contribution of the sentiment of the right of our land as Gibraltarians, not as anything else. We honestly believe that we have been promoting that in clearer and stronger terms than anybody else since the original drive when it was a very clear position which subsequently I think became less clear with this problem of the timing. In talking about the progress in constitutional advance which is point number three of the Chief Minister's amendment, I have already made a passing reference to the constitutional proposals which led to the creation of this House. The Chief Minister has said, that Sir Joshua was the man that produced this House of Assembly, in his remarks in support of his amendment. On the 9 March 1968 in fact a press release was issued from the Chief Minister's office, in those days people did not think that

if a press release came out from the Chief Minister's Office it meant that you could sue the Chief Minister personally, Mr Speaker, this is a more recent development. But in 1968 the press release came from the Chief Minister's office as every other press release has come since and will continue to come in future and that made public the analysis and the conclusions of the Committee that had been set up from the elected Members of the Legislative Council on the 5th October 1965. When we are looking at the contribution that he made in the achievement of self-government and the progress in the constitutional advancement, which is point three of the amendment, we have to look at the document to which I have referred which contained the views of the elected Members of the House of Assembly elected on the 10th September 1964. This is the blueprint of the constitutional advance that Sir Joshua was involved in and that was reflected in this Legislative Council setting up a Committee with the hon Peter Isola as Chairman, the hon Mrs Chiappe and the hon Louis Triay as Members. It was that Committee that presented the basis of the constitutional proposals that led to the negotiations in 1968 with the United Kingdom Government and led to the Constitution of 1969 which brought into being the House of Assembly. In that document the Committee starts off by making reference to the Referendum held in September 1967 and indeed to the fact that Gibraltar was being discussed and had been placed on the agenda of the Committee of 24 and that the petitioners, that is the hon Sir Joshua Hassan and the hon Peter Isola had argued the case for constitutional advance in the United Nations. The Committee came to the conclusion that independence had effectively been ruled out by the Referendum results where the people said they wanted to stay linked with the United Kingdom in the vote that they took. Therefore, they considered free association which was being advocated by Sir Joshua Hassan and integration with the United Kingdom which was being promoted by the Integration with Britain Party that made representations to this Committee. The Committee decided that in putting forward the proposals for the constitutional advance which then the Government under Sir Joshua Hassan took forward with the United Kingdom and which led to the visit here of Lord Shepherd who discussed proposals with different sectors of opinion, they came to the conclusion, even then, that free association was the most likely formula but that it still was imperfect to meet our needs. Of course, at the time when the constitutional committee and when Sir Joshua was taking that position in the achievement of self-government and in the progress in the constitutional advancement of our country, the UN limited decolonisation to three options and therefore although the committee recommended that Gibraltar should

cease to be known as a Colony and that it should become known as the City of Gibraltar, and that is why we are able to confer the Freedom of the City to anybody, because if we were not a City we would not be doing it, we might be conferring the Freedom of the Colony I suppose, but that is the closest they came then to actually talking about the decolonisation. That negotiating process produced the constitutional advance of the 1969 Constitution. If we now move to point number four of the amendment of the Chief Minister, I do not think anybody can possibly doubt the lifetime dedication and commitment to the interests of Gibraltar. I think throughout the history of this House and indeed of the Legislative Council, before this House, there has never been any question that the people that have dedicated themselves to defending the rights of the Gibraltarians have been totally committed and we have no hesitation in recognising the commitment and the dedication, even though that commitment and that dedication in much of the history was reflected in policies which we equally committed and equally dedicated, disagreed with. I think one needs to draw a distinction between the two. The Government Members may be very committed, they may be as committed as we are or more or less but it is quite obvious that we do not see things the same way on a whole range of issues which are ideological and philosophical and certainly the policy of slowing down the pace to coincide with the tempo, that suited the Foreign Office, was not one with which we were then or are now in agreement but we recognise that it is a perfectly legitimate and defensible view to say, as some people do, as some Government members do, that we had to go slowly and we had to await for the timing, and that is no reflection on the committee. Clearly, Mr Speaker, the conferment of the Freedom of the City on Sir Joshua or on anybody else is the only thing that this House can do to pay tribute to somebody for the length of time that he has been in the public service and the length of time that he has served in the political life of Gibraltar. Her Majesty's Government has recognised that on a number of occasions with a number of honours. We do not have the ability to bestow such honours, so as point five says, it is not a question of it being the highest honour, it is the only honour that we can give somebody and in giving it, we certainly believe that it is most appropriate to give it for what is most fundamental. Certainly we could not have been in agreement, that notwithstanding the commitment and notwithstanding the dedication and notwithstanding the desire to promote the welfare of the people of Gibraltar, we could not say we need to congratulate him for having resisted parity for four years but obviously he was resisting it, because at the time, in the judgement of the

Government in the United Kingdom and in the judgement of the Government of Gibraltar, it was a bad thing. The Government of the United Kingdom changed its mind in 1976/77 and the Government of Gibraltar followed suit. But in judging what is best for Gibraltar there is no question about the nature of that commitment but there is one where there has never been any division, the one thing on which with various degrees of forcefulness we have consistently agreed has been on the principle of self-determination. Notwithstanding whatever things he may have done other than that, some of which some people may agree with and some of which people may not agree with, if the contribution that he has made has been, to put us on that road, then I submit to the House that my original wording is not an insult to Sir Joshua but to recognise that on the most important and the most fundamental thing it is there that he provided the leadership in Gibraltar which has influenced all those that followed. And if the Chief Minister tells me that Sir Joshua is recognised as the father of Gibraltar and the father of this House internationally it can only be about that. When people look to other colonial territories then they look at Mintoff as the father of Malta because of his drive for decolonisation not necessarily because they agreed with his domestic policies. If they look at Zambia and at Kenneth Kaunda, they see Kaunda as the father of Zambia because of his fight for decolonisation and for self-determination. And it is against the background of colonialism and it is in the period of colonialism that I think Sir Joshua was seen in Gibraltar clearly in an international context as playing the same role here, perhaps with the constraints of having an enemy on the doorstep which did not give us much breathing space and therefore with less militancy that might have been possible in other circumstances in other areas, but that was true also of Belize with Guatemala. The people in Belize that led the right for decolonisation always had to have constantly at the back of their minds that as long as Guatemala was breathing down their necks they could not afford the luxury and therefore, I do not think that one needs to bring a motion to this House in which one lists items of this nature, as the Chief Minister has done, in order to bestow the Freedom of the City of Gibraltar on one of our distinguished citizens, because in fact in support of that, one can say as many things as one wants. I imagine that just like there are four points which the Chief Minister says in his motion justify the bestowing on him, one could sit down and given the length of years that he spent in public office, one could produce a list with 20 points. There is nothing of particular significance as far as we are concerned in the fact that the Chief Minister gives four

reasons for granting the freedom of the city and I give one which means that he gives three more than me. As far as I am concerned that does not mean that he wants to give him four Freedoms and I want to give him one, Mr Speaker. Therefore, we have no problem in altering the motion the way that the Chief Minister wishes to alter because we would not wish to vote against this and give the impression that because the original wording has been altered we are opposing the granting of the Freedom of the City. But let me say that I consider the amendment unnecessary, superfluous, and if you like, Mr Speaker, actually diluting the uniqueness of the contribution in respect of self-determination and self-government which is the one that we think requires highlighting.

HON P C MONTEGRIFFO:

Mr Speaker, I would like to make a short tribute to Sir Joshua not because he is deserving of anything other than an extensive tribute but because the Chief Minister has elaborated on his contribution to Gibraltar and the amendment the Chief Minister has moved reflects the affection and recognition that this House, on behalf of the people of Gibraltar, wishes to bestow on Sir Joshua. Let me say before going into that, Mr Speaker, that we have witnessed today a mockery, a cynical mockery of everything that this process of the granting of the Freedom of the City to Sir Joshua was supposed to be. The honourable Leader of the Opposition has done not just a disservice to Sir Joshua but a disservice to himself. That a man with his parliamentary record should have abused this House in the way that he has is shameful, Mr Speaker, and a complete disservice to this community, to Sir Joshua, and as I say, to himself. There is no heart in the Leader of the Opposition's tribute to Sir Joshua. There is no warmth of affection. There is no real attempt to bestow recognition because it is felt, and because in many respects Sir Joshua is the antithesis of Joe Bossano. Far from Joe Bossano painting himself as somebody following in the footsteps of Sir Joshua he is the antithesis of the whole approach of Sir Joshua Hassan, a man that looked for dialogue, a man that sought not to work with confrontation, a man whose reputation today I believe the Leader of the Opposition has sought to rape for purely political manipulation. I personally first had extended contact with Sir Joshua, Mr Speaker, back in 1981 when I remember Lord Douro came to Gibraltar to take part in a television debate on self-determination and on the future of Gibraltar and I participated as a student in that debate and well remember, even then, Sir Joshua's words of advice to me how we enjoyed

talking with each other and indeed, my very first papers on issues like free association and the United Nations came from Sir Joshua who was eager to transmit with enthusiasm those ideas and that commitment to a young person who he thought also shared his interest in this area. We have talked about everything that he has contributed to Gibraltar but there is one aspect of Sir Joshua which I simply want to highlight which has not been talked about and which I think was his most special feature, Mr Speaker, and that was his ability to have the common touch, his ability always to relate to people, the ability he had to speak to everyone, never to insulate himself in the bunker of Convent Place, always to be receptive to the needs of the individual in the street, and the legacy he leaves as a result is of a man who knows the people of Gibraltar. I can think of no one else who knows the people of Gibraltar like Sir Joshua, a man who knew the pains each family had gone through, the difficulties relatives were suffering, the housing conditions they were going through, the sort of problems a particular son had. Sir Joshua's contribution quite apart from the matters of state which have rightly been focused on, was also a true Gibraltarian and a politician of the people. I perhaps represent the link between the AACR and the GSD and for that I owe a personal debt to Sir Joshua for having interested me in politics and for the extent to which the GSD as a party believes in dialogue, believes in participation, believes in openness and I would like to regard it in that sense at least that the GSD is the legacy of Sir Joshua, that Sir Joshua's philosophy will continue to be promoted by this party and by those perhaps that have supported it.

Thank you.

HON J GABAY:

Mr Speaker, I too have known Sir Joshua for many, many years and have a very high regard for him. Referring to the contribution of the hon Chief Minister, I feel that it was his contribution in fact that has abused the privilege of the honour that we are about to confer on Sir Joshua Hassan. It is with his usual arrogance that he started his preliminaries by accusing the presenter of the motion with all sorts of motives and playing the role of an inverted Mark Anthony as he increasingly fell in love with his own verbosity and rhetoric before he actually sinks as usual into his armchair. The fact remains that he reduced this to an accusation. If the hon Chief Minister's feelings for Sir Joshua are as noble as he claims, he would have overlooked this because the motion as it stands is global and many of

his biographical details that he bored us with are well known to everyone but since he feels entitled to question the motives of other people then I feel that we can question his motives as well. The fact that the central issue that was singled out, that is self-determination and decolonisation, I do not think that I do the hon the Chief Minister an injustice by saying that these in his record, when you analyse it, are not the points that would come more easily to him.

Thank you, Mr Speaker.

HON J C PEREZ:

On the amendment, Mr Speaker, I think that the Government are the ones with the confrontationist attitude that are turning this into a censure motion on the Leader of the Opposition for the only good reason that he has taken the initiative before them of bringing the motion to the House and with the highest respect that I have for Sir Joshua and his long career, and it is something that I say sincerely because we have had lots of differences, but at a personal level the relationship and the mutual respect exists, I think honourable Members should not try and possibly out of spite or because we have come and moved the motion try and make out that there is an ulterior motive other than the very sincere one that the Leader of the Opposition has expressed in moving the motion and rather than accuse us of all sorts of things from political manipulation, because it might not suit honourable Members, what we should do here is, once we are united, being this the first meeting agree to the motion Mr Speaker and it is incredible the confrontationist manner that honourable Members come with that on a motion that we are going to be united they come and they stand up and attack the Leader of the Opposition. The Election is over. You have made your campaign against the person of Joe Bossano, the election campaign is over, it is incredible that we come with a real, sincere motion moved by the honourable the Leader of the Opposition and there are aspersions of political manipulation, of having ulterior motives in moving the motion, all because honourable Members might want to have booked themselves for whatever ulterior motive that might be because they moved heaven and earth to try and bring the motion themselves. It does not service at all to the spirit in which the motion was moved and to the spirit in which the motion ought to be debated and respect in this Chamber, Mr Speaker.

Question proposed.

HON CHIEF MINISTER:

Mr Speaker, I do not wish to reply at all. I do not think anything he has said that warrants or even needs a reply.

HON J BOSSANO:

Let me see if I understand correctly. We are now voting on whether my motion should be amended or not?

MR SPEAKER:

Indeed, that is what we are doing in the terms of the amendment.

HON J BOSSANO:

.....in accordance with the proposed amendment which is a deletion.....

MR SPEAKER:

That is right.

HON CHIEF MINISTER:

I do not think the honourable the Leader of the Opposition can speak in reply on the amendment. He can speak after.....

HON J BOSSANO:

No, no, Mr Speaker, I am not speaking on the amendment, I am trying to establish that what we are doing now is taking a vote whether the motion as originally moved by me should be amended or not, am I correct?

MR SPEAKER:

Yes, should be amended in these terms.

HON J BOSSANO:

.....in order to replace it with the words.....

MR SPEAKER:

When you vote you are already accepting the wording.

HON J BOSSANO:

But the amendment is the deletion of what and the replacement by what, Mr Speaker, if I can ask?

MR SPEAKER:

The hon the Chief Minister gave it.

HON J BOSSANO:

The deletion of all the words?

MR SPEAKER:

Yes, except "That".

HON CHIEF MINISTER:

The Leader of the Opposition is well acquainted with this since he invented it.

HON J BOSSANO:

So what we are saying is we are leaving the word "that".....

MR SPEAKER:

Yes.

Question put on the amendment to the motion. The House voted.

For the Ayes:

The Hon K Azzopardi
The Hon J Baldachino
The Hon J Bossano
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J Gabay
The Hon J J Holliday
The Hon A Isola

The Hon Dr B A Linares
The Hon Miss M I Montegriffo
The Hon P C Montegriffo
The Hon J J Netto
The Hon R Mor
The Hon J C Perez
The Hon Miss K Dawson
The Hon B Traynor

The motion, as amended, was carried. The original motion was defeated.

MR SPEAKER:

The amendment is now carried but we have still got to vote, if you want it, on the original motion as amended. The father of the House can claim the last word and he can have it.

HON CHIEF MINISTER:

Mr Speaker, on a point of order, I think once the motion has been amended the original one no longer stands, I think that is the practice of this House. Mr Speaker, the honourable Member knows that what I am saying is the case and it is no use trying to.....

HON J C PEREZ:

I am sorry Mr Speaker, he always thinks that there are ulterior motives for everything. What the honourable Member has moved is an amendment to a motion. The vote that has been taken is whether that motion should be amended or not. Now on the Order Table in my view, Mr Speaker, what there is is an amended motion for which we have to vote again. This is what we have always done here whether the honourable Member thinks it or not.

HON CHIEF MINISTER: .

We have never done that here. Votes to see on whether we amend and then on the wording of the amendment.

HON J C PEREZ:

You check with Hansard.

HON J BOSSANO:

Of the original motion that I moved, the only word that remains is "that" so we now have my motion as amended by the proposed amendment on the table, it still happens to be my motion that I originally moved and which has been amended by the Government.

MR SPEAKER:

I am prepared to go that way, it is a question of voting again, and I do not think you need a division now, do you?

HON J BOSSANO:

I would think not, I think we are all very clear that we are unanimously supporting the conferment of the Freedom of the City on Sir Joshua Hassan. As far as we are concerned, primarily and predominantly for the role that he has played in constitutional development and as far as the Government Members are concerned in addition to that.....

HON CHIEF MINISTER:

As a matter of order. This is an abomination, we can no longer vote on his original motion, it is no longer before the House. It has been amended, with his consent, the wording that he put on the table is no longer on the table and cannot be voted on.

MR SPEAKER:

I am going to recess for 10 minutes to have a word with the Clerk. I think that is the way to do it.

The House recessed at 7.00 pm.

The House resumed at 7.15 pm.

MR SPEAKER:

(Inaudible)

HON J BOSSANO:

Thank you, Mr Speaker, that is what I was in the process of doing in fact and I was saying that the motion, as amended, reflects the recognition of the whole House where in fact it is only a question of the emphasis that we would be giving

which is in fact reflected in the motion, as amended, in one of the paragraphs, that has introduced an element of disagreement in terms of what is the most relevant part of the political career of Sir Joshua Hassan. There is no doubt that in the contributions that he has made in Gibraltar there are many things that he has been a major mover on, certainly one could think in domestic matters, of the early horrendous housing problem that Gibraltar faces in its early years and how the initiative for housing people came at that stage in most of the public housing estates of Gibraltar. We sincerely believe that when the chapter is finally closed on the road to decolonisation he will be remembered, without a doubt, as the man that put us on that path and therefore it is very welcome that that should be included in the motion, as amended.

MR SPEAKER:

(Inaudible)

HON J BOSSANO:

Mr Speaker, I beg to move the motion of which I have given notice:- "That the Honorary Freedom of the City of Gibraltar be conferred upon Colonel Robert Peliza for his lifelong commitment as Chief Minister, as Leader of the Opposition, as Speaker of this House, in promoting and strengthening the links between Gibraltar and the United Kingdom." As in the previous motion which we have just debated, one could consider that this motion is deficient by simply referring to one particular aspect of the contribution that has been made by Bob Peliza but we have limited ourselves to that because, again, it is in this area of the inalienable right of the Gibraltarians to determine the future of our country, that we think that the lifelong commitment of Bob Peliza can stand out because of course in the history of the political life of Gibraltar, whether it is the House of Assembly, which Bob Peliza initiated as Chief Minister in 1969 and where the Government that he led was in office between 1969 and 1972 or in the administrations, in the Legislative Council, there were and there have been many individuals who perhaps have not served as long but whose commitment and dedication to many aspects of the development of Gibraltar has not been any less simply for being shorter. But, just like in the case of Sir Joshua, the fundamental issue which was the cornerstone of the political philosophy of Bob Peliza, was a particular emphasis on the element that was most important in the decolonisation process. The link with the United Kingdom was a fundamental part of the electoral platform of the Integration Party in the 1969 Constitution.

It was, as I have already said by reference to the constitutional proposals that led to the 1969 Constitution, which were put there by the Integration Party before the Constitutional Committee, the one element on which the thinking of Bob Peliza politically was reflected and as was mentioned in the Official Opening of the House by the Chief Minister, in that Constitutional Conference the most adamant lobbying on the need for the Preamble to the Constitution was being made at the time by Bob Peliza even before he had been elected to this House. At one stage, of course, Bob Peliza was a member of the AACR before that, but today we still see that Preamble to the Constitution being constantly referred to as the cornerstone of the British Government's policy in respect of Gibraltar's decolonisation. A policy which now we feel does not go far enough but of course we feel it does not go far enough because it is already there and because it has been there for a very long time. In the visit we had from Madam Speaker from the House of Commons we had that exchange which reflected the commitment in the Preamble to the Constitution and the link with the United Kingdom. That was an initiative of Bob Peliza. In the establishment of the Gibraltar Branch of the British European Movement, Bob Peliza was the main mover. Clearly, if there had been unanimity in support of integration with the United Kingdom in those days, the result might have been different. One never knows, although, frankly, I myself was closely involved with Bob Peliza in those days and indeed I remember that even before the establishment of the Integration with Britain Party the original lobby of the pro-integration movement was within the AACR. It was an attempt to persuade the AACR to move from the philosophy of free association to the philosophy of integration, and it was subsequent to that, that the integrationist wing of the AACR took a different path. That link between Gibraltar and the United Kingdom which has been a lifelong commitment of Bob Peliza is, of course, something that we all continue to subscribe to as an element that should continue in existence in a different form from the form it takes today subsequent to Gibraltar's decolonisation. We included in the recent General Election constitutional proposals which contain the element of Gibraltar coming under the Home Office in a decolonised relationship and that was not a new idea, it was something that has been there as well from the constitutional conference of 1968. In the report produced by the Committee of the Legislative Council, to which I have referred in the previous motion, there was included a proposal for the UK's consideration that Gibraltar should come under the Home Office just like the Channel Islands and the Isle of Man that enjoy internal self-government and that are not included by the United Nations because they were

never so included by the United Kingdom, let me say. The United Kingdom decided that when it submitted the list of non-self-governing territories that would require to be decolonised, Gibraltar should be placed on that list and the Isle of Man and the Channel Islands should not. It was one of the original arguments that the Spanish representatives used to throw back at the United Kingdom representative in the United Nations, that it was not Spain that had put us down on the list of territories requiring decolonisation, that it was the United Kingdom and the fact is, that the territories that were there when the original list was drawn up and when a reporting requirement was demanded of the United Kingdom as the administering power under Article 73(e) of the Charter of the United Nations, that list in the case of the United Kingdom and indeed in the case of every other colonial power was actually left to the colonial power and because the United Kingdom did not treat the Isle of Man as a colony, the Isle of Man, notwithstanding the fact that the United Kingdom has responsibility for its foreign affairs and for its defence, was never seen as a territory that required decolonisation. Spain did not include, when it joined the United Nations in the 1950's, Ceuta or Melilla as places that required decolonisation, and even though the Kingdom of Morocco tried to argue that they should so be included the position was that it was a matter for the colonial power, for the administering power to put it there and therefore even before the present Constitution was agreed, that was seen by the Committee of the Legislative Council and accepted with everybody's support, as a way of retaining that link that Bob Peliza defended throughout his involvement in Gibraltar's public life in a way that was consistent with the constitutional relationships that the United Kingdom had with those small territories off its shores that were not totally self-governing but were, on the other hand, not colonial territories and did not become dependent territories when the terminology was amended. Promoting and strengthening the link between Gibraltar and the United Kingdom has always been a difficult exercise in Gibraltar when the philosophy of the direction in which we wanted to go and the direction in which the United Kingdom, in its global policies on foreign affairs, prefer that we should go and the reflection today of the unanimity that there is in ensuring that a decolonised Gibraltar maintains a relationship with the United Kingdom which will basically ensure that the UK acts as the agent of Gibraltar in discharging its responsibilities for our external affairs is something that was identified in the exercise that was carried out in 1986 in the decolonisation proposals on free association. So, although there was a clear division in the political life of Gibraltar in respect of whether the

preferred option for exercising self-determination should be free association or should be integration, the truth is that the free association proposals that have been recognised and accepted by the United Nations, and there are three of them, two with New Zealand and one with the United States, all produce a link but a link which is non-colonial because it is not a link of superiority. It is a link of equality, it is a link under which the strength of that link is one where the sovereign state cannot and must not exercise its responsibilities for the territory that is linked to it by way what is in the best interest of the sovereign state and what is in the best interest of the territory that is linked to it. Promoting and strengthening the link other than through a process of complete integration which ceased to be a tenable option in 1976 and which as recently as a couple of years ago was once again ruled out by the Minister of State David Heathcoat-Amory in an interview where he volunteered that the United Kingdom would not be willing to consider proposals for integration just like Roy Hattersley had done in 1976 even though on neither of the two occasions anybody had asked the question. The information was volunteered to pre-empt the thought crossing anybody's mind. Other than that, where the essence of such a link is that the self-government is achieved because the link converts into a relationship where there may be a level of local autonomy but the sovereign of the territory rests fully with the parliament of the sovereign state, and the people in the territory are represented in the parliament of the sovereign state and participate in electing it. In our Constitution the link in the Preamble states that the territory cannot pass under the sovereignty of another state without an Act of Parliament and there is a commitment that we, the people, will not pass against our wishes under the sovereignty of a foreign power and the reality of that is that that means that neither the territory nor the people can be handed over against our wishes although in the actual wording there is an apparent distinction and that apparent distinction is of course because of the sovereignty of parliament in disposing of Crown properties. Developing and strengthening the link in the way that Bob Peliza saw it was something that was resisted by the United Kingdom Government and many of us felt that in some respects apart from the difficulty of convincing the United Nations that this was a legitimate exercise of self-determination which was certainly in the environment of the 1960's have been extremely difficult given that the whole thrust of the decolonisation process then was one of hostility towards the administering powers in the different colonial territories, apart from that difficulty many of us felt that part of the problem lay in the finality of that development. Developing that link and

strengthening it to the degree of decolonising by integration created an irreversible process because of course any change after that would have been, in constitutional terms, breaking up the territorial integrity of the sovereign state. Not an impossible situation as we have seen in some parts of Europe and indeed as we are seeing in the case of Northern Ireland, by definition the process that has been started does not discard the possibility of Northern Ireland, at some future date, leaving the United Kingdom. The United Kingdom Government has said it will never be done against the wishes of the people in Northern Ireland but we are seeing that breaking up a state that is integrated is today not considered as impossible as it was in those days. So, to the extent that the ultimate strengthening of the link with UK meant integration, the resistance of the UK Government as I have said, Mr Speaker, was seen by many in Gibraltar as reflecting a view that was being put and that continues to be put and that has been a feature of the colonial relationship for the last thirty years that the people of Gibraltar would never be handed over to a foreign power against their wishes but that the UK would not stand in the way of such a transfer if that was what the people wished, and in promoting and strengthening the link between the United Kingdom and Gibraltar, of course, Bob Peliza, and many others close to him, were advocating the development of a constitutional relationship which would make, if not an impossibility, as near an impossibility as it was possible to achieve politically. The idea that the door should always be open to an option of unlinking with the United Kingdom, was the very anti-thesis of the philosophy of Bob Peliza, and not because there is not an argument which was used by other people, those who were critical of his views argued at the time that one never knew what future generations of Gibraltarians might decide. If in a hundred years' time future generations of Gibraltarians have a different view, then irrespective of the decisions that we take in this House today or of the position that Bob Peliza took politically throughout his different roles in public life in Gibraltar, nothing could prevent that happening, but certainly saying we must not try and make that difficult was not a necessary logical consequence and therefore what Bob Peliza tried to do throughout this contribution and as I have said we are concentrating just on his contribution to the decolonisation of Gibraltar, just like in the other motion we felt that that was the important element, we do so as well in respect of Bob Peliza. His view was that those of us who did not want it to happen could not be neutral on this. We had to promote the route and try and put in the safeguards and try and tie things up. We in this House have

in the last legislature in fact wanted to go further than the Preamble of the Constitution, particularly by reference to the nature of the commitment that is included in the Constitution of the Falkland Islands where, not as a preamble, but as the opening paragraph of the constitution there is an unambiguous clear commitment to the right of self-determination of the Falkland Islanders. We have got a motion that was carried unanimously in this House which the United Kingdom Government did not reject out of hand, they said they were prepared to look at and again I think that in the case of Bob Peliza in recognising his contribution to securing Gibraltar's future in a way that confirms to what the vast majority of Gibraltarians want, we would be honouring him more by pursuing that indeed than we could by granting him the Freedom of the City. The Freedom of the City is simply a practical way of reflecting a recognition of the importance of these issues but we need to continue to work to achieve the commitment. We feel that it is appropriate at this stage, immediately after an election covering this four-year crucial period again in the context of the eradication of colonialism by the year 2000, that we should at the same time give recognition to the other political figure that has been most closely involved in some respects in the process of decolonisation that appeared at some stage at the height of the time, when these views were being put forward appeared to be one the antithesis of the other but which we feel in fact are reconcilable, can be reconciled and lead to the same end. Therefore it is on that basis that we have moved that the time is now right to honour Colonel Bob Peliza, particularly and especially, for this particular element of his contribution to public life.

Question proposed.

HON CHIEF MINISTER:

Mr Speaker, the essence of uncontroversial procedures lies in consultation and consensus. It is not appropriate for Opposition Members to constantly regret that we make things that are supposed to be uncontroversial controversial when they depart from the traditions which are that there is consultation between both sides of the House before motions are brought bestowing the Freedom of the City, not a tradition to which the Leader of the Opposition subscribes because of course, Mr Speaker, he did not do it in relation to the last motion that he brought granting the Freedom of the City to the Royal Marines. If these uncontroversial things such as motions granting the Freedom of the City become controversial they make them controversial by studiously avoiding the process of consultation which would

have permitted them to remain within the realms of the uncontroversial. The honourable Leader of the Opposition, in moving both motions that we have debated today, has attached great importance to the question of timing and indeed the Government on this occasion considers that one of the issues which this motion raises is indeed the question of timing. The House will know that I have never been shy to heap praise on Bob Peliza for his political attainments, although it was not the first time that I had done so, the most recent was during the ceremonial opening of this House. I have on various occasions recognised his achievements in relation to the Preamble, his achievements in relation to obtaining the right of Gibraltarians to register as British citizens under the British Nationality Act, and the British Government wanted to exclude Gibraltar from that, and indeed there are others, but it is odd, Mr Speaker, that in justifying the previous motion the honourable Leader of the Opposition should say that he should only concentrate on the one thing. That is why the previous motion, in his opinion, was correctly formulated by simple reference to the fact that Sir Joshua Hassan played in obtaining self-government for Gibraltar, yet on this motion there is a litany, because what he asks us to do is to grant the Freedom of the City to Major Peliza not just because of the role that he has played in strengthening the links between Gibraltar and the United Kingdom, which would have been the equivalent of the outstanding part he played in obtaining self-government for Gibraltar, on this occasion he prefixes it by his lifelong commitment as Chief Minister, Leader of the Opposition and Speaker of this House. So, where are we now in terms of the fact that there is only the need to highlight the one important fact or has Sir Joshua Hassan not been the Chief Minister and the Leader of the Opposition, and a lifelong commitment in addition to the one issue which he said was the important one and therefore the only reason why he says he wants to limit the motion to that. There is just lack of consistency in the argument and it is precisely that lack of consistency in the wording which caused us to view his motivation with suspicion because there is a simple difference of approach to the wording of these motions which reveals the spirit with which he intended them.

Mr Speaker, the question of timing is of the essence. We believe it would be incongruous for this House to have taken more than eight years, now nearly nine years, in recognising Sir Joshua Hassan's considerable achievements by bestowing the Freedom of the City on him and consider at the same time that the timing now is also right to at the same time bestow the Freedom of the City on Bob Peliza who, in our opinion, is deserving of the Freedom of the City. But as the

honourable Leader of the Opposition has himself identified timing as a crucial factor in the bringing of these motions, then I feel entirely justified to rely on it myself in relation to this motion too.

Mr Speaker, it is the opinion of the Government that having waited for more than eight years, to confer the Freedom of the City on Sir Joshua Hassan for his considerable achievements on behalf of Gibraltar, it is appropriate that this should be his day and only his day. It is for that reason that we propose an amendment to the motion placed before the House by the honourable the Leader of the Opposition, the honourable Members of the Opposition have the wording of it, I do not know if the Chair does. Mr speaker, it has been pointed out to me that the grammar is wrong. The words "at an appropriate occasion" should be at the end rather than where they appear in my manuscript. Mr Speaker, just after the words "at an appropriate occasion" if they could just be placed after the word "Gibraltar" on the last line and then add to them the words "in the future" so that the sentence would end "at an appropriate occasion in the future". I will now, Mr Speaker, read the amendment as I am proposing it and this is, that we delete all the words after the word "that" and replace them with the words "This House recognises the enormous contribution made by Robert Peliza to the political affairs of Gibraltar and in consequence thereof records its intention to further acknowledge his contribution by conferring upon him the honorary Freedom of the City of Gibraltar at an appropriate occasion in the future".

Mr speaker, I hesitated when I came to the word "Colonel" because I am advised that the rank that is personal to him is Major and that he occupied the office of Honorary Colonel but that is not a rank that attaches personally to him. It would not be a point to which I personally would attach the most remote significance, I had no objection to leaving the phrase "Colonel" subject to the question of accuracy of fact. That is all.

HON E M BRITTO:

On a point of order and if I may with the greatest respect. The post of Honorary Colonel is an appointment which is temporary and has nothing to do with the rank of the person who holds it. The person can be a Major, as in this case, or could be a General but during the time in which he holds the appointment he is referred to as the Honorary Colonel but it is an appointment and not a rank. The rank of the person remains what it was, whether it be Major or

Lieutenant General and when the appointment is over, he goes back.

HON CHIEF MINISTER:

For those of us, Mr Speaker, who are less concerned by such matters I think the point is that he is not a Colonel, he is the Honorary Colonel. But, Mr Speaker, I am quite happy to attach no importance to that aspect of the matter, I am very happy to leave "Colonel" which is what I call Him when I see him at a cocktail.

Mr Speaker, in moving this amendment it is perfectly clear from its wording and from what I have already said that there is no doubt whatsoever being placed on Bob Peliza's entitlement by his historical contribution to politics in Gibraltar to enjoy this accolade. The amendment recognises that and recognises also that if it is correct for this House to have taken eight years to recognise the achievements of Sir Joshua Hassan, it cannot be right to also recognise those of Bob Peliza eight weeks after he has left his latest office. Therefore, Mr Speaker, the amendment is intended to recognise what is worthy and deserving of recognition at his point in time and as a matter of timing the Government would prefer to defer the bestowment of the Freedom to a later occasion in order to keep it chronological in relation to the award in favour of the previous recipient of a few moments ago Sir Joshua Hassan.

I commend the amendment to the House.

HON J BOSSANO:

We are opposing this amendment and I would like to be clear on the procedure that is, we will vote against the amendment and then presumably I will be able to speak on the motion after the amendment has been passed against our votes, am I correct?

HON CHIEF MINISTER:

Mr Speaker, there is no Parliamentary authority for it because one of the advantages of the majority of the House being able to amend the motion is precisely that it then does not have to vote on the original one. That is why amendments exist, otherwise we could simply vote against the motion and not bother with amendments. It is depriving the majority of that traditional and obvious and intended device and it is a device to which the honourable Leader of the

Opposition constantly had recourse and the device to which he now seeks to have recourse, has no precedent in this House nor indeed in his own recent practice in it and frankly, it is not a tradition which the Government Members welcome.

HON J BOSSANO:

Mr Speaker, the Chief Minister is wrong and Hansard shows that he is wrong. When he was on this side of the House he brought innumerable motions here and when they were amended at the end of the amended motion it was still the motion that had been moved and Hansard shows the motion of the honourable so and so as amended was passed.

Let me say Mr Speaker that the arguments that are being put in this House by the Chief Minister shows the hypocrisy with which the Government are conducting themselves in this matter. I do not recall ever, and I have been here since 1972, I do not recall ever having been consulted by anybody before they gave notice of a motion on the granting of the Freedom of the City or on anything else, ever, since 1972, and I do not recall anybody ever since 1972 using that as justification for adopting the position that is being adopted. Certainly the Chief Minister, when the motion to which he has such great objections and which he amended in respect of Sir Joshua Hassan was brought here by Peter Cumming, he did not make a fuss about the fact that presumably Peter Cumming had not consulted him or perhaps he had, he certainly had not consulted us, I do not know who else he had consulted or not consulted but the truth is that that motion with that wording is not my copyright and therefore to suggest that because we reproduce the motion that had previously been circulated there is again some sinister motive behind it in order to downgrade Sir Joshua Hassan and upgrade Robert Peliza, is a reflection of the sickness of the Chief Minister that sees a Machiavellian plot in every single thing. The motion that we are moving does not list all the achievements and says we propose the Freedom of the City because he was Chief Minister and because he was Leader of the Opposition and because he was Speaker. We are not saying that, we are saying because of his commitment in promoting and strengthening the links. One thing. The fact that he happens to be a Colonel or a Major or a Chief Minister or a Leader of the Opposition or a Speaker is incidental. That describes the different functions that he has had, during which he had many commitments. He had a commitment to parity which Sir Joshua Hassan opposed and which I supported and which some Government Members supported and some opposed and therefore,

if we were to say "we give the Freedom of the City to Bob Peliza for supporting parity" we would have to say "and we deny it to Sir Joshua for opposing it" but we have not done it. We have concentrated on one element in both cases and have been at pains in moving the motion to demonstrate why we were focusing on the one thing that is common to both. It is not a question of whether this is Hassan's day or anybody else's day, unless the Chief Minister believes and has reason to believe that Sir Joshua Hassan is not a man of such great stature that he can contemplate something being bestowed on somebody that was a political adversary at the same time as it is bestowed on him. I cannot imagine that someone that we have recognised for his outstanding contribution as an international figure, for his commitment, can possibly lose sleep over that and I hope that there is no reason for that to be the case or for that or have motivated the amendment of the Chief Minister. It certainly is not true, Mr Speaker, that he decided after hearing me speak that the motion should be amended to defer the conferment of the honorary Freedom of the City on Bob Peliza because he circulated the amendment before I had moved the motion, so that statement which he has just made where he says after hearing me produce my arguments in support of the motion on the Order Paper he has decided that there was a need to defer it because I had made timing an issue. I had made timing an issue after I had seen his amendment on the timing. If anything, I thought it was important to raise the question of timing precisely because he circulated a copy of this. On the first motion, Mr Speaker, I have given a lengthy explanation and the Chief Minister has said that (Interruption) I think the Chief Minister must have decided that this was what he was going to do when he discovered that he could not block the motions by suspending or seeking to suspend Standing Order 47 and, of course, the Chief Minister that made such a big song and dance about the process of the importance of this House debating issues has attempted to bring in and would have done it, had it not been for the 24 hour rule, would have suspended Standing Order 47 in a way which no Government has ever done since the 1969 Constitution was brought in.....

HON CHIEF MINISTER:

Would the honourable Member give way on a point of order? If my attempt to suspend Standing Order 47 had prospered, we would have debated the Freedom of the City to Sir Joshua Hassan and your motion in respect of Bob Peliza would still have been on the Order Paper. So I do not see how you have got the effrontery to stand there and suggest that the application this morning to suspending Standing Order 47 was

an attempt to gag you in relation to this motion. It has got nothing to do with this motion. This motion was not the object of my application this morning.

HON J J BOSSANO:

Mr Speaker, presumably since he was intending to move Standing Order 47 be suspended in order to bring in a Government motion and make it impossible for the Opposition to put its arguments in respect of a motion of which proper notice had been given, but if he could do it about that one, presumably he could equally have done it about this one, and could do it over any future motions that he chose. The fact is that the Government, with its majority can change it, but by seeking to abuse the provision of Standing Order 47, since there is another Standing Order which says that once a matter has been debated it cannot be debated again, it would have meant that the ruling of the Chair would have been under Standing Order 45, that it would be out of order to attempt to revive in any debate a matter upon which the Assembly has come to a conclusion.

HON CHIEF MINISTER:

We would have debated both Freedoms, so there is no gagging, whether we debate it in relation to my wording or yours is not a gagging and it cannot be so abusive of the procedure of the House if I cannot do it unless I give 24 hours notice but can do it on Monday morning or on Tuesday morning, so the rules obviously do not think it is that outrageous, if all they require is for me to give 24 hours notice.

HON J J BOSSANO:

The use of that rule has never been made use of before by any Government in order to prevent the Opposition from moving a motion, because let us ask ourselves, what is the strategy? If we were to put ourselves in the framework of the sick mind of the Chief Minister and look for sinister motives, what is the sinister motive? Why should they want to move the motion previously as a Government motion? Because in the Order Paper it comes first, and they could achieve exactly the same results as they have done now with the amendment. They are going to be able to use the Government majority to deny the granting of the Freedom of the City to Bob Peliza now because, although they think it is sacrilege that in the case of Sir Joshua Hassan it is eight years after he retired from politics, once we have committed sacrilege in the case of one person we must enshrine it as a tradition of the House and presumably we

will look at the year 2004 for Bob Peliza to be granted the Freedom of the City.

Mr Speaker, the right of any Member of this House to bring a motion by following the Standing Orders and giving the proper notice is not something that can be used by the newly elected Government as an excuse for an attack because it was not done before by a previous Government. They have brought motions here from the Opposition benches and on many of them we have finished up with amendments which they accepted and which were carried unanimously and in some others it has not been the case. It is no more a sacrilege in the case of any other issue than it is in this one because the only explanation that he could give as to why he had not brought it earlier was because he claims that Sir Joshua Hassan wanted it from me as Chief Minister and did not presumably want it from me as Leader of the Opposition. Hence all this subterfuge about bringing in a new motion, trying to put it in the Order Paper as Government business, seeking to suspend Standing Orders, presumably because Sir Joshua prefers to have had me moving this motion when we were the Government and does not like that I should be moving it now that we are Opposition, but Bob Peliza does not suffer from that problem. He is not inhibited by the fact that the initiative has come from the Opposition, and therefore, the Chief Minister does not need to worry about the sensibility of Bob Peliza, or that Bob Peliza may want at a future date for the motion to be moved by the Chief Minister instead of being moved by me. I certainly do not accept that the motion that we have moved requires amendment by contrasting it with the previous one as the Chief Minister has done, because the previous one was not drafted by us and we simply maintained what was there on the premise that if that was acceptable last year to the mover and to those that had been close to him, presumably it will continue to be acceptable to all the parties concerned. We do not accept that there is a correct interpretation that we are listing in this, facets of the contribution to the political life of Gibraltar of Bob Peliza other than in respect of the link. The language of the motion is very clear. We certainly do not accept that we are diluting the previous motion by using the occasion to give it to Bob Peliza. Indeed, since we wanted to have one motion doing both things, what we were saying was in fact that on something like the conferment of the Freedom of the City what better than to honour the two political rivals that have been most closely involved in a debate that has gone on for 30 years on this particular issue. Because there were many issues other than this one where the positions sometimes were totally different. Sometimes they were in agreement, sometimes they were in

disagreement but on this one; there is a very clear relationship between the two, as the two leaders proposing two routes to self-government and therefore that is the logic and the essence of what we did and that is the explanation that we have given and to now come along and say "because it is only eight weeks since he ceased to be the Speaker of the House it is too soon.....". This has nothing to do with timing, the timing is there because it is a timing that as far as we are concerned we consider to be appropriate, for both of them, and because we were ready to support the previous motion when it had originally been proposed and therefore at that time when Bob Peliza was still Speaker of the House we would not have ourselves suggested that it should happen, because of course, we thought then that it would not be appropriate to move a motion granting the Freedom of the City to somebody that was still sitting in that Chair, Mr Speaker. That is the only reason why this has come now and did not come before. Had in fact Mr Cumming not decided not to proceed with the motion, the motion would have been carried last year and it would not have been on the same day. I have to say that it is quite obvious that as was the case before, where on the least offensive or trivial or inconsequential issue or answer given in this House, the Members of the GSD in Opposition used to burst into all sorts of conclusions which were totally unjustified as we have seen in the contribution during the debate on the Appropriation Bill, we have had reactions looking for the nigger in the woodpile, what is this all about? I can only say that the reaction of the Chief Minister in trying to find ulterior motives every time can only be evidence of one thing, that that is how his mind works and he presumes that so does everybody else's and therefore he is doing a great disservice to the contribution made by Bob Peliza. There is absolutely no justification for this amendment and it is nonsense to suggest that the honour conferred on Sir Joshua would be diminished because it coincided with the decision of the House extending the same recognition to Bob Peliza and we will vote against the amendment.

MR SPEAKER:

(Inaudible)

HON CHIEF MINISTER:

I waive my right of reply Mr Speaker as there are no new arguments to address.

HON J J BOSSANO:

I have a more persistent streak in my character than the Chief Minister, Mr Speaker, and therefore before a division is taken and before the final vote is taken I have to say that in this first meeting of the House that these motions should have finished up as a matter of controversy is something that does not augur well for the way in which we from the Opposition wish to see the conduct of our debates here. The Chief Minister previously in the Appropriation Bill justified the way they conducted themselves from the Opposition benches where half the time there were innuendoes left, right and centre, on the basis that because we governed using a certain methodology of which they disapproved, that justified the nature of their conduct and I have to say that the nature of their conduct in these motions, more than justifies us going down the route that they went. We will try and resist the temptation but I cannot guarantee the result.

Question put on the amendment to the motion. The House divided.

For the Ayes:

The Hon K Azzopardi
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon H A Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson

For the Noes:

The Hon J L Baldachino
The Hon J J Bossano
The Hon J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

Absent:

The Hon B Traynor

The amendment was carried and the original motion defeated.

ADJOURNMENT

HON CHIEF MINISTER:

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

Question put. Agreed to.

The adjournment of the House was taken at 10.25 pm. on Friday 5th July 1996.

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

4TH SEPTEMBER, 1996

**(adj to 24th September 1996
and 14th October 1996)**

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Third Meeting of the First Session of the Eighth House of Assembly held in the House of Assembly Chamber on Wednesday the 4th September, 1996, at 2.30 pm.

PRESENT:

Mr Speaker (In the Chair)
(The Hon Judge J E Alcantara OBE)

GOVERNMENT:

The Hon P R Caruana - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Dr B A Linares - Minister for Education, the Disabled, Youth
and Consumer Affairs
The Hon Lt-Col E M Britto OBE, ED - Minister for Government Services
and Sport
The Hon J J Holliday - Minister for Tourism, Commercial Affairs and the
Port
The Hon H A Corby - Minister for Social Affairs
The Hon J J Netto - Minister for Employment & Training and Buildings
and Works
The Hon K Azopardi - Minister for the Environment and Health
The Hon Miss K Dawson - Attorney-General
The Hon E G Montado OBE - Financial and Development Secretary(Ag)

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon J L Baldachino
The Hon Miss M I Montegriffo
The Hon A Isola
The Hon J Gabay
The Hon R Mor
The Hon J C Perez

IN ATTENDANCE:

D J Reyes, Esq, ED - Clerk to the House of Assembly (Ag)

PRAYER

Mr Speaker recited the prayer.

OATH OF ALLEGIANCE

The Hon Ernest George Montado took the oath of allegiance.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 28th June 1996, having been circulated to all hon Members were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Minister for Tourism, Commercial Affairs and the Port laid on the table the following documents:

- (1) The Air Traffic Survey 1995.
- (2) The Tourist Survey 1995.
- (3) The Hotel Occupancy 1995.

Ordered to lie.

The Hon the Minister for Employment and Training and Buildings and Works laid on the table the Employment Survey Reports - October 1994 and April 1995.

Ordered to lie.

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

- (1) The Income Tax (Allowances, Deductions and Exemptions) (Amendments) Rules 1996 - Legal Notice No. 81 of 1996.
- (2) The Accounts of the Government of Gibraltar for the year ended 31 March 1995 together with the report of the Principal Auditor thereon.

TUESDAY 24TH SEPTEMBER 1996

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 4.30 pm.

The House resumed at 4.50 pm.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Tuesday 24th September 1996 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 6.15 pm on Wednesday 4th September 1996.

The House resumed at 10.00 am.

PRESENT:

Mr Speaker (In the Chair)
(The Hon Judge J E Alcantara OBE)

GOVERNMENT:

The Hon P R Caruana - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Dr B A Linares - Minister for Education, the Disabled, Youth
and Consumer Affairs
The Hon Lt-Col E M Britto OBE, ED - Minister for Government Services
and Sport
The Hon J J Holliday - Minister for Tourism, Commercial Affairs and the
Port
The Hon H A Corby - Minister for Social Affairs
The Hon J J Netto - Minister for Employment & Training and Buildings
and Works
The Hon K Azopardi - Minister for the Environment and Health
The Hon Miss K Dawson - Attorney-General
The Hon E G Montado OBE - Financial and Development Secretary(Ag)

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon J L Baldachino
The Hon Miss M I Montegriffo
The Hon A Isola
The Hon J Gabay
The Hon R Mor
The Hon J C Perez

IN ATTENDANCE:

D J Reyes, Esq, ED - Clerk to the House of Assembly (Ag)

DOCUMENTS LAID

The Hon the Financial and Development Secretary moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of documents on the table.

Question put. Agreed to.

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

- (1) Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 1 of 1995/96).
- (2) Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 14 and 15 of 1995/96).
- (3) Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 1 to 3 of 1996/97).

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) ORDINANCE 1996

HON H A CORBY:

I have the honour to move that a Bill for an Ordinance to establish a scheme for the purpose of providing pecuniary benefits by way of Old Age Pensions, Widow's Benefit, Guardian's Allowance and Widower's Pension to persons who paid contributions under the Social Security (Insurance) Ordinance 1955 and for connected purposes be read a first time.

Question put. Agreed to.

SECOND READING

HON H A CORBY:

I have the honour to move that the Bill be now read a second time. Hon Members will recall that on the 22nd March 1996, the Minister of State at the Foreign and Commonwealth Office announced in the House of Commons that the British and Gibraltar Governments had reached an agreement under which Gibraltar and other eligible pensioners irrespective of nationality or residence would receive fixed payments representing the full entitlement under the Gibraltar Social Insurance Fund which had been wound up at the end of December 1993. Hon Members will also recall that the British Government had agreed to pay the full cost of the pensions of pre-1969 Spanish workers arising from the contributions paid into the Social Security Pensions Fund before the border between Gibraltar and Spain was closed on the 9th June 1969. The Bill gives legislative effect to that part of the agreement and it creates a closed scheme to pay benefits arising from contributions paid up to and ending on the 31st December 1993 only. The Bill reproduces the provisions of the 1955 Ordinance in respect of Old Age Pensions, Widow's Benefit, Guardian's Allowance and Widower's Pension. Under the provisions of the Bill, all eligible pensioners irrespective of nationality and residence will receive fixed pension payments representing the full entitlement under the former Gibraltar Social Insurance Fund, which was wound up at the end of December 1993. This extends to three broad categories of actual and potential beneficiaries. Firstly, existing pensioners. Secondly, people who have paid contributions under the Social Security (Insurance) Ordinance 1955, who no longer contribute in Gibraltar and are not yet entitled to a pension - the so-called dormant contributors. Thirdly, existing contributors, that is, people who have paid contributions under the 1955 Ordinance who are either paying the existing levy, are self-employed persons or have paid for them as employees and who will in due course pay contributions under the proposed new open schemes to provide long-term pension benefits to current and future contributors. This scheme will be backdated to the 1st January 1994. Current contributions therefore means anyone who has made or has made on his behalf contributions to the pre-occupational pension fund since that date. The Bill has been drafted on the basis that when the existing contributors become entitled to benefits, only that part of the benefit which is attributable to contributions paid under the 1955 Ordinance will be paid under this Ordinance. Benefits attributable to the levy and contributions paid under the proposed new open scheme will be paid under the new open

scheme Ordinance that is yet to be drafted, in other words, the existing contributor will have two pensions entitlement under two separate schemes. Under Section 2 of the Bill, benefit entitlement is limited to contributions under the 1955 Ordinance by defining contributions as a contribution paid under that Ordinance. Under Section 5(5) the yearly average of contributions is defined as an average over a period ending on the 31st December 1993. Section 3(1) sets out the purpose of the closed long-term benefit fund which is to pay benefits to persons who were insured under the 1955 Ordinance and whose entitlement to benefits derives from contributions paid under that Ordinance. The Ordinance has been structured to allow for, first, the creation of a fund and its financial provisions. Second, a substantive scheme for paying benefits with description of benefits adjudication of regulation-making powers. Third, transitional provisions to enable those receiving benefits under the old legislation, that is, the 1955 Ordinance and the two 1993 transitional regulations to move into and be entitled to benefits from this new scheme. The Bill is essentially a reproduction of the 1955 Ordinance except that there is obviously no provision for payment of contributions since the scheme created by the Bill is only in respect of benefits arising from contributions paid up to the 31st December 1993. The substance of the scheme is in Section 5 and derives from Sections 10 and 10A of the 1955 Ordinance. The transitional provisions are in Sections 6 and 7. This provides for the bridging of payments currently made under the Transitional Interim Payments Fund and the Pre-occupational Payments Fund to a new Ordinance. Whilst the Bill is largely a repetition of the relevant provisions of the 1955 Ordinance, changes have been made to provide a more modern style of drafting. Mr Speaker, I commend the Bill to the House.

Mr Speaker invited discussion on the general principles and merits of the Bill.

HON R MOR:

Hon Members will recall that at Question Time, when we asked who was drafting the regulations for the closed insurance scheme that was to pay benefits arising from the Social Insurance Fund, we were told that a new Ordinance had been drafted by an ODA specialist draftsman. We were also told that the drafting is substantially a re-enactment of the 1955 Ordinance which repeats the rights and benefits as well as the terms and conditions of that Ordinance. When one examines the Bill, as the hon Member has said, it is indeed true that the Ordinance is substantially a re-enactment of the 1955 Ordinance and I will later be

drawing attention to the implications and possible liabilities this could create. But one noticeable difference between this Bill and the 1955 Ordinance is that, whereas in the 1955 Ordinance almost all references were to the "Governor" to exercise executive powers, in this Bill we find that it is the "Minister" who has replaced the reference to the "Governor", in almost all instances. Obviously, this is something which we would welcome in all Bills brought to this House, as it would be indicative of our being unchained from our colonial status. However, one could hardly believe that this is a deliberate ploy on the part of the GSD Government to take Gibraltar towards UDI. A more reasonable assumption would be, that the person who drafted this legislation, is more accustomed to drafting legislation for the United Kingdom Government and that through force of habit rather than by design, has placed more emphasis on the Minister than on the Governor. But, in my view, if ever there was a piece of legislation which should not have the slightest reference to a Gibraltar Government Minister or place upon the Government of Gibraltar one iota of responsibility, it should precisely be this Bill, because we all know why it has been brought to this House, because we all know that the reason for this Bill is to reactivate the Social Insurance Fund so as to facilitate the continuation of payments to Spanish pensioners, but the decision to pay Spanish pensioners is not a decision this House has taken or wants to take. This is a decision which has already been taken by Her Majesty's Government and indeed, as we all know, it was the British Government through the then Foreign Secretary, Sir Geoffrey Howe, who agreed to pay Spanish pensions in the first place. This is why I am making the point that the onus of this Bill should be better placed on the Governor as Her Majesty's Government agent in Gibraltar. Yet, it would have been so easy to have avoided the Spanish pensions problem altogether. In fact, the very clause which made it possible for the pre-1969 Spaniards to claim revalued pensions is still contained in this Bill, having been copied from the 1955 Ordinance. If hon Members have a look at the top of page 23, Section 5(3) of the Bill, it says, "where a person entitled to benefit has not, for at least 104 weeks in the aggregate since the 2nd July 1970 been - (a) ordinarily resident in Gibraltar; or (b) insured under the 1955 Ordinance in a self-employed or unemployed person's capacity". It then goes on to give the rates of benefits and one will find that a married couple were entitled to £1 a week. Since the Spaniards were withdrawn on the 9th June 1969, as the Minister for Social Affairs has just said, they could not have been insured for 104 weeks since the 2nd July 1970 so they could never have complied with sub-clause (b). However, Mr Speaker, what was considered justification for their being given revalued pensions as from the 1st January 1996 when Spain joined the

European Union was clause (a), on the basis that being ordinarily resident in Gibraltar was the same as being ordinarily resident in any part of the European Union. The GSLP were aware of this before 1986 and we had pressed the AACR administration to amend the 1955 Ordinance to avoid the problem. In our consideration all that was required was to have deleted sub-clause (a), that is the residential clause. We were given to understand that the legal advice given by the United Kingdom at the time was that it was not possible to amend the Ordinance. In 1988, when we took up office, we had occasion to seek legal advice on this and the advice we received was that there was no reason whatsoever why the Ordinance could not have been amended to protect the Social Insurance Fund against the Spanish liability. In fact, the whole purpose of this sub-section was precisely originally intended to protect the Social Insurance Fund from any Spanish liability. So we have never been able to understand why the United Kingdom advised that the Ordinance could not have been changed again. I cannot understand either why, if ordinarily resident in Gibraltar means ordinarily resident in any part of the European Union, why does it not say so in this Bill.

Mr Speaker, I did say earlier on that I would be drawing attention to the implications and possible liabilities which this Bill could create. If I may draw your attention, first of all, to the interpretation of pensionable age. It says, "pensionable age means the age of 65 in the case of a man and 60 in the case of a woman". If we now move to page 27 as regards widower's pension, if one looks at sub-paragraph (a) it reads, "he is and has been permanently incapable of self-support for not less than 10 years and has been wholly or mainly maintained by her during this time". Well, if one looks at the section on widow's pension, pages 24 and 25, one will see that a widow does not have to be permanently incapable of self-support for not less than 10 years or anything of the kind. Another clause I would draw attention to is in section 11(3), page 28, referring to guardians' allowance which says, "in the case of a child who is a child of the family of a man and his wife, the wife only shall be entitled to a Guardians' Allowance". Again, a man would not be entitled, but the wife is. Perhaps it could be more understandable if we had a Bill which effectively allowed the continuation of the 1955 Ordinance as if this had continued without having been stopped at the end of 1993 because the situation that we have today is, that we are bringing an entirely new Bill to this House. The point I am raising is, whereas it may have been possible in 1955 to introduce discriminatory clauses in any legislation, since we have become members of the European Union and we are bound by EU Law and EU law prohibits, totally, any sex

discrimination on any grounds, then I think what we are being asked to do today is totally contrary to European law, and clearly this Ordinance is not just a Bill to make the 1955 Ordinance to continue unchanged. It is a totally new Ordinance, with its own title and being brought in 1996 which I believe is a complete contravention of European law on sex discrimination and which could bring about liabilities on the fund which would again create many problems as regards our continuation of our pensions scheme. Mr Speaker, I am therefore reserving our position until we hear some clarification on the points which I have raised.

HON CHIEF MINISTER:

The drafting of this Bill, as I had indicated at Question Time, was done by a United Kingdom social insurance solicitor by the name of Mrs Asprey. The hon Member said that this had been provided by the ODA and, indeed, it has been in the sense that they have paid for it. However, I cannot be certain that she is an ODA person. I think that she might be, although if it is important to the hon Member, I certainly would clarify this for him, but I think she is a private practitioner in a firm of social insurance specialists in London which the ODA has made available at their expense. If he attaches any importance to whether or not she is a solicitor in the employment of the ODA or in the employment of the Social Security Department in the United Kingdom as opposed to being a private practitioner, I shall certainly clarify that for him after the recess.

The hon Member welcomed the fact that the Bill now says "Minister" in terms of exercise of power, whereas the 1995 Bill had said "Governor", and he assumes that this was not any sense of constitutional assertiveness by the Government but rather the constitutional generosity of a draftsman provided by the ODA. The problem with Opposition Members is that they have grown to believe their own propaganda. They utter the same nonsense so often that they now forget that it is their own propaganda and assume it to be fact. If it makes the hon Member feel any better in the thought that he has a Government that attach importance to these points, let me rush to tell him, that the supposedly constitutionally generous ODA draftsman, faithful to her instructions, produced for the consideration of the Government of Gibraltar a draft which, in keeping with what it had said in the 1955 Ordinance said "Governor", and that I instructed her to delete references to "Governor" and to substitute them with references to "Minister". I am sure that if it was propaganda before, now he has information which will enable him to modify his propaganda so that he

does not misquote the position in the future. I am, however, astonished at the suggestion, which I think I have understood correctly, of the Opposition Member who, having first welcomed the fact that we introduced the word "Minister" instead of "Governor" then goes on to lament the fact that the Bill should not have imposed responsibility on the Government. Let us be clear about this, what the hon Member is suggesting is that in respect of this defined domestic matter, namely, social security, it appears now to be the official policy of the GSLP Opposition that the Government should hand over constitutional responsibility for social insurance to Her Majesty's Government. Well, he shakes his head, but if he says things, he has got to take responsibility for the natural consequences of what he says. What the hon Member said was that what he wanted us to do was to bring a Bill to this House in a matter of social insurance which did not impose responsibilities on the Government of Gibraltar. Given that this is a defined domestic matter I do not see how that could be done. I take note that that is the policy of the Opposition. It is not the policy of the Government. If, of course, by responsibility he means financial burden as opposed to political and constitutional responsibility, then I suppose he remembers from the days when he was in Government, that the agreement of the United Kingdom Government is to pay all amounts due to the pre-1969 Spanish contributors, due under the Social Insurance Fund. So any financial burden, if that is what he meant by responsibility, which arises in favour of pre-1969 Spanish contributors from this Bill, the hon Member can rest assured will not be paid by the Government of Gibraltar but will be paid by Her Majesty's Government in the United Kingdom. The hon Member must also know that the scheme of the Ordinance, in other words, the agreement to restore the benefits and the scheme of benefits under the 1955 Ordinance was part of the so-called pensions agreement between the Government of Gibraltar and the United Kingdom Government, agreed to, not by us, but by them when they were in Government. I really find it odd in the extreme that the Opposition Member should, for example, suggest that this Bill is some sort of policy initiative by this Government when he knows full well that all we are doing is giving legislative implementation to the first part of the pensions agreement, in other words, the pre-1993 benefit scheme which they agreed to as part of Her Majesty's Government counter agreement to pay for it. The Opposition Member said and asked, and I think it was a fair question, why does it say "ordinarily resident in Gibraltar" given that we all know that "ordinarily resident in Gibraltar" has to be read in accordance with EU Law as if it read "ordinarily resident in Gibraltar or in any other member State of the European Union". The answer to that question, Mr Speaker, and it

relates indeed not only to the question of residence but also, for example, to such things as aggregation which is not mentioned in the Bill either, and the reason for that is that the Bill is drafted and adopts the same approach to the European Union Law as is adopted in the United Kingdom legislation on social security, namely, that since Regulation 1408/71 of the European Union has direct effect in Gibraltar, it is already part of Gibraltar's law and indeed effect is now being given to it by paying the Spanish pensioners the same rate of pension as the Gibraltarians. There is nothing in the laws of Gibraltar that requires that, it has been done by the previous administration because there is a provision of European law in this regulation that I have just named, which requires it as if it were in Gibraltar law, and therefore, there is no need to reproduce it in the draft Bill itself, as I have just mentioned. It is also happening now because Regulation 1408/71 requires it. There is nothing in this Bill about it and there was nothing in the previous Ordinance about it and indeed there is nothing in the Transitional Fund Regulations about it, so certainly it could not come to the hon Member as a surprise that not everything that is required by European Union Law is in this Bill. I accept that it is not, it does not need to be and it is not in to the extent that EU law has direct application to Gibraltar which is the legislative technique which the Opposition members also used in this area and indeed which the United Kingdom Government also use in their own social security legislation back in the United Kingdom. Mr Speaker, the hon Member pointed out that the Bill preserves the existing differentials in pensionable age between men and women and indeed it does and it preserves other forms as he has pointed out. Indeed, it does preserve other forms of what one could very loosely call sex discrimination in the sense that it creates benefits in favour of one sex, and it is not creating favours, and of course, the most obvious example is, the unequal pensionable age, but there are others as he quite rightly says in respect of guardian's allowance.

Mr Speaker, the essence of this Bill, and what the Government have agreed to do with the United Kingdom, is to restore the benefits as they existed in 1993 in respect of the period up to 1993. In other words, when we in 1996 restore the position retrospectively to what it was in 1993 in respect of pensioners or in respect of beneficiaries, let us call them that because, of course, it is not just pensions, it is other benefits as well provided by the Ordinance, what we have got to do and what we and I think the Opposition Members had also agreed to do, but what certainly we have set out to do, is, to recreate the regime existing as at the date of dissolution in 1993. Otherwise what we would be doing is improving all these benefits retrospectively for everybody even existing pensioners

including Spaniards. Is the hon Member suggesting to me that we should now equalise the pensionable age in respect of the closed scheme, in respect of contributors prior to 1993 so that we have to equalise the pensionable age between men and women for the benefit of pre-1993 Spanish pensioners as well? The Opposition Member may take the view that we ought to try and spend as much as possible of British taxpayers' money just to rub their noses in it, but I do not take that view. Certainly the Government do not take that view and I did not see why we should retrospectively. In respect of pre-1993 contributions, these increase the accessibility to benefits of people who in 1993, when the scheme was dissolved, did not enjoy them. A very different kettle of fish arises in respect of the open scheme that the Government are in the process of formulating because that will be commencing in respect of contributions on the 1st January 1994 and then, of course, will continue and will become Gibraltar's Social Insurance Scheme, Pension Scheme and Benefits Scheme. The Government are free, as a matter of policy, in that new scheme for the future to modify the pensions regime in whatever way we please and the Government are free to consider, as a matter of policy, if we wish to do so, whether for the future the Gibraltar pension scheme should be on a different basis to what it has been in the past. I can tell the hon Member that in respect of the open scheme, in other words, in respect of the part that is not retrospective, well partly, because even the new scheme would be retrospective back to the 1st January 1994, but it is substantially for the future, that in respect of that scheme the Government are indeed considering ways of improving Gibraltar's historical pensions regime and that for that purpose we are taking privately, that is to say, not through the good offices of any United Kingdom Government department, we are taking a specialist pension's advice on as to whether there are any improvements which can be suggested to the pensions scheme. Then the Government will decide whether they can be funded, because pension benefits may be socially and morally desirable but simply beyond the financial means of the community to fund, so that policy process is taking place. And of course, Mr Speaker, when the Government have completed their considerations of the new scheme they will be brought to the House in the form of a Bill for full debate given that moreso even than this Bill, it may, I put it no more strongly than that, it may be a substantial modification of Gibraltar's traditional pensions arrangements.

Mr Speaker, the hon Member, I think has unhelpfully suggested that this Bill may be in breach of the European Union laws because it perpetuates the discriminations to which he has alluded. I can only

assume that the hon Member knows from his days as Minister with responsibility for pensions the potential consequences of highlighting that. He must also I am sure understand and know that the European Union law on such things, for example, as equalisation of a pensionable age, is that in respect of any new scheme the equalisation must be immediate but that in respect of existing schemes the equalisation can be introduced over a period of time and that in respect of new schemes the pensionable age can be equalised over a reasonable period of time which is not defined. The United Kingdom Government has no intention of phasing in pensionable age equalisation until the year 2010 or 2015, in other words, 20 years down the line. The basis of this Bill is precisely on the understanding with which the United Kingdom Government are satisfied because if we have any additional cost in respect of Spanish pensioners on age equalisation it would be for the British Government to fund. So the British Government are satisfied that the European Commission will accept that this Bill although re-introduced by new legislation is in fact no more than a re-introduction, than a re-commencement of the existing regime and therefore not a new scheme at all, therein lies the importance of not having introduced any radical modifications to it precisely so that it could be argued that this is just a re-commencement of the previous scheme and is not a new scheme. The hon Member suggested that one alternative way to have achieved that, might have been to have re-introduced the old scheme. The old scheme, insofar as pensions were concerned, the old Ordinance was repealed by them, the Opposition Members repealed the old Ordinance insofar as it related to old age pensioners. There is no legislative way of pretending that that repeal had not taken place except by a Bill which has to do one of two things, the Bill either has to say, the repeal is cancelled and this is now the law of Gibraltar again, or it can say as this one says, the repeal is cancelled the law of Gibraltar is what it always had been and is now set out here again. Both constitute the re-introduction of the old scheme by the mechanisms of a new piece of legislation. So the distinction that the hon Member sought to make is a distinction without a difference. The way of saving the European Union requirements on age equalisation is not to pretend that the repeal had never taken place and try to crease this back into the statute book in a one line Bill instead of in a 15 page Bill, the way to achieve it is to make the provisions of the law as we are now going to re-introduce them, so similar to the pre-dissolution law that no sensible rational objective person would and could try to argue that it is a new scheme. That is something about which we as a Government are satisfied about, which the United Kingdom Government are satisfied, and certainly it does not help us to maintain that position in the face of the European Union if

Members of our House of Assembly in Gibraltar are arguing that it is discriminatory on the basis which would be contrary to European Union law. So certainly that point with which I do not on the merits agree anyway but certainly the making of it is not helpful at this point in time.

Mr Speaker, finally the hon Member alluded to possible increases in the liabilities of the fund. Any potential increases in the liabilities of the new closed scheme fund being established by this Bill which may arise in favour of pre-1969 Spanish contributors will be met in accordance with the agreement by the United Kingdom Government. If, simply repeating what the laws of Gibraltar have always been increases the cost of this scheme in favour of local pensioners, which we do not agree will have that effect, but if it did have that effect, then obviously that part of any such additional cost would fall on the fund itself which in effect means on the Government.

HON J J BOSSANO:

Mr Speaker, in speaking to the general principles of the Bill which is before the House, unlike the Chief Minister who has just sat down, I will not be making a party political broadcast. I will be directing myself to the matter which concerns us which is, is what is being done being done properly? Are we not here in this House, in looking at legislation and in explaining in which way we are going to vote, perfectly entitled to explain if we are not supporting something the reasons for our misgivings, not to make the lives of Government Members difficult with the European Commission? In any case the Chief Minister has just said in one breath that the United Kingdom is satisfied that there is no problem under Community law and that the United Kingdom has cleared it with the Commission and that if we express doubts here we will alert the Commission and make things more difficult, the two things do not go together.

HON CHIEF MINISTER:

Mr Speaker, I have not said that the United Kingdom has cleared it with the Commission, just for the sake of accuracy.

HON J J BOSSANO:

We will have to wait until we read the record of what the Chief Minister has said. I made a note of it when he said that they had taken the trouble to make sure that the Commission was satisfied that this met the

requirements to restore the benefits previously enjoyed by Spanish pensioners prior to the dissolution of the Social Insurance Fund in 1993. The Chief Minister towards the closing end of his speech then went on to tell us how in fact having repealed the old Bill, we could not just go round the corner, and he gave us a very descriptive show and happened to show what round the corner meant to bring it all back, when in fact we did not repeal the old Bill. The Social Insurance Fund 1955 has not been repealed. I find it quite extraordinary because they do not seem to have discovered the first thing which is, that it was not repealed. It is still on the statute book and much of what is being legislated today here is already law, in the old law, which is still there because we put everything in suspended animation. We did not have in 1993, when we brought in enabling powers to suspend the operation of the Social Insurance Fund but not repealing the law, when we did that we did not know what was going to replace it because the United Kingdom had said in 1988, "You must stop paying in 1993". Then, we have been from 1994 to 1996 arguing with the United Kingdom Government as to what took over from 1994, given that as far as we were concerned, we had no problem in what took over in 1994, like we had no problem in keeping what was there in 1993, like we had no problem in 1985 because the problem was created by the United Kingdom Government for us and it was up to them to find a solution to it, not up to us. When they came along at one stage and said, "We will pay 25 per cent of the accrued rights to Spanish pensioners but you must pay 25 per cent to Gibraltarians", we said, "Well fine, we will pay 25 per cent to Gibraltarians and then we will have to find another way of protecting the Gibraltarian who loses 75 per cent, because the Spaniards are not going to lose their Spanish social insurance pension, only our people are". It has been that requirement of the United Kingdom which has meant that in the interim, precisely as the legislation itself says, interim payments were being made. Since January 1994 what we have had is interim payments being made to all Gibraltarian and Moroccan pensioners equivalent to what they were getting in 1993 and interim payments funded by the United Kingdom being on offer to Spanish pensioners, 80 per cent of whom chose not to take them. What are we doing today then, we are not simply, which we could do and which the Government could have done simply, reactivate the unrepealed 1955 legislation which is still there. That could have been done, instead they bring a new Bill to the House. Well, the Chief Minister may have been advised that this is something that can be done without it being challengeable under Community law. I would remind the Chief Minister that of course he must know, that under Community law any individual beneficiary has got the right to challenge this. I am glad

that on the record of the House he has said this is the advise that he has had from the United Kingdom because most of the problems we have had since I arrived in the House in 1972 has been the advise of the United Kingdom. So probably this is something which will give us problems in the future. We have it on public record that it is based on the advise of the United Kingdom and I can tell the Chief Minister that as far as the Opposition are concerned, we will not seek to hold him responsible for it if it gives us problems in the future. We think that it will, and we feel as a responsible Opposition it is our duty to point out pitfalls before the steps are taken and that is all we are doing, no more than that. There is no need for the Chief Minister to get irate about it because we are being constructive and helpful.

Let me say, Mr Speaker, that we can see no difference notwithstanding the fact that the closed fund has got a different title from the opened fund, we can see no difference in the light of the argument that was put to us by the United Kingdom that we had no choice, but if we brought in a new Social Insurance Fund under Community law, the new one could not re-enact what was in an old one because the old one had been enacted at a time when there was no mandatory requirement under Community law on equalisation of treatment. So any new fund and any new legislation, and it is at the time when they were talking about a single fund which is called a "successor fund" and then they talked about two funds, and one of the primary reasons, if not the only reason, for them saying we had to draw a dividing line between the benefits obtained by a contribution record ending in December 1993 and the benefits earned by contributions post December 1993, was the fact that the first lot of benefits had to be frozen. The reason why it had to be closed was that it had to be closed to any possible increases and it was the view of the British Government that if there were any increases in pensions then it was the responsibility of the Government of Gibraltar to meet such pension increases in respect of pre-1969 Spanish pensioners. Indeed that is what led in 1988 to the five year frozen benefit bilateral agreement which was what was put by Her Majesty's Government as a condition for continuing to finance for five years the Spanish pensions. So really all they are saying is, "we will continue to finance the Spanish pensions for the next 25 years on the same terms as we have done it since 1988". Therefore, what is the purpose I ask of making a provision in the new legislation for the Minister to increase benefits? If we have an agreement which we did, which the new Government are honouring, which says, the scheme is being restored at the point at which it was stopped, suspended on the 1st January 1994 and the condition is that benefits may not be increased, why is the

House being asked to legislate so that benefits may be increased by the Minister? The clause that has been replaced and this is 38(1) on page 43, says, "The Minister may by order amend the sum in Section 16 above and the sums specified in Schedule 1 below", and Schedule 1 below is the rate of old age pensions, widow's pensions and guardian's allowance. If the Minister may by order do that, then this legislation is in breach of the agreement with the United Kingdom which requires that the Minister may not do that. Mr Speaker, I have spent a lot of time on this business in the last eight years or so and therefore I can assure the Chief Minister that I am being helpful. It would seem to me, from my previous experience of dealing with this, that if we have the power to do this, the Minister does not have to do it obviously. But we are saying it is a possible thing to do and if it is a possible thing to do, from my understanding, if this had been accepted by the United Kingdom, the United Kingdom would have made the point that it is only possible for us to do if at some future date a Minister so decides to do. It may not be the Minister that is there now who picks up the bill for making the same payments to Spanish pensioners, because that has been one of the fundamental positions of the United Kingdom Government in respect of these payments from day one.

The provisions in this Ordinance and we have, having been told in answer to a previous question in the House, that essentially what this was doing was transposing what was there in the previous legislation in respect of benefits and removing what was there in respect of contributions and little else. Well we do not think it is doing little else. We think it is doing a number of other things for which no explanation has been given and which certainly raise matters of general principle. One of the things that exists in the previous Ordinance but which is very important in the context particularly of this legislation and which has ramifications in respect of other Community obligations related to the application to the Territory of Gibraltar or Regulation 1408/71, is the rights that are obtained in Gibraltar by virtue of the free movement of workers under Regulation 1408/71, and we have a clause which says that "notwithstanding the provisions of Section 5 of the European Community's Ordinance the cost of meeting such obligations will fall on this Fund and not on the Consolidated Fund". In 1988 one of the first things we did was to amend the Social Insurance legislation to remove the mandatory requirement for any shortfall in the Social Insurance Fund to have to be met by advances from the Consolidated Fund, the Hon Mr Montegriffo will remember, because he spoke on that Bill and supported the measure. We did it because we felt that this made it impossible for the Government to do anything other than to have to

feed the Social Insurance Fund from the general reserves of the Government if a stage was reached when the money was running out and there was no agreement with the United Kingdom. Under the Public Finance (Control and Audit) Ordinance there is the ability, that is to say, there is the enabling power but not the requirement to make advances from the Consolidated Fund to any other Special Fund and since this is a Special Fund that ability is there, but there is a fundamental difference between being able to do it if you want to do it and having to do it because the law requires you to do it. Let me say that having the ability to do it, if you want to do it, was long considered by Government Members to be a hideous crime, I am glad to see that their conversion enables them to re-introduce the same flexibility because that is good for the public administration of Gibraltar. The fact that we have a reference here to this liability arising out of the movement of people falling on this fund, notwithstanding the provisions of Section 5 of the European Communities Ordinance, implies of course, that in the absence of such a provision, the section in the European Communities Ordinance would trigger an obligation on the Consolidated Fund. Section 5 of the European Communities Ordinance says, "There shall be charged on and issued out of the Consolidated Fund the amounts required to meet any Community obligations arising out or in respect of Gibraltar". I do not think that is particularly well drafted linguistically but it is clearly meant to be a requirement for the Government of Gibraltar to have to foot the bill in respect of a Community obligation without having to come to the House of Assembly for appropriation as a direct charge on the Consolidated Fund. That which is there, we are being told, would apply in respect of this closed fund by implication without the introduction of this clause. We do not accept that, we do not accept that the closed fund is a Community obligation which triggers Section 5 and therefore we will vote against the removal of that liability because we do not accept that that liability is there. We do not accept that if Government Members did not put that it fell on this fund it would fall on the Consolidated Fund because we do not accept that it is Gibraltar's obligation. We do not accept that this Bill is here to pay the Spanish pensions because of any obligation of Gibraltar, we cannot accept that, because then it would make a complete nonsense of all the arguments the British Government have been using in the past, because if it is a Community obligation, then they were advising us to break Community law in 1988 when they told us to dissolve the old fund in 1993. It is not that there is a Community obligation that has been enacted subsequently to 1988, it was there in 1988 and in 1988 they said, "you can close the fund in 1993 and you are not breaking Community law"

and we took the step to close the fund in 1993 and they said we were still not breaking Community law.

Mr Speaker, when the United Kingdom started backtracking on the position it had been taking and on which it had advised us, they did it as a result of a recent opinion produced by the Commission on the 20th October 1995. Let me say that I was given a copy of that recent opinion after a lot of toing and froing, on the strictest confidence, and therefore I am not at liberty to quote from the recent opinion that I was given by His Excellency the Governor after Her Majesty's Government were persuaded that I could be shown the text in the strictest confidence. But I have got here the Spanish version which is freely available in Spain and which is a literal translation, and since this was made available to me by an ordinary Spanish pensioner with no requirement that I should keep it as a state secret, I am able to quote liberally from this translation. In order to preserve the secrecy I will not tell Government Members how accurate the translation is. What this recent opinion clearly states is, that in the view of the Commission the decisions that were taken by Her Majesty's Government and the recommendations that Her Majesty's Government made to the Government of Gibraltar, which the Government of Gibraltar, then implemented, were in breach not of Gibraltar's Community obligations but of the United Kingdom's Community obligations. They were told they 'had an obligation to go back to the Commission if there was a problem because in 1984 and 1985 they had held discussions with the Commission about how to avoid the problem in 1986 and having told the Commission in 1986 that the pensions were going to be paid for life, the Commission said the United Kingdom failed in its duty to go back and tell them they were not going to be paid for life. It is not an obligation of the Government of Gibraltar arising out of Gibraltar or taking place in Gibraltar which triggers Section 5 of the European Communities Ordinance. It is an obligation according to the European Commission which falls squarely on the shoulders of the United Kingdom and whatever arrangements the United Kingdom makes with the Government of Gibraltar that is a matter which is internal.

Let me say that since we are bringing a new Bill to introduce a new law in Gibraltar, in my judgement, in the new one we should not repeat something which implies that it is an obligation that we have in respect of which we are being bailed out by the British Government, which is regrettably how it was put in 1986. Regrettably because we have had to live with it since 1986. Since the agreement done in 1986 precisely described the situation as our responsibility to meet those pensions and

the United Kingdom generously bailing us out, we never accepted that version of history, we think it was avoidable, we have been on public record as long ago as 1980 in this House of Assembly saying it was avoidable. My hon Colleague has just pointed out how it was triggered by having a clause on residence as a qualifying condition as an alternative to contribution record and there is hardly anybody left now who is getting paid because of that clause. The clause does not apply anymore to any Gibraltarian, so by having it there was what gave us the trouble in the first instance, it was certainly avoidable. Since 1988 the different options that have been looked at, indeed the dissolution of the old fund, the suspension of the payments, the introduction of a closed fund and an open fund, all demonstrate, Mr Speaker, how many things could have been done other than simply paying out. But in 1985, at a meeting in December of the Brussels negotiating process, after perhaps one glass too many of "tinto", Sir Geoffrey Howe on the spot committed Gibraltar to pay pre-valued pensions from the beginning of January. At least that is the version of the people who were there who now includes the Director of Media and Public Relations. So the Chief Minister can get firsthand verification of what I am saying. We consider that the fact that the United Kingdom chose to proceed along this road having advised for many years the claim was resistible and defensible, is a purely political act by the United Kingdom Government based on their own domestic political problems with their Euro-sceptic wing. I have every reason to believe that in fact the technical advice was that the case could be won, but of course like any other case, might not be won. Rather than go into the position of maintaining what had originally been the official line and arguing with the European Commission that there was no obligation to reconstitute the suspended fund, which was the original position - let me say nothing that I have seen from the Commission actually contradicts the position of the United Kingdom Government, because all I have ever seen from the Commission did not tell the United Kingdom what they had to do. They always told the United Kingdom they could only do one thing, what they could not do is different things for different categories or beneficiaries based on residence or nationality, but they did not tell them what that had to be. So even though the Commission was less than happy when the United Kingdom was telling them, "we are going to pay 25 per cent of acquired rights", they never challenged that there was anything in Community law which actually prohibited that and certainly the information that was available to me was, that the political decision that was taken that the Treasury would fork out £150 million, was taken not on advice that this case was lost and that therefore to fight the case would be to throw good money after bad, but on the basis that to actually go into the arena

would open a can of worms in lots of other areas that the United Kingdom preferred to avoid. Well, that is fine, all the more reason for arguing that this is not a Community obligation of Gibraltar. It is a Community obligation of the United Kingdom in the first instance anyway and the fact that the United Kingdom chooses to pay rather than fight as a political decision for unconnected, from their point of view perfectly legitimate political reasons, cannot create a liability on Gibraltar. Therefore we cannot accept that there is there a clause which is a repetition of what was there before. This is not the same act, this is a new act of this House of Assembly, a new Ordinance and we are there putting something with which we do not agree as a matter of principle. Let me say that it is doubly unfortunate that they have horned in on this particular point, I do not know to what degree if this is purely something lifted from the old Ordinance and put in here or to what degree there has been consideration of the implications of this but if we are having a situation where the liabilities are being accepted as direct, as creating a direct charge on the Consolidated Fund in the same way as public service pensions, the servicing of the interest on the national debt and other things of that nature, then we will not be able to do anything to be required to meet other liabilities. Of course the one on which the Government were reconsidering the position which is not totally unconnected with this because it is also based on conflicting advice over different periods of time, is the payment of the family allowances to Spanish pensioners. Is it now the case that the Government have accepted by inference from this, that this is now a direct charge under the Consolidated Fund which will have to be paid and it is not challengeable. When this was done in 1972, like many things that were done then and for many years after that it is obvious that what was being done was that things were being presented here as being the same as in the United Kingdom without anybody bothering to go back and find out whether we were being told the truth. All that we are doing here is, we are taking the United Kingdom Act and with the necessary modifications, because of different institutional structures, introducing the same provisions in the laws of Gibraltar. Well it is not true, we have now gone back and checked what the United Kingdom Act says and the United Kingdom Act does not say that. The United Kingdom Act does not create a liability on the Government of the United Kingdom to pay out of the Consolidated Fund, Community obligations. What it creates is a liability that there shall be charged and issued out of the Consolidated Fund, which are the same words as we have in Section 5 of our law. The amounts required to meet Community obligations to make payment to any of the Communities of member States, is the contribution of the United Kingdom to the Community, which is of course, a treaty

obligation which is not subject to an Appropriation Bill, but any other obligations require that it should be done as a result of the money being enacted. There is a distinction drawn, so that the other obligations which are being made here mandatory and compulsory, in the United Kingdom require to be taken to Parliament for an Appropriation Bill. So in fact, the only bid that was a direct charge in the United Kingdom, here it was introduced and presented as being the same thing, when it is not. So there is all the more reason for questioning this, because what we are doing now is looking at something which by reference to its introduction here and by the possible use that may be made of it elsewhere, we could find ourselves that the access to the Consolidated Fund, which the hon Member has indicated he intends to increase in size, may become much more open to other people putting their hand in it than we would like.

Mr Speaker, the Bill does not create new rights for new classes of beneficiaries, because one of the things that featured in the recent election was lobbying by people who were left out of the original scheme and it was said that when the new scheme came in, consideration would be given to how their position might be protected and they might be given the opportunity of being brought back into the system from which they were excluded at the time for reasons which, frankly, were never clearly understandable by any of those affected and by many others because of this peculiar business of people, who were so well off that they earned £500 a year, would never need to have provision for their old age. There has been no mention in the general principles of the Bill as to whether this is being done or whether in fact is not going to happen, but we have not been able to find anything here that indicates that something is being done about it here. It would seem to us that it would need to be done here, we cannot see that there is even an enabling power for it to be done by regulation in anything that was here other than this business of the Minister being able to alter the schedule or the benefits or anything else. In looking at the point that was made by my hon Colleague of the differential in the treatment, he mentioned the age differential, he mentioned the way that the widower is treated different from the widow in terms of having been supported by the spouse. Frankly our position has been that all these things that are to be found in the old Ordinance and some other antiquated things that are there we would have had to live with if we had simply said, "We are reactivating the unrepealed law." But we are not doing that, we are bringing new law, and therefore when one brings new law to this House it seems to me that it is not enough to say, "The reason why we are doing it is because that is what was done in the year dot". It is being

done today and there are things of course which in the time that the legislation was introduced, which was a completely different world from today, these things might have had some rationale. There is a strange provision here and I am sure many of us in fact, if this was not being re-enacted, would not even have been conscious of the fact that it was there in some instances in the previous Ordinance. There is a provision here which says that a pensioner stops getting his pension if he is convicted and put in jail. I imagine that this happened because there is something like that in the civil service pensions and when this was done initially somebody transposed it from one to the other, but it is a nonsense to be doing that today because in any case if it were to happen, the only way we would get to know about it is if the jail that the pensioner was put into was Moorish Castle not if the guy was being put in jail in some other remote corner of the world. We have always, I think in the opening up of our labour market and in the fluidity on the free movement of labour which gives people rights here I think we have to be conscious that by legislating things that made sense when Gibraltar was isolated from the rest of the world or at least those who did it at the time felt it made sense, when we are no longer isolated from the rest of the world we are doing things which can only have an effect on our own and on nobody else because we would not know about the rest, we would not know whether they are OK or they are not OK. There are occasions when we not even know if they are alive and we keep on paying them. That is something which we are unhappy to see resurfacing here and at the end of the day we cannot simply vote on a Bill on the basis that all that this is doing is repeating things that were there in the old Ordinance because presumably the Government thought there was no alternative because the old Ordinance was now dead and buried. If that is the rationale of these things, we cannot go along with that. We think there is an alternative and we think the alternative is the fact that the Ordinance is still alive and kicking and that ways could be found to trigger what needed to be triggered without doing this and certainly if the Government had done it by doing it through subsidiary legislation they would not have had the benefit of getting our advice and shared wisdom. In any case they do not seem to appreciate it because when we try and do that, they condemn us for it. So what is the point of bringing the Bill to the House if we try and say to them, "Look these are the misgivings we have" and those misgivings are misinterpreted? We will look to the explanations in the general principles in deciding what the position is on this from the point of view of the way we cast our votes, Mr Speaker, but certainly there is one clause which we will be voting against clearly which is the one that I have mentioned and I have to say that with reference to the right of the

Minister in section 37 of Part 5 in page 42, we will certainly support that particular expansion of our decolonisation process because in fact it is going in an area which is quite extraordinary. It says that any agreement with the Government of the United Kingdom, which is of course another country, or with any part of Her Majesty's Dominions, assuming they have got any left, or the Government of any foreign country, providing for reciprocities in matters related to payments of widowhood, orphanhood, retirement or old age. Let me say this Ordinance makes no provision for retirement, it only makes provision for old age, so I am not sure why it is that we are looking to making reciprocal agreements on retirement when we do not pay retirement pensions. It shall be lawful for the Minister to make provisions for modifying or adapting the Ordinance in order to give effect to the application to the cases accepted by the agreement, here we have a Minister being given the power by order to amend primary legislation, this is not the Government by regulation changing primary legislation, this is a Minister by order changing. At other times with another Minister, who might have had a press release saying, "Government by decree" and things like that, or "dictatorship". We do not say things like that. We will support this, this is the one that we are likely to be convinced about, we will vote in favour, but I find it very odd that in the area where we are giving the Minister enormous powers internally we are also giving him the power externally in respect of foreign affairs. We are talking about international treaties, between Gibraltar and the United Kingdom as two separate sovereign states, or Gibraltar and the Dominions, I do not think there are any left but there may be, or Gibraltar and any other foreign country and we are not talking about Community obligations because that is covered in another area. Now, I believe that in the previous one it was done by the Government and of course it was there since 1955 and in 1955 the Governor was the Government, and the Minister, and everything else, and in 1955 the format was, that one was getting a development of social security provisions happening in many parts of the Empire and the Commonwealth based on the post-war welfare state that had been created by the Labour Government in the United Kingdom and therefore, similar provisions were brought in by the Colonial Office in the colonies and in the Commonwealth countries in order to do something which strangely enough has got similarities with what Regulation 1408 does for Community nationals. The purpose of this thing in 1955 was to facilitate the possibility of Commonwealth citizens being able to access each other's welfare state provided that there were bilateral agreements on social security rights as between those member States. So this clause would have enabled us in 1955 to say, "We will allow Australians to be paid here and they will allow Gibraltarians to be

paid there". In fact, it is something that in the legislation of the United Kingdom not very long ago surfaced because the absence of a bilateral agreement with Australia meant that pension increases for United Kingdom nationals living in Australia, unlike those living in the EEC, were not being revalued. So the reciprocal agreements for our citizens were therefore the reason. Other than the fact that somebody has lifted it out of the old Ordinance and decided that the Hon Mr Corby makes a better Governor than Sir Hugo White, with which we agree, I can see no other explanation. I will give way to the Chief Minister.

HON CHIEF MINISTER:

I am grateful to the Leader of the Opposition. I would just like to make two points. First of all, on the point that he is now on, what the section simply does as he has correctly identified is give to the Minister power which was previously held by the Governor but not in respect, I think as the Leader of the Opposition has stated, of foreign affairs, because what the Minister would have power to change is not the international agreement but rather the Ordinance to give effect to the international agreement, so it is not that the section gives to the Minister the power to amend the international agreement.

Mr Speaker, I am sorry that the hon Member should have said earlier that the Government do not welcome their participation, that is clearly the participation of the Opposition in the legislative process, but this is not true. Indeed it is precisely because we want Government's legislative proposals exposed to full debate, so that we can have the benefit of every Member of the House, as a legislator impacting on it, that this Government have declined to introduce this and other important legislation through regulations, as may have been done in the past, and as a matter of policy bring as much important legislation as possible to the House in the form of a Bill precisely so that it can be debated. If Government did not want to hear the views of the Opposition Members, we would have done it by regulation. Let me tell the hon Member that as a result of the point that he has made in relation to whether indeed we are free to simply reactivate the old Bill, it is my intention to take the matter today no further than the Second Reading precisely so that we can investigate the possibilities of doing that. Of course, Mr Speaker, we have the difficulty, that if we simply reintroduce or reinstate the operability of the old Ordinance, in other words, we still have to have a mechanism that will create a new fund which was certainly dissolved and which either limits the old Bill to pre-31st December 1993 contributors or otherwise simply reactivates it for

everybody on a continuing basis and we are back to the one scheme solution. These are matters which we have to look into, but certainly I will tell the hon Member the result of his observations. The Government will take the opportunity to look into the possibility of restructuring the legislative proposal in that way.

HON J J BOSSANO:

Mr Speaker, I was not giving the Chief Minister the right of reply, I was allowing him to interrupt on something which I thought.....

MR SPEAKER:

Mr Corby has the right of reply.

HON J J BOSSANO:

Mr Corby has the right of reply, that is right, and therefore Mr Corby would have said what the Chief Minister has just said. Let me say that the only reason why I made the observation that I made was precisely because of the way he reacted when he spoke earlier. He reacted to the points that we had made as if he thought we should not be making them and that we were making them for some ulterior motive. And I am glad, for example, that having gone into that long explanation of why this was required because the Bill had been repealed, I take it from his last observation that he has now discovered that the Bill was not repealed. Now, that makes me wonder how much work has been done on this, as to the different alternatives, and I do not accept the last point that he has made that restoring, not even restoring, the Bill is there in suspended animation. In fact even after passing this, the old Ordinance is still not repealed, because he has not repealed it. So we would finish up had we supported what the Government are asking this House to do, with two laws. One of them which says a lot of things that are already said in the other law. I have no knowledge of that ever having happened before. Normally if one comes in with a law that replaces an old one, one takes the old one out at the same time. What this in fact does is it stops the existence of the fund under Section 40 where it says, "A transitional interim payment fund regulations and the transitional interim fund establishment notice shall cease to have effect", which presumably is the equivalent of repealing them, and therefore since that is what was created that is what is being removed. What was still there continues to be there and will continue to be there after this. I am not sure how it sort of fits in structurally but that is the position that we are

seeking to establish with this. It seems to me, and frankly in the time we have had to go through this, and I accept that that is the time that the rules of the House provide, we have tried to look at it objectively to see where we could see problems arising in the future because at the end of the day, if problems arise in the future, they are going to arise for all of us not just for the Government Members. So we have been looking at it in terms of taking effective avoiding action and pre-empting future problems which is always a much better philosophy than trying to cure things after the event, particularly in this area, as we have found when we had the responsibility of dealing with it. I accept the point that the hon Member made when I gave way, but of course the Minister does not have the power to make the agreement but he has the power to block the agreement which is almost as much power. That is to say, if there was an international agreement done by the United Kingdom and in order to give effect to that agreement there was a requirement to change the law, this law, then there is nothing here that can require the Minister to do it if he does not want to do it because it gives him enabling power, he may do it and therefore is not required to do it. This is in fact strange as it sits with the Constitution where there is indeed a particular reference when it comes to defining the ministerial portfolios and defined domestic matters, that a reservation is entered saying that, for the introduction in Gibraltar or the application in Gibraltar of international treaties, the Governor continues to have sole responsibility, that is what the Constitution says. So here we have a situation where the Governor under the Constitution has a sole responsibility, the international treaty cannot be done by us because that is clearly foreign affairs and yet the Minister may, depending in the mood he is in, either block the Governor or permit it. Fine we will vote for that. The bringing in of the payments under the pre-occupational pension fund at this stage appears on the surface a neat way of doing it, but I am not sure that it will work, Mr Speaker. It seems to me that this is a situation where they are saying in some clauses some things and in other clauses other things. So we have a situation where the pre-occupational pension payment in existence in September 1996 becomes an entitlement in October and yet we are also being told that this is being backdated to January 1994, and we are being told that anybody who is entitled to this payment is entitled to everything under the rules of the Ordinance. Frankly we have gone through this on a number of occasions and we are not sure we can see where it leads us at the end of the labyrinth. I can see what is being attempted and I can see the mechanism, that somebody has come up with saying, "Well, let us do this", but the fact that they have got one cut-off date for one thing and another one for the other one, what happens to the people who get

the pre-occupational pension payment in October not in September? Do they not get it, and if they do not get it, what do they get in October, the new payment? Well is the new payment in their case going to be calculated on the same basis as the payment of the pre-occupational pensions where, for example, the rules of aggregation did not apply? We are not really talking about legislation, we are talking about the efficient implementation and administration of this, but it seems to us, that the wording of the legislation may make its administration more or less difficult. Given the fact that we have been told that the other points are going to be looked at, then clearly any further information that can be provided before we have to take the vote at the Committee Stage, is something that we would welcome.

HON H CORBY:

Mr Speaker, we heard the Chief Minister and the Leader of the Opposition and the Hon Mr Mor. We certainly value whatever contributions are coming from the Opposition Members. We will look at the proposals and the things put to us by the Leader of the Opposition and the Hon Mr Mor, and we will certainly look into it and come back to the House with our views.

Question put. The House voted:

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson
The Hon E G Montado

Abstained: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

The Bill was read a second time.

HON CHIEF MINISTER:

I would be grateful if the House could now recess until tomorrow at 3.30pm.

MR SPEAKER:

The House will now recess until 3.30 pm tomorrow.

The House recessed at 11.45 am.

WEDNESDAY 25TH SEPTEMBER 1996

The House resumed at 3.30 pm.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the Social Security (Closed Long-Term Benefits and Scheme) Bill 1996, clause by clause.

THE SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) BILL 1996

HON J J BOSSANO:

Can I seek clarification before we start on the Committee Stage of this Bill. Given the fact that we have been given an agenda which had two Bills and then a supplementary agenda on a third, that the fact that we have now moved to the Committee Stage means that the First and Second Readings of the other two Bills are not going to be taken after the Committee Stage of this Bill, or is it that we are going back in the agenda to take the First and Second Readings?

HON CHIEF MINISTER:

The position is that once we have taken the Committee Stage and Third Reading of the Bill I will be moving to adjourn the House to a specific date and when we resume on that date, I will of course have to move that Standing Orders be suspended in order to revert back to the First and Second Reading of the other Bills on the agenda.

Clause 1

HON J J BOSSANO:

Mr Chairman, I want to raise two points in relation to clause 1 of the Bill. The first is of course that as we indicated in the Second Reading, we do not see the necessity for the introduction of this Bill and having put our arguments and indeed having indicated to the Government how we thought there were unnecessary risks in so doing. I would now like to draw the attention of the House to the fact that this is a Social Security Bill to create an Ordinance which has a commencement date in 1996 and which is covered by the provisions of Community law which clearly place obligations on member States as to what they may do in respect of any newly created Social Security States Scheme which this is. When the legislation was brought to the House in December 1993, the view was put by the Government then in Opposition, that it would have been preferable, in their view, to bring legislation to the House to dissolve the Social Insurance Fund as opposed to bringing legislation to the House to create enabling powers to do so by regulation. The main reason given then was that this would have enabled a vote to be taken here proceeding with the dissolution of a fund which was unanimous. In fact the legislation that was brought to the House, which was Ordinance No. 20 of 1993, created a new Section 53 in the Ordinance as a result of which a number of amendments were subsequently introduced by regulation to the principal Ordinance which still stands today with those amendments in place. The amendments deleted part of sections and removed other sections in their entirety. Consequential on the need to remove an obligation in law to make payments from a fund that no longer existed. The reason for so doing was in fact specified in the Ordinance that created the enabling power and therefore, it seems to me appropriate to put on record something which the Government Members may not be entirely familiar with, but the Ordinance makes quite clear that the reason for creating those enabling powers and the reason for the

dissolution of the fund and the creation of a temporary interim payment system was for the making of transitional arrangements in advance of the coming into operation of occupational pension arrangements in respect of employment in Gibraltar. Because at the time the United Kingdom Government were insisting on the opposite of what they are insisting today, which is that the successor arrangements should not be covered by Regulation 1408/71 and that there had to be occupational pension arrangements so that there was no question of Community directives applicable to State Social Security Schemes having to apply to those successor arrangements. Clearly the rationale for doing that has disappeared with the restoration of the SIF for all intents and purposes and we honestly believe that the regulations that were brought under the powers of this Ordinance would have given the Government a more effective and less risky way of restoring the fund, and indeed as we will point out in specific areas of the Bill as we come to look at it clause by clause, which is what we are doing now, we will point out why we can see that there are difficulties by bringing a Bill which would not otherwise exist.

The second point I want to make in relation to this Ordinance is that I note, that although we were told in the Second Reading that the replacement of the word "Governor" by the word "Minister" in the Ordinance was an assertive act of the Government, we find that nevertheless the Governor has been retained for the purpose of determining when the law shall become effective, that is by publishing, by notice in the Gazette, the appointment date as to the commencement. In fact when we have in an Ordinance "Governor" it has always been held in this House, that in respect of a defined domestic matter it is the Governor acting on the advice of the Government or of a particular Minister and indeed when it comes to determining the commencement date of an Ordinance, given the fact that there are many other provisions in the Constitution which allow the British Government to delay the bringing into effect of legislation approved by this House, it seems to us quite clear that having passed all other hurdles there should not be a final stage whereby not publishing the date when it commences it never commences and therefore given the explanation that "Governor" has been replaced by "Minister". I would like to ask why it is that "Governor" has not been replaced by "Government" in this particular clause.

HON CHIEF MINISTER:

Mr Chairman, during the debate on the Second Reading of this Bill I made a factual statement on the accuracy of which I was challenged by the Leader of the Opposition. I said that the provisions of the Social Security Insurance Ordinance had been repealed insofar as they related to the subject matter of this Bill, namely, old age pension, widow/widower's pensions and guardian's allowance. The Leader of the Opposition on three occasions, during his contribution on the Second Reading, asserted that I was wrong and asserted that the Bill had not been so repealed and that the fact that I was not aware that the Bill had not been repealed caused him at least to question the extent of the thoroughness of the Government's investigations and research into this matter. Because it is always better to be safe than sorry, I decided to recess the House, to look into and to double check the correctness or otherwise of the assertions made by the Leader of the Opposition. Not only was it the advice that I received departmentally but indeed the provisions of the Social Security Insurance Ordinance (Amendment) Regulations 1993, had the effect, and I am advised from within the Accountant General's Department, who are responsible for the payment of pensions, that the repeal remains extant. Indeed their version of the laws of the Ordinance is, which I have here, clearly marked to the effect as is provided by these regulations of the 30th December 1993, introduced by the Government then led by the Leader of the Opposition, repealed. Sections 13, 14, 14(a), 15, 16, 16(a), 17, 19, 20 and 24 of the Ordinance are repealed. Those are all the sections making provision in the then Social Security Insurance Ordinance for the payment of pensions and the other benefits with which this new Bill is concerned. The old Ordinance was left intact only in relation to maternity grant and death grant which are not benefits with which we are concerned in this Bill. It is therefore, the opinion of the Government, incorrect to assert that it is not necessary to bring legislation, that is to say, there is no provision in a presently valid law of Gibraltar which would authorise the Government to commence the payment of old age pensions. It is true, that if we wanted to, which we do not, we could have introduced the legislation by subsidiary legislation, that is to say, by regulations in the Gazette as opposed to by principal legislation in this House. But it is not true that the Ordinance had not been repealed in its relevant parts and it is not true that the statutory framework existed already providing for the payment of pensions etc, etc. The Government are furthermore satisfied that whatever the risks might be of implementing the agreement entered

into by the Opposition Members with the British Government when they were in Government and the agreement was to establish a closed scheme, that is what they agreed with the British Government, that is what this Bill does, establish a closed scheme. Whatever risks might exist and we do not believe that they are substantial but whatever they might be of falling foul of European Union provisions as a result of establishing the scheme as they agreed, exists equally whether the scheme is established by principal legislation or by subsidiary legislation, because the European Union law does not say, a scheme is new if it is established by an Ordinance in the House of Assembly but is not new if it is established by regulations in the Gazette. What the European Union law says is, "If you establish a new scheme you have got to comply with certain things, but the scheme is new", whether we do it by regulation or whether we do it by principal Ordinance and it is new because it does not exist as we speak. As we speak now in Gibraltar there is no pension scheme in existence because the fund from which they were paid has been dissolved and the Ordinance, the sections in the Ordinance pursuant to which it was paid had been repealed, and therefore as a matter of trite law, there is no such law in operation. Insofar as the second point that the Leader of the Opposition has made, he is of course quite right, for the purposes of introducing the commencement date of legislation, we believe that "Governor" means "Government", on the advice of the Government. I do not know whether he changed that because he had any experience of a Bill that this House had legislated which any past Governor during his term of office refused to commence. Obviously that has not happened to us yet, we do not expect it to happen to us, and therefore I am not prepared to assume against this Governor that he would "abuse" a power which is clearly intended for him to exercise on the advice of the Government, however should that situation occur, the hon Member can be absolutely sure that we would have recourse to the same device to which he apparently had recourse during the last parliament.

HON J J BOSSANO:

We are in Committee Stage, Mr Chairman.

MR CHAIRMAN:

Let me read the Standing Order and then we will proceed. Standing Order 33(1), "When the Committee Stage is reached the Assembly shall resolve itself into a Committee of the whole Assembly for consideration of the Bill. (2) The Clerk shall call the number of each clause in succession". There is already clause 1. If there is no amendment for clause 2 then it shall stand part of the Bill. What I am saying is, that we are now considering other clauses, not general principles which were considered last. I am prepared to hear you again if the Chief Minister has a short reply.

HON J J BOSSANO:

Mr Chairman, there is a long tradition in this House of bowing to the rulings of the Speaker. All I can tell you is, that since I arrived here in 1972, in every Committee Stage of every Bill there has not been a limit to how many times one may speak.

MR CHAIRMAN:

I was here before you both as an elected member and as an acting Attorney-General.

HON J J BOSSANO:

But not in the House of Assembly.

MR CHAIRMAN:

Well, in the Legislative Council which was better.

HON J J BOSSANO:

In the House of Assembly when I arrived you were not here and I assume, Mr Chairman, that the tradition that I encountered when I arrived must have been there before and I am speaking to the Bill in relation to what it says in clause 1. It is my intention to contribute in most of the other clauses of the Bill to whatever the Bill is saying.

MR CHAIRMAN:

Provided you propose an amendment.

HON J J BOSSANO:

Well, this has never been the case in the House, that one cannot speak, unless one proposes an amendment.

MR CHAIRMAN:

It would not be the rule of the House.

HON J J BOSSANO:

Well then, Mr Chairman, the rule of the House is, that unless we propose to amend something we cannot stand up and seek an explanation on something we are being asked to vote about before we exercise a decision on whether we vote for or against.

MR CHAIRMAN:

No, what you cannot speak is on the general principles of the Bill but yet on the section provided you put an amendment.

HON J J BOSSANO:

Yes, but being able to speak on a clause in this Bill and presumably in all forthcoming Bills is limited to whether we propose to amend it or not.....

MR CHAIRMAN:

That is what the rule says.

HON J J BOSSANO:

Well, then all I can say, Mr Chairman, is that in every previous meeting of every previous House, both when I have been sitting there and when I have been sitting here, Members have spoken to the clauses and then at the end having raised issues they have decided whether they vote for, against, propose an amendment or abstain.

MR CHAIRMAN:

I was merely reading you the Standing Orders which you should know.

HON J J BOSSANO:

I am aware of the Standing Orders, Mr Chairman, all I am saying is that if I take what you have said literally then it means that before we consider the Bill, clause by clause, we have to make up our minds whether we actually intend to amend anything without having debated what the clause is. It seems to me that, for example, if there is a clause here that says, the three occupational pension payments are going to be continued whether we want to amend it or not is not something we have raised in the general principles, because I can assure you that when specific details have been raised at the Second Reading of the Bill the ruling has always been that one should leave that for the clauses. Now, if we cannot raise it in the general principles and we cannot raise it in the clauses, then fine, we can just take it that the Government pass the Bill and we will finish very quickly.

HON CHIEF MINISTER:

Mr Chairman, I wonder whether I can assist. I believe that Mr Chairman's ruling on the strict interpretation of the Standing Orders is correct. However, it is also true that in the past, when we were in Opposition, we were allowed, presumably in the exercise of the Chairman's discretion, to put certain questions to seek clarification. It is true that we were not allowed to engage in long debate, but I remember on occasions standing up and asking the Government, "Can the Government explain how this should work?", and the Chairman would not allow us to engage in a debate on that but if the hon Members, then in Government, were willing to answer that question the Chairman would allow it. Now, Mr Chairman, I do not say that that is what Standing Orders requires but in the exercise of the previous Chairman's discretion he did allow some latitude in that respect and of course it is entirely a matter for you whether you are willing to do the same or not.

MR CHAIRMAN:

No, but I allowed latitude at the very beginning, did I not, I did not stop you.

HON J J BOSSANO:

I mean it is of course a relatively simple device to move an amendment to every clause and then one can say what one likes and what one does not like. It is totally unnecessary but I can.....

MR CHAIRMAN:

Delete the fullstop after the order.

HON J J BOSSANO:

When I finish up, there are no fullstops in it, Mr Chairman.

In respect of the explanation we have been given as to why there is no need to replace "Governor" by "Government", the Chief Minister has said this because he has not encountered from the current Governor any question as to whose decision it was when the commencement date should take place. I can in fact say that indeed in my experience the question of the commencement date was questioned by the Deputy Governor and if I remember correctly was in the public domain. A public statement was issued about that and it was for the avoidance of doubt as to when the law should commence and in fact, if I remember correctly, I believe the Chief Minister supported the view at the time. That is the reason why we felt, to avoid that kind of scenario, we should put "Government" in future instead of "Governor". The Chief Minister says he sees no need for it because there has been no question of that being challenged. That is hardly consistent with the fact that in the Ordinance, in a subsequent clause, what was previously a clause in the 1955 Ordinance which said that the Governor could by regulation amend benefits on the advice of the Minister, has now been substituted by the Minister doing it, which to be consistent with what he has just told us, will only be necessary if he had an indication that in respect of that clause there was a need to replace the "Governor" by the "Minister", because the Governor will no longer act on the advice of the Minister. So we are not satisfied with that explanation and therefore we believe, having started the precedent now in a number of Ordinances, that it is the Government who decide when the law should start and there is a very simple explanation for wanting to do that, and that is, that we may have a law that is intended to start at a particular date, for example, this law. This law, it may be intended, should come into effect on the 1st October

but if for practical reasons the place where the payments are due to be made is not ready on the 1st October, it will be a reasonable thing that the Government should decide on a different date because they are the ones who have to make the practical provisions to give effect to the machinery that the law creates. As regards the other point that the hon Member has made, what he has said in his original statement in the general principles of the Bill was that there was no other legislative way of doing this other than by the introduction of a Bill which did one of two things. Either the Bill has to say the repeal is cancelled and it is now the law of Gibraltar, well there is no need for a Bill to say the repeal is cancelled because the repeal was not done by an Ordinance in the first place and what we will demonstrate is the inconsistencies that exist in this Bill, precisely because the regulations that amended the 1955 Ordinance are untouched. There is nothing here that touches those regulations, those regulations will continue after this Ordinance.

HON CHIEF MINISTER:

Yes, Mr Chairman, just for the sake of clarification. There are of course subsidiary regulations to be made under this Ordinance and of course the regulations to which the Leader of the Opposition has referred will of course be repealed as well. If the position of the Opposition Members is that they do not welcome the opportunity, that bringing a Bill to the House gives them as Members of this House, to debate legislation, if what they really want me to do is what they did, which is to put most of the law in our statute book by regulations in the Gazette so that they get no opportunity to debate it, I can arrange that as well.

MR CHAIRMAN:

You are now infringing the Standing Rules.

HON J J BOSSANO:

Mr Chairman, that is neither on the general principles of the Bill nor on the clause, but I have to say.....

MR CHAIRMAN:

Since we have started it has not been.....

HON J J BOSSANO:

What I have to say is that when we raised it in the general principles of the Bill we were at pains to point out to the Government that the reason why we were making a case for not doing it by primary legislation on which there is no agreement with the United Kingdom, which is not a requirement or anything to do with the United Kingdom was, that we thought this would give them more problems than if they did it the other way and since we are telling them that this would give them more problems and they persist in doing it, then it will be entirely their political responsibility. We cannot do more than warn them.

Question put on Clauses 1 and 2.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson

Abstained: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

Absent: The Hon E G Montado

Clauses 1 and 2 stood part of the Bill.

Clause 3

HON H CORBY:

Mr Chairman, I wish to move the following amendments to Clause 3(1) -

(a) the deletion of the words "term Benefits" on the third line thereof on page 20, and (b) the deletion of the word "fund" in the fourth line thereof on page 21. Those are typing errors.

HON J J BOSSANO:

Mr Chairman, the fund that it is intended to establish, which is the Closed Long-Term Benefits Fund says that it is for the purpose of paying benefits to persons who were insured under the 1955 Ordinance and whose entitlement to benefit under that Ordinance derives from contributions paid under the 1955 Ordinance. The 1955 Ordinance therefore, presumably, is the one we have to go to to see who can benefit from this fund. In section 3(1) of the 1955 Ordinance, when it was originally introduced, it stated that subject to the provisions of the Ordinance, every person who after the 3rd October 1955 was under pensionable age and employed in insurable employment, should become insured under this Ordinance and thereafter continue throughout his life to be so insured. In 1974, by Ordinance No. 30 of 1974, an amendment was brought in which said that every person who on or after the 6th January 1975 was under pensionable age and either self-employed or in insurable employment under the Employment Injuries Ordinance should be insured under the Ordinance and continue therefore throughout his life to be so insured. The provision that was brought in meant that at one stage there had been a £500 limit on income and people were debarred and, subsequently social insurance contributions were made compulsory for everybody, irrespective of income and there was, as a result of representations to the Government on more than one occasion, an opportunity given to people to come in into the scheme. Therefore what I want to raise is, when we are talking about who is eligible to claim benefit from the Closed Long-Term Benefits Fund, we cannot tell from this Ordinance who is eligible without going back to the 1955 Ordinance. I want therefore clarification as to what the definition in section 3(1) of the principal Ordinance which refers to the 6th January 1975, has as to the criteria for eligibility. I also want to ask whether it is intended, by regulation, to make provision for allowing the people who were left out

originally to be able to make up deficiency in their contribution record and benefit from the new payments. And I want to raise the question of the fact that in this particular clause it talks about the entitlement to benefit under the Ordinance being derived from contributions paid under the 1955 Ordinance and what concerns me is that this might somehow unintentionally create an obstacle in respect of the contributions that have been credited and not paid under the 1955 Ordinance which, in particular, was something that was brought in in 1988 in respect, especially, of the persons who were aged 60 and unemployed who previously had to make voluntary contributions between the ages of 60 and 65 and where arrangements were made for those people, if they were not in employment between the ages of 60 and 65, to be able to get credits for that particular five year period so that they would not finish up having to pay from perhaps an occupational pension, a voluntary contribution to the Social Insurance Scheme from a low income and would not, on the other hand, by not being able to make that payment, find themselves with a lower contribution record.

HON CHIEF MINISTER:

Mr Chairman, obviously the intention of the Bill is that contributions and contributors to the 1955 Ordinance means contributions to the 1955 Ordinance as it stood on the date of dissolution. That is to say, not as it stood in 1955 when it was first legislated and if the Opposition Member thinks that that is not clear let it certainly be clarified by either deleting the 1955 part from the definition or by adding words to the effect of "means the Social Security (Insurance) Ordinance as amended, from time to time". If that is his concern, in other words, that this might mean that only people who contributed to the Ordinance in the form in which it stood in 1955, then that problem could be dealt with on that basis. As to the question of people who had been given subsequently opportunities to contribute then, of course, all contributions made under the Social Security (Insurance) Ordinance as at the moment immediately prior to its repeal, in the case of the sections and dissolution in the case of the fund, will be entirely honoured and respected and that is what contributor and contribution makes. In respect of giving people with incomplete payment contributions a further window of opportunity because, of course, the hon Member knows that independently of what I consider to be a quite unfair circumstance in which people who in 1955 earned, I think it was, more than £500, were prohibited from participating in the scheme and so therefore people who earned more than £500, and I think the reason why

there are so many policemen who have not got complete payment records is that it was mainly people in employment such as the police who used to earn more than £500 in those days, of course, did not have initially the opportunity to contribute to the scheme. But the hon Member also knows that the AACR Government, I think, opened the window twice, if I recall correctly, to give pensioners with incomplete payment records the opportunity to make up the deficiencies in their contributions and, indeed, it is as Opposition Members know the case, that hundreds and hundreds of Gibraltarian pensioners took that opportunity. The people that we are now discussing as being the Gibraltarians with incomplete payment records, of course, are the pensioners who omitted to take advantage of either or both of the two opportunities that the AACR Government gave for them to bring their contributions up-to-date. The Opposition Members did not, during their eight years in office, give those pensioners with an incomplete payment contribution record, did not open the window the third time, so to speak. The hon Member, I think, asks and I think he also posed the question, either he or the Opposition Spokesman for Social Affairs, the Hon Robert Mor, one or either of them posed the question whether and why did not the Government take this opportunity to do that. Well, they did not take the opportunity to do so. We are interested in doing so and we are looking at how it can be done without also having to give Spanish pensioners with incomplete payment records the opportunity to catch up with their contributions. Of course it is true that they may not be many because it has got to be contributions in respect of the period that they actually worked in Gibraltar and that the opportunity to bring up their contributions has got to relate to a period of actual work. The hon Member knows that the state of the records in the Social Insurance Department being manual as they are, makes it very difficult - although an attempt is being made - to quantify how many Spaniards might be let in to the opportunity to catch up with their contribution records and therefore it makes it difficult for Government to evaluate what the cost of that might be. Certainly the Government are going to consider opening the window a third time provided that it can be done without consequence to what can generally be called the Spanish pensions case.

HON J J BOSSANO:

Mr Chairman, I am afraid the Chief Minister has not addressed the first of my questions as to eligibility. It is not a question of specifying anything as to which Ordinance we are talking about because, in fact, in clause 2,

which is the one that provides the interpretation, it clearly states "the 1955 Ordinance" means the Social Security (Insurance) Ordinance 1955, so there is no need to spell it out anywhere, it has already been spelt out in the clause that has just been voted by their votes. All I am asking is, the definition in clause 3 is that the provisions of this Ordinance applies to persons who were insured under the 1955 Ordinance and, of course, the persons who were insured under the 1955 Ordinance logically, does not mean the persons who were insured when it started in 1955 but the persons who were insured right up to now but the fact that it says where, is symptomatic of the mistaken view that the Ordinance no longer exists. The Ordinance still exists and it exists, as amended, by the regulation that we have been told today is going to be repealed tomorrow. Of course, if what we have is that there will be a notice in the Gazette tomorrow, which is what we were told just now, repealing - I believe that is what the Chief Minister said - that tomorrow in the Gazette there will be a notice repealing the 1993 Regulations that amended the 1955 Ordinance.

HON CHIEF MINISTER:

No, that is not what I said. If the Leader of the Opposition will give way. What will be repealed, in fact, without strict necessity because the hon Member knows that under the Interpretation and General Clauses Ordinance, if regulations are made under a principal Ordinance so, for example, regulations were made under the 1955 Ordinance providing for the day-to-day workings of the Ordinance, as a matter of law by virtue of the Interpretation and General Clauses Ordinance, the moment that he repealed the sections in the principal Ordinance which were regulated by the regulations made under the 1955 Ordinance, the regulations automatically were revoked. Therefore the regulations made pursuant to the 1955 Ordinance to regulate the sections that I read earlier of the 1955 Ordinance which had been repealed by the 1993 regulations, in my opinion, already stand automatically revoked with effect from the date on which the Opposition Member published the 1993 regulations. Notwithstanding that and in order to make sure that it is not open to argument, the Administrative Secretary had suggested that we actually, on a belt-and-braces basis, actually include notice in the Gazette formally repealing them. My view is that that is legally unnecessary but it does no harm and it puts the argument beyond doubt. There is no intention, and this is the clarification of what the hon Member says, of repealing the 1993 regulations that repeal the sections in the 1955

Ordinance if that is what he understood me to say, then the hon Member misunderstood me.

HON J J BOSSANO:

That is indeed what I understood him to say. That, in fact, the 1993 regulations that repealed sections of the principal Ordinance was itself due to be repealed. If that is not the case, which he has just confirmed, then in fact it lends strength to my argument that the 1955 Ordinance is not the Ordinance that was done in 1955, it is the Ordinance that exists today and that is the Ordinance, as amended, by the regulations which we have now been told are not going to be repealed. *[HON CHIEF MINISTER: Absolutely correct.]* Right, and it is therefore relevant to the nature of the advice we are giving the Government that in doing things in this law which are in conflict with what the regulation did to the Ordinance, they are going to be facing a problem and it is in relation to who is entitled, we have to ask, is the definition of entitled person possible to decipher from this Ordinance or does one have to go back, as I understand this to say, to the 1955 Ordinance, as amended on several occasions to be able to say whether somebody will be able to claim a benefit from this or not claim a benefit from this. Because that is what I understand this particular clause is doing. The reason why I drew attention to the fact that it talks about contributions paid is because it seems to me that given the fact that once a particular word is approved in primary legislation, Mr Chairman, if the unintentional effect is to deprive somebody of something when it was not intended, then there is no way of correcting that other than coming back with a new Bill and maybe putting paid or credited under the 1955 Ordinance. But without doing a very detailed exercise of comparison between this and the existing law with all the subsequent amendments, one cannot be sure that that is the effect that this is having but, prima facie in the face of it, it seems to me that if the benefit derives from the contribution paid then there is an implication that one cannot claim a benefit from a contribution credited.

HON CHIEF MINISTER:

Mr Chairman, I am assured by the expert technicians both in England and in Gibraltar within the Social Insurance Department that that is not the case. That the Bill, as drafted, enables all contributors under the Ordinance as it was when it was repealed, all such contributors in extent

of all their contributions made, paid or credited, that their contributions of any of those types are saved. That is the advice, that is the basis on which the legislation is drafted. I cannot tell the hon Member because I have not studied them, whether the regulations that will be published tomorrow will cast further light on the question that he is now raising but the advice that the Government have received is that this legislation saves the position, in other words, he knows that the purpose of this is to restore everyone to the rights that they had on midnight on the 31st December 1993. The Government are assured by the experts and the technicians in the field that that is what is achieved but I will, of course, put his observations to those technicians because if there is a need to clarify some ambiguity or some lacuna has been left in the Bill then, obviously, we will want to close it immediately. But my advice at present is that that is not the case.

HON J J BOSSANO:

I do not know, Mr Chairman, whether the adviser is Mrs Asprey from the private sector paid for by the ODA or anybody else but we are looking at the Bill as it stands in front of us. I want to draw attention to subsection (2). Are we taking the subsections separately or are we now talking to the clause?

MR CHAIRMAN:

Clauses one by one but not the subsections. You have got no amendment to subsection (1)?

HON J J BOSSANO:

No, given the fact that the Chief Minister has said there is no requirement. In section 3(2)(d), there is provision for money to be credited to the new fund under the provisions of section 20 of the Public Finance (Control and Audit) Ordinance which is the Ordinance that allows money to be transferred from one special fund to another and from the Consolidated Fund, something that used to be considered not the thing to be done before by the Government. *[HON CHIEF MINISTER: Except that we are now doing it by principal legislation, Mr Chairman.]* That makes it all right? *[HON CHIEF MINISTER: Absolutely.]* I see. Since he is doing it by principal legislation and that makes it all right then, perhaps, he can explain what is the purpose of having that

there because it would seem that it is a provision which allows this fund to be fed not just from the arrears of contributions and not just from the money which we were able to get the United Kingdom to contribute, by refusing to put one penny of our money, but also from any of our money from any other fund.

HON CHIEF MINISTER:

Mr Chairman, I really do not know what the hon Member is talking about. What this law says is not that moneys have to be transferred. In other words, from what sources is it lawful for the Government, if they want to, to transfer moneys into the new pensions fund? There is a much depleted, let me say, pensions fund whereas when the hon Member reached office the Social Insurance Pensions Fund had a sum of money in it in the region of £55 million. As we speak today, because he has been using it to make transitional payments but not topping it up, it now only has £15 million in it. So there is a substantial problem of underfunding of this scheme which the Government will have to find resources for. And all that this section says is that the Government may put into this new fund moneys, the £15 million, in (a) all moneys standing to the credit of the Transitional Interim Payment Fund on 30th September 1996, in other words, the £15 million - it might now be a little bit less; (b) any arrears of contributions, that is to say, people can still come in to pay arrears when the Opposition Members look at a subsequent section in this Bill; all moneys that the United Kingdom pay in order to fund the Spanish pensions under the pensions agreement, and any other moneys in any other special fund which the Government may wish to transfer into the pensions fund in order to fund it properly. Those are not the moneys that must be credited to the fund, these are moneys that the Government may credit into the fund if the Government make the decision to do so. So there is no danger, as I am sure the Opposition Member will recognise, of moneys in another fund, for example, the Gibraltar Investment Fund, there is no danger of this requiring the Government to pay moneys from the Gibraltar Investment Fund into the Pensions Fund but if the Government wanted to transfer moneys from the Investment Fund into the Pensions Fund in order to properly fund this pension scheme for the future, it is under the provisions of this section able to do so.

HON J J BOSSANO:

But, Mr Chairman, there is no requirement for this to be inserted here anyway because, in fact, in clause 39 of the Ordinance, on page 43, the Government are proposing to amend the Public Finance (Control and Audit) Ordinance by including the Social Security (Closed Long-Term Benefits Fund) in the list of funds in respect of which this may already be done by the provisions of the Public Finance (Control and Audit) Ordinance. So why does he feel he needs to make provision to do the same thing twice in two different clauses of the same law?

HON CHIEF MINISTER:

Very simple, it is not twice in two different clauses of the same law. It is true that even if (d) were not in this subsection we could still have transferred money from any other special fund because there is another Ordinance, the Public Finance (Control and Audit) Ordinance which enables the Government to do so, but in order to make the law as transparent as possible and in order that citizens who want to know what the laws of Gibraltar are should be able to go to one document and see it, and as it certainly does no harm, all the sources of finance for this are there. I think that the hon Member, surely, is more concerned with what may be wrong with the Bill than what is there unnecessarily but which does no harm.

HON J J BOSSANO:

No, Mr Chairman, I am seeking, before we decide what the position is in voting for a particular clause or subclause, what is the purpose of putting it there. The Chief Minister seems to have discovered that the purpose is transparency when I pointed out to him that he had already done the same thing in section 39. Of course, if he wants to bring legislation to the House which does the same thing more than once in the same law, we are not going to stop him but I think we have got the right to point out to him that he seems to be putting something there which would only have made sense to us if there was a policy on which already a decision had been taken and which was being highlighted for that reason. It seems that, in fact, what we have got there is a redundant subclause which the Chief Minister is putting in so that all the citizens who clearly will not be able to understand any of it since he has difficulty himself, will now be transparently able to make sense of this. In subclause (3) we raised in

the general principles of the Bill, our objections to this particular subclause and we would like a separate vote on this subclause because on this one we are completely opposed as opposed to the others where we have got reservations. Subclause (3), Mr Chairman, reproduces what is in the 1955 Ordinance which was introduced subsequent to the accession of Gibraltar to the European Union and it refers, as I mentioned in the general principles of the Bill, to a section which was brought to this House in 1972, I think it was in October or November, in the European Communities Ordinance which purported to be a replica of the provisions in the United Kingdom European Communities Act but which is not. We do not accept for the reasons that I have explained in the general principles of the Bill that we have got a Community obligation to be introducing a Bill in the House in order to make the payments to Spanish pensioners that were suspended in 1993 at the insistence of the United Kingdom who then argued that there was no obligation to continue such payments and who have since continued to argue that until 1995 when, following a reasoned opinion from the Commission to which I was able to make reference because I had a Spanish version, they decided that for purely domestic reasons they preferred to provide the money for the payments to be resumed retrospectively from 1994. We believe there is absolutely no need for that to be there because by putting that there we are de facto recognising that in the absence of this Bill with this section the liability would fall on the Consolidated Fund. This does absolutely nothing for this Ordinance, it would have been preferable if it was not in the preceding one but it was there since the 1970's following our accession to the European Community and since we are not restoring what was repealed then we believe it is not wise to introduce it here when it does nothing whatsoever. Given the view that we have held throughout that the obligation falls on the United Kingdom, that is an obligation that was avoidable, that is an obligation they had chosen politically not to challenge and that therefore we cannot accept that in any circumstances it would ever have fallen on the Consolidated Fund and we want to vote against that.

HON CHIEF MINISTER:

Mr Chairman, I think it is instructional to review the history of this Bill. The Leader of the Opposition refers to its introduction in 1955 and then in 1972 by amendment to the 1955 Ordinance as if to say, "it was put there by people other than me and all I did was remove it". Well, it is true that it was put there in 1972 into the 1955 Bill. It is also true that when

the Opposition Members in November 1988 introduced into this House an Ordinance to amend the Social Security (Insurance) Ordinance by virtue of the Social Security (Insurance) (Amendment) Ordinance 1988 which was legislated in this House and became law in November 1988, that is to say, seven or eight months into their first term of office, this provision was left there by them. Not only was it left there but having repealed the section in which it was previously to be found, they went to the trouble of including it in a new section then being introduced by them into the Ordinance. And it was not until December 1993, having lived with this terrible clause for six years, without any apparent disability of holding the British Government politically answerable for the cost of Spanish pensions because our argument that the British Government are responsible for the Spanish pensions is a political argument, not a legalistic argument, it is political because it is a mess that they got us into which they could have saved us from. But the fact that this was there for six years which he having put it back into the Ordinance did not prejudice him in his discussions with the British Government and it was only on the 30th December 1993 that this argument came to him, it is an argument, it came to him and he decided that he would repeal it but he did not repeal it, Mr Chairman, as a conscience act in order to deal specifically with this point, he dealt with it, he repealed it by necessary effect in a series of repeals which all went to the question of the repeals of the sections that I referred to earlier. So, Mr Chairman, the Government do not accept that legalistically the inclusion or exclusion necessary or not of this subclause in this Bill has the effect, certainly not directly and I do not think the hon Member argues that it has the direct effect of making pensions a charge on the Consolidated Fund, I think what he is arguing is that it is in argumentative terms a qualitative concession, that is to say, he says that we have recognised in this Bill by referring to section 5 in the context of pensions and saying that notwithstanding that somebody could say, "You see, you accept that pensions are a matter of Gibraltar obligation under section 5" and that would let in the Consolidated Fund. If his arguments were correct then that would be true mechanically but I do not concede that the reference to those lions with which he was able to live comfortably for six years has the effect of weakening Gibraltar's arguments or altering the position of Gibraltar legalistically and to the extent that arguments are political, they will be advanced as he has done, successfully in terms of persuading the British Government to pay for the Spanish pensions, whether or not this is a legalistic obligation on the part of Gibraltar. But whilst we are on the subject of legalistic obligations on the part of Gibraltar, the Leader of the

Opposition referred to the reasoned opinion of the European Court. He got his copy of it confidentially and therefore did not want to use it. As far as I am concerned, this document is on the Government file, it has been made available to me by the Administrative Secretary and he has not told me that I cannot use it. So here it is, this is not a translation, this is in its genuine and pristine and original form, I am reading, for the record, from paragraph 5.2, paragraph 5 is generally entitled "The responsibility of the United Kingdom", paragraph 5.2 reads, "However, the United Kingdom is the Member State responsible for Gibraltar under Article 227/4 of the European Community. As a result of its status as a dominion of the British Crown and thus is responsible for all matters relating to the free movement of workers and the co-ordination of social security relating to Gibraltar." Paragraph 5.3 says, "In this context the Commission would recall that the Court of Justice has consistently maintained that each Member State is responsible with regard to Article 169 of the European Community, whatever the agency of the State whose action or inaction is the cause of the failure to fulfil its obligations even in the case of a constitutionally independent institution." Paragraph 5.4 reads, "In this respect the Commission would observe that the division of powers between the United Kingdom and the Gibraltar authorities is an internal institutional problem, a situation under the British legal system which cannot be used to justify the non-observance of Community law". In other words, that as far as the European Community is concerned there is only one Member State and it is the United Kingdom. And if any part of the Member State/United Kingdom which includes Gibraltar is not in compliance with its European Community obligations, the Commission looks only to the Member State which is the Government of the United Kingdom. The Government of the United Kingdom may wish to peep across Europe and say, "Hey, Gibraltar why haven't you complied with your obligations because I am being harassed from Brussels as the Member State responsible?" That is what the Commission is saying. This is an internal matter. What the Commission is saying here is that all of Gibraltar's Community obligations are as far as the European Community is concerned, the responsibility of the British Government and the European Commission does not look to the Gibraltar Government for compliance and does not sue the Gibraltar Government in infraction proceedings if we have not complied, it looks to the United Kingdom Government. I think the logical effect of what the Opposition Member said when he referred in the loose Spanish translation to this provision is that the Community has said that pensions is a United Kingdom responsibility and as it is a United

Kingdom responsibility let us not do anything that suggests that it is our responsibility. This is not just about pensions, this is about everything and I am sure the Opposition Member is not recommending to this House that I should say to the British Government, in respect of everything remotely connected with the European Union, I recognise that it is your business and not mine and therefore you are responsible. Because that is what the hon Member has, with our support, been cogently arguing against for the last four or five years and therefore I do not accept that for reason of these views expressed in this reasoned opinion, it is politically prudent for Gibraltar to assert in connection with pensions that pensions are a United Kingdom legalistic responsibility. We have already said that whatever the legalistic responsibility it is certainly their political responsibility for having allowed it in the first place but certainly this Government are not going to argue that on the basis of what the Commission have said, Spanish pensions liability are the legalistic responsibility in a domestic context of the British Government. Therefore I disagree with the general tenor of the hon Member's point. But if I am wrong and he is right, I do not agree that the effect of having this here is to expose the Consolidated Fund any more than it is already constitutionally exposed to the payment of pensions in the sense that he is fearing.

HON J J BOSSANO:

Mr Chairman, the Chief Minister has totally misunderstood the nature of the argument that I put to him in the general principles of the Bill. I was not saying that it was the view of the GSLP that the Commission had made a distinction between the United Kingdom liability in respect of Regulation 1408 whether it be for pensions or anything else as it applies in Gibraltar and any other regulation. What I was pointing out was that that document clearly challenged the view of the United Kingdom between 1988 and 1995 that the dissolution of the fund was not in breach of Community law, that was the view, and that the decision not to persist in defending that view was a political decision, not a legalistic decision. *[HON CHIEF MINISTER: I agree.]* Yes, and that the consequence of that political decision cannot remotely be considered to be a Gibraltar obligation and that therefore since the reason why we have this Bill is not because we have lost the case in the European Court of Justice but because the United Kingdom chose not to go to the European Court of Justice for purely political reasons then, in fact, the section in the European Communities Ordinance that says, "the obligations of Gibraltar

under Community law are a charge on the Consolidated Fund" are totally irrelevant because this is not such an obligation. This is the giving into effect of an agreement between the Government of Gibraltar and the Government of the United Kingdom whereby the United Kingdom shows politically to pay £150 million rather than contest the case and that is not a Community obligation of Gibraltar and since it is not a Community obligation of Gibraltar then it is nonsense to say, "Notwithstanding section 5 the payment of the benefits will be paid from this and not from the Consolidated Fund". The payments of the benefits could not be paid from the Consolidated Fund because the obligation to pay those benefits is the result of a political act by the United Kingdom Government and not a ruling of the courts. There is, independent of that, of course, the fact that section 5 of the European Communities Ordinance was slipped under our noses in 1972, and I was here then and I certainly took it that when the Attorney-General told me, "This is a photocopy of the United Kingdom" I did not look to the United Kingdom then, having been in the House three months. Having looked at it subsequently I found that it was not a photocopy of the United Kingdom, that it imposes an obligation by making a direct charge on the Consolidated Fund of costs which are not so charged on the Consolidated Fund in the United Kingdom. I explained that in the Committee Stage, I said in the United Kingdom what is a charge on the Consolidated Fund over which there is no control by appropriation is the contribution that the United Kingdom has to make to Community budgets arising out of the Treaty of Accession but actual administrative costs of the payments of benefits are met, of course, by the Treasury but they are met out of funds appropriated for that purpose. In our law, it has never been used since 1972 but it seems to me that by having it here what we are saying is, "We accept that the reason why we are having these benefits is because this is a Community obligation of the United Kingdom which by virtue of section 5 of the European Communities Ordinance is a Community obligation of Gibraltar", and it is our contention that it is neither a Community obligation of ours or a Community obligation of the United Kingdom because the United Kingdom was telling us, between 1988 and 1995, that it was not such a Community obligation.

HON CHIEF MINISTER:

Mr Chairman, I agree with the Leader of the Opposition in everything that he has said except to the point of stating that this makes it a Community obligation. If it is in law a Community obligation of Gibraltar, section 5 of

the European Communities Ordinance applies to make it a charge on the Consolidated Fund. If it is not, and I support his argument in support of the contention that it is not, this does not make it a charge on the Consolidated Fund and therefore this does not make a charge on the Consolidated Fund anything which presently is not. That is what I am saying to the hon Member and to make this point I only need to disagree with the last paragraph of everything that he has just said.

MR CHAIRMAN:

Would you be quite happy if I put now subclauses (1), (2), (4), (5), (6) and (7), as amended, stand part of the Bill and postpone subclause (3) until all the other clauses have been voted?

HON J J BOSSANO:

Yes, Mr Chairman, I am happy with that.

Vote taken on subclause (1), as amended, and subclauses (2), (4), (5), (6) and (7).

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson

Abstained: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

Absent: The Hon E G Montado

Clause 3(1), as amended, Clause 3(2), Clause 3(4), Clause 3(5), Clause 3(6) and Clause 3(7) stood part of the Bill.

MR CHAIRMAN:

Clause 3(3) is postponed until after consideration of all the other clauses.

Clause 4

HON J J BOSSANO:

Mr Chairman, I mentioned before, section 3(1) of the 1955 Ordinance, as amended. Again here we have got a reference to the rights that people enjoy under this new Social Security legislation and it says, "A person who was insured under the 1955 Ordinance shall be so insured under this Ordinance and shall thereafter continue throughout his life to be so insured". Section 3(1) already said that he was insured throughout his life and in fact it has not been repealed.

HON CHIEF MINISTER:

Section 3(1) presently applies only to maternity benefit and death grants and therefore, when section 3(1) as it presently stands in the Ordinance speaks about insured persons, it is referring only to insured persons for the purposes of those two benefits only and not for the purposes of old age pensions, widows, widowers, guardians, etc. I do not agree with the point the Leader of the Opposition has made.

Question put.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson

Abstained: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

Absent: The Hon E G Montado

Clause 4 stood part of the Bill.

Clause 5

HON J J BOSSANO:

In Clause 5(5) we have a statement that says, "Any reference in this Ordinance to contributions paid or credited to any person shall be a reference to contributions paid or credited to him under the 1955 Ordinance". That means that it only applies to contributions paid or credited until the 31st December 1993.

HON CHIEF MINISTER:

Or arrears now paid under the provisions contained a little bit later on to permit it. It will still be possible to make a claim. It may be possible for certain arrears to be paid, so if it is still possible to make arrears of contributions under the old rule, certainly not under any new window opened for people with insufficient contribution records, but this new scheme applies only to contributions paid or credited under the 1955 Ordinance. I do not know whether it is still possible, under the late payment rules, I think one has got six months, but if it is this will be included and no others.

HON J J BOSSANO:

The question I am raising is, this applies only to contributions paid or credited in respect of the period up to December 1993.

HON CHIEF MINISTER:

The answer to that is yes.

HON J J BOSSANO:

Can I ask in terms of the fact that there is a constant reference to weekly rates in both subclause (2) and in subclause (3), does that mean that the benefits under this Ordinance will be paid weekly or have to be paid weekly?

HON CHIEF MINISTER:

The Leader of the Opposition knows that this business of weekly payments in terms of the tables and entitlement, he knows that entitlements under the Ordinance have always been established on a weekly basis and these tables are the ones that existed in the Bill immediately prior to its repeal. I am advised, and indeed I believe that the advice is correct, that the fact that one calculates people's entitlement on a weekly basis does not mean that one cannot pay them on a monthly basis if one wanted to. In other words, there is no connection between the period of time established for the purposes of calculating the amount to which one is entitled, on the one hand and on the other hand, the number of weeks that one lumps together for the purposes of including it in a one payment cheque.

Question put.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson

Abstained: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

Absent: The Hon E G Montado

Clause 5 stood part of the Bill.

Clause 6

HON J J BOSSANO:

In Clause 6 we are told that a person who was entitled to a benefit in paragraphs (b), (c), (d) or (f) of section 10(1) of the 1955 Ordinance on 31st December 1993, he could not be entitled after that date because it disappeared on the 1st January 1994, or to a payment under either the Transitional Interim Payment Fund Regulations or the Pre-Occupational Pensions Payments Fund Regulations shall be entitled to a benefit or payment of the same description under this Ordinance. The understanding that we have of the way that this is written is that the people who are getting pre-occupational pensions payments in September will continue to get them in October, that they will be of the same value and that they will be called the same thing because otherwise what does "of the same description" mean? But of course it also then goes on to say, in subsection (2), "Where a person is entitled to benefit under this Ordinance by virtue of subsection (1)" - which I have just read - "all the provisions of this Ordinance shall thereafter apply to that benefit". One of the provisions of the Ordinance that applies to that benefit is the one that I have just asked about which is that one only gets a benefit in respect of contributions made in respect of the period up to December 1993 and the pre-occupational payments are being made in respect of contributions that would have been made post-December 1993 had the SIM not been dissolved. So it seems to me that in the light of the answer that I got in respect of clause 5(5) and what I read in clause 6, that there is a contradiction between (1) and (2) created by the fact that there is no provision for insurable employment post-1993 to be counted towards the benefit. On the one hand we are told that the benefit

will be maintained at the same rate and on the other hand we are being told that the benefit will be subject to the new rules. Well, one negates the other.

HON CHIEF MINISTER:

No, I do not agree with the Leader of the Opposition's arguments. This section does not establish how much somebody gets paid, it identifies who gets paid. In other words, who are the existing beneficiaries of this scheme just being established. The existing beneficiaries are people who were already entitled to a benefit. In other words, people who were already pensioners on the 31st December 1993 and were already collecting their pension - that is (a). Who else is entitled, who else is a beneficiary under this scheme? People who have become pensioners after the 31st December 1993 or who were pensioners before the 31st December 1993 but never submitted a claim because all this went up in the air and such people are described as beneficiaries under this new scheme for part of their benefits. In other words, when they are paid their pension the benefits arising from their contributions up to 31st December 1993 will be paid from this scheme. Some of them might have become pensioners in 1995, so they will also be beneficiaries under the new scheme to be established and part of his pension cheque will come from the open fund to be established by some different legislation next month or the month after that. So this section says who is an existing beneficiary. One is an existing beneficiary if one had become a recipient of benefits on the 31st December 1993 or have subsequently become or subsequently would have become if the scheme had carried on and in that latter case only in respect of one's contributions up to the 31st December 1993 because whatever benefits one may be entitled to in respect of post-December 1993 contributions will be paid to one out of a different fund, out of a different scheme to be established by a different Bill. I therefore do not accept that there is any contradiction between these because we are not here talking extent, we are simply identifying people; what those people so identified are then entitled to by way of quantum is established by the rest of the rule of the Ordinance and the regulations made under it for the purposes of calculating entitlement, which is one of the regulations which will be published tomorrow.

HON J J BOSSANO:

Mr Chairman, perhaps the Chief Minister can explain to me what the words in the Ordinance mean because what I read in the Ordinance is where a person was entitled to a pre-occupational pensions payment on the 30th September 1996, he shall be entitled to a payment of the same description at the same rate, which is how much, which it was payable to on that date which is on the 30th September 1996. That is what I am reading. If what I read does not mean he will get in October the same as he was getting in September as a pre-occupational pension then maybe the language of the law is different from the language of the Queen, but in the Queen's English this means to me how much, to whom and on what date.

HON CHIEF MINISTER:

No, how much is to be calculated under this Ordinance, that is the rest of it. There are many provisions in this Ordinance and regulations made under it to work out how much. This section identifies people and it identifies people by reference to those who were receiving and the reason, I am sure the Leader of the Opposition knows why it says 30th September 1996 is because that is the last day that the transitional rules are going to be in place. If one was receiving a payment under the transitional rules because one had become a pensioner by the 30th September 1996, then one will continue to receive a pension. In what amount under this Ordinance? In the amounts established by the benefits entitlement calculation provisions established by this Ordinance and they will be the ones that the Leader of the Opposition is already familiar with, the weekly averages, etc. So that regime has not changed. I understand the point that he is making but I do not think the words have the effect that he has attributed.

HON J J BOSSANO:

What do the words "at the same rate" mean? If one says somebody is going to be paid at the same rate, how does that identify the person and not the amount? This is what the House is voting on, that they will be paid at the same rate which it was payable on that date and that date can only mean the date in the preceding sentence which is the 30th

September 1996. To me, I think what this says is that if somebody was getting £x in September the transitional provisions guarantees that he will get the same amount in October. I am pointing out to the Chief Minister.....

HON CHIEF MINISTER:

And he will. He will get part of it under this Bill and the other part of it under the Pre-occupational Pension Fund Regulations insofar as they remain relevant to him.

HON J J BOSSANO:

But it says, "he shall be entitled to a payment of the same description, at the same rate under this Ordinance".

HON CHIEF MINISTER:

There is no point in the hon Member repeating. I hear what he says, that is not the effect of this as far as the draftsman is concerned but, of course, if anybody mounts a challenge on the basis of the argument that the Leader of the Opposition is saying we will have to deal with it. But I am advised that this definition is actually one of the essential clauses of this Bill has been carefully studied by our people and by Mrs Asprey and I am assured that every word in this is essential to include in this scheme everybody who needs to be included in the scheme.

HON J J BOSSANO:

I have no doubt that lots of people have studied it. All I am pointing out to the Chief Minister is that the letter of the law, which is what will create the right, does not appear to confirm the intention that he is saying and, of course, this is one area where having used the opportunity that he had to go through the regulations, this conflict would have been avoided because I need to point out to him that, in fact, the Pre-Occupational Pensions Payments Regulations are not going to be repealed. So it seems to me, what happens in October? Do people in October cease to get payments of pre-occupational payments and get this instead?

HON CHIEF MINISTER:

In respect of their entitlements arising from their contributions up to and including the 30th September 1993 absolutely so, yes. They will continue to collect under the Pre-occupational Pensions Funds Regulations; they will stop collecting under the Transitional Interim Payment Fund Regulations in respect of their pre-December 1993 contributions and when we have the new open scheme in place, they will also cease to collect in respect of post-1993 contributions under the Pre-occupational Pensions Payments Fund Regulations.

Question put.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson

Abstained: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

Absent: The Hon E G Montado

Clause 6 stood part of the Bill.

The House recessed at 5.10 pm.

The House resumed at 5.30 pm.

Clause 7

HON J J BOSSANO:

Can I make the point again. We have, Mr Chairman, the fact that in some areas of the Ordinance it talks about contributions paid or credited under the 1955 Ordinance. Here again we have got a reference to the transitional provision and the extension of the time limit and there there is no reference to a claim for the payment under this Ordinance being on the basis of contributions credited, it is limited to contributions paid. It is a point that we have made before and we are making it again. In some areas the reference to the benefits covers both contingencies, in others it does not. Here is one case where it says the transitional provision which, by and large, I would imagine apply to the former Spanish pensioners who are the only ones likely not to have claimed. But, of course, because we are opening it up to every previous insured person under the 1955 Ordinance it does mean that if anybody missed the boat before, if they become aware of this they will have an opportunity. There have been, not many, the odd case where a person has made the claim after the six months, maybe overrunning by one or two months and has lost one or two months, presumably this provision will allow people in that category to be able to claim the benefit all the way back to July 1993. But it does say that it is a claim for benefit of payment under this Ordinance on the basis of contributions paid under the 1955 Ordinance. Frankly we are not clear why it appears to restrict it to contributions paid in some sections and yet in other sections of the Ordinance there is a reference to both.

HON CHIEF MINISTER:

There is no point in my getting up every time the point is made. The Government intend to pass the Bill on the basis that it was drafted and we will certainly refer the matter and if it should need amendment it will, of course, be amended if the Leader of the Opposition turns out to be correct. But this Bill, as I said before, has been carefully studied and drafted by technicians. But if the hon Member turns out to be right the necessary amendments will be introduced in due course.

HON A ISOLA:

Mr Chairman, there is only one thing the technicians might like to consider and that is that the heading "claiming" seems to be misspelled, perhaps that could be corrected.

HON CHIEF MINISTER:

I am glad to see that even the Opposition Member is a technician.

Question put.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson

Abstained: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

Absent: The Hon E G Montado

Clause 7 stood part of the Bill.

Clauses 8 to 21

Question put.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson

Abstained: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

Absent: The Hon E G Montado

Clauses 8 to 21 stood part of the Bill.

Clause 22

HON J J BOSSANO:

Mr Chairman, in clause 22 we have got a provision that says, "Every assignment of, or charge on, benefit and every agreement to assign or charge benefit shall be void". Are the Government aware that there was a decision taken by the United Kingdom, given the fact that it was intended to make lump sum distributions, that for a period of time they were paying these lump sums to the estate and what is the effect of this section on claims related to persons where we have got a situation where in some cases lump sum payments have been made to the estate?

HON CHIEF MINISTER:

Yes, Mr Chairman, the view is that benefits of a deceased pensioner to which an estate becomes entitled is not the subject matter of an assignment, there is no change in legal title. The point is that the estate becomes, by operation of law, entitled and stands in the shoes of the deceased, there is no assignment. There is a point that arises in section 22 but the Leader of the Opposition has not made it and that is that, of course, this section as it stands, and we are not proposing an amendment at this stage, would be an obstacle to the reimbursement even with the consent of the pensioners to the Junta de Andalucia of any moneys that they may have advanced. The Opposition Members are probably aware that there is a suggestion that moneys should be paid to the Junta instead of to the pensioners themselves. We have said that under the law of Gibraltar the person entitled to come and collect the pension is the pensioner and it would only be if the pensioner were to so direct that any part of his lump sum could be made over on his behalf and in his name to the Junta. Even if that happened, it would require an amendment, in other words, even if the pensioner requested us to pay his lump sum or some part of his lump sum to the Junta, it would require an amendment to this section because this section would make any such charge or assignment of the lump sum by the Spanish pensioner to the Junta void and the Government are not going to pay any lump sum to the Junta unless we are getting a proper discharge in respect of that lump sum from the pensioner. So if there is any administrative arrangement in that respect, it would require an amendment to this section but it is not required for the purposes of the case that the hon Member has raised.

HON J J BOSSANO:

Mr Chairman, as the Chief Minister has said this is not the point that I am making and it is not the point that he was answering either. The point that I am making is that, in fact, payments have been made not in respect of retrospective lump sums due while the pensioner was alive but the value of the unexpired lump sum which the pensioner would have got had he lived. There were payments being made which were payments which the United Kingdom authorised and happened for a period before we discovered that they were happening and when we discovered it we pointed it out to the United Kingdom that this was something that they were doing which was creating discriminatory treatment between Spanish

pensioners and Gibraltar pensioners. *[Interruption]* Given the fact that that has happened I am asking what is the effect of this. We have had a situation already created in a number of cases where a pensioner has died and the United Kingdom decided that if the pensioner had not died he would have continued getting the pension for x period of years and that therefore the next of kin was able to claim the unexpired period of the future pension and got it paid. Presumably this does not allow that to happen anymore.

HON CHIEF MINISTER:

I do not think that that is the effect of this clause. In the circumstances that the Leader of the Opposition is describing, and the discrimination point aside, does not give rise to an assignment or a charge nor does it constitute an agreement by the pensioner to assign or charge his pension entitlement which is the only circumstances with which this section is concerned.

Question put.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson

Abstained: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

Absent: The Hon E G Montado

Clause 22 stood part of the Bill.

Clauses 23 to 36

Question put.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson

Abstained: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

Absent: The Hon E G Montado

Clauses 23 to 36 stood part of the Bill.

Clause 37

HON J J BOSSANO:

Mr Chairman, as we indicated in the general principles, this is the only clause we are voting in favour of.

Clause 37 was agreed to and stood part of the Bill.

Clause 38

HON J J BOSSANO:

In clause 38, in the general principles, we asked for an explanation, other than the fact that it is in the old Ordinance, for this clause being here given the fact that we have been told throughout that the purpose of this is to give effect to the bilateral agreement with the United Kingdom and the nature of that bilateral agreement with the United Kingdom is that the United Kingdom would fund 100 per cent of the cost of the benefits to the pre-1969 pensioners at the rate at which such benefits existed in December 1993, that is the nature of the agreement. Therefore if we are introducing in the new closed scheme the possibility of not being closed because the Minister may by order increase the sum in section 16 which is the addition for the spouse subject to an earnings limit of £23.90 and the sums in Schedule 1, which are the rates of benefits, then we still cannot understand, given that there has been no response to that point, why it is we are introducing in an Ordinance that gives effect to an agreement that says that this may not happen, the enabling power to do what may not be done.

HON CHIEF MINISTER:

The fact that the agreement relates only to pensions that are frozen rate, does not mean that it cannot be increased. This provision is here to enable the Government, if we decided to do so, to increase the level of pensions. Of course, Opposition Members understand that since the Government of Gibraltar will not pay Spanish pensions either at the present rate or in respect of any increased rates, any agreement to increase pensions under this could only be following an agreement from the United Kingdom to pay, for example, any increased rates to Spaniards. So it is true that the pensions agreement does not require this but there is much here that the pensions agreement does not require, this is a permissive power. In other words, it allows the Government, if they wished to, to raise the rates of these pensions but hon Members will know that it cannot be done without the approval of this House in a resolution. So if we are ever proposing to do that the Opposition Members would have an opportunity to contribute to the debate as to whether it was right or wrong to do so. But, yes, the Leader of the Opposition is entirely right, the pensions agreement with the United

Kingdom does not require this, does not require many things, the pensions agreement does not require that there should be an appeals procedure and does not require that there should be penalties and does not require that there should be a review and does not require that there should be an appeals board or fees or that there should be provisions for overlapping benefits; there are many things in this Bill that the pensions agreement with the United Kingdom does not require. That does not mean that it cannot be in the Bill.

HON J J BOSSANO:

Given the fact that the Chief Minister, when he introduced the Bill, spent a lot of time telling us that all that this Bill was doing was giving effect to the agreement with the United Kingdom and nothing else, if there are lots of things that are discretionary then, frankly, the whole trend of the discussion of this Bill both in Committee Stage and in the general principles have been totally misguided because there are things that we can do or things that we need not do then. They are there not because it is a requirement of any agreement that was done with the United Kingdom to restore the benefits under the old Ordinance. In fact, most if not all of what is here, is what was there in the 1955 Ordinance up to December 1993 except that even in December 1993 the condition on not raising benefits was already there. It seems to me that by putting that clause there what we are saying in this House is that there is a possibility that these rates will be increased or could be increased if the Minister so decides and the House approves it and that possibility, as the Chief Minister has said, can only come about by two ways; either by the United Kingdom agreeing to pay or the Government of Gibraltar agreeing to pay, both of which seems to me to be highly unlikely sets of circumstances.

HON CHIEF MINISTER:

I may be as successful as the Leader of the Opposition in negotiating with the United Kingdom.

Question put.

For the Ayes: The Hon K Azopardi
 The Hon Lt-Col E M Britto
 The Hon P R Caruana
 The Hon H Corby
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon P C Montegriffo
 The Hon J J Netto
 The Hon Miss K Dawson

Abstained: The Hon J L Baldachino
 The Hon J Bossano
 The Hon J J Gabay
 The Hon A Isola
 The Hon Miss M I Montegriffo
 The Hon R Mor
 The Hon J C Perez

Absent: The Hon E G Montado

Clause 38 stood part of the Bill.

Clause 39

Question put.

For the Ayes: The Hon K Azopardi
 The Hon Lt-Col E M Britto
 The Hon P R Caruana
 The Hon H Corby
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon P C Montegriffo
 The Hon J J Netto
 The Hon Miss K Dawson

Abstained: The Hon J L Baldachino
 The Hon J Bossano
 The Hon J J Gabay
 The Hon A Isola
 The Hon Miss M I Montegriffo

The Hon R Mor
 The Hon J C Perez

Absent: The Hon E G Montado

Clause 39 stood part of the Bill.

Clause 40

HON J J BOSSANO:

Mr Chairman, the way that this is being done is, in fact, to say, "The Transitional Interim Payment Fund Regulations cease to have effect" and the Establishment Notices cease to have effect and therefore once this Bill is passed and approved and becomes law, the fund which was established in 1993 no longer exists and we have got a provision that the balance of the money in that fund is to be credited to the newly created..... *[Interruption]* No, it says, "there shall be credited", it is mandatory under the provisions of clause 3(2). In the (Amendment) Regulations 1993 in the Social Insurance Ordinance which are not being amended or repealed, we were told, there is a provision saying that the money is to be paid into the fund that will cease to exist. Is it not necessary to go back and amend that regulation which we were told earlier it was not the intention to amend?

HON CHIEF MINISTER:

I am not sure that I have understood the hon Member's point. These two regulations, that are revoked, are the ones that establish the Transitional Interim Fund and the one that regulates it. Those funds will be obsolete once this Ordinance is passed and the moneys are transferred because there will be no further transitional interim payments. Legal Notice No. 191 of 1993 which are the regulations called the Social Security (Insurance) (Amendment) Ordinance 1993 which are the ones that I said were not going to be repealed. Certainly Part II deals with the Transitional Interim Payment Fund but they will be redundant whether as a matter of legislative practice it is necessary to formally revoke them or whether they simply fall away by virtue of being redundant. This is a technical point which I suspect the Attorney-General will, when she gets round to it, advise, but they are empty of all meaning and effect.

HON J J BOSSANO:

The point that I am making is to draw the attention of the Government to the fact that we have got a clause here which says, "The arrears will now be paid to the new fund instead of the Transitional Interim Payment Fund which shall cease to exist" and we have got in the existing law, unrepealed, a requirement that the arrears will be paid to the Transitional Interim Payment Fund. I would have thought if we are now placing a law on the statute book that says, "The arrears shall be paid to the Closed Long-Term Benefits Fund" then we need and we ought to, repeal the provision in the law that says that they should be paid to the Transitional Interim Payment Fund. It is something that may have been overlooked and I am drawing it to the attention of the Government.

HON CHIEF MINISTER:

And we will look into it, given that this is primary legislation. Of course, if there were a conflict which I cannot consider on my feet in the middle of a debate, but if there were a conflict between the provisions of this subsidiary legislation and this primary legislation which we are now considering, then needless to say, the provisions of the primary legislation will take precedence and therefore there is no question of there being any unresolvable conflict between the two because if there is a conflict between the two it is this Bill when it becomes primary legislation that will supersede the regulations.

HON J J BOSSANO:

The amendment made by the regulations, Mr Chairman, actually incorporated that provision in the 1955 Ordinance which still continues to exist.

HON CHIEF MINISTER:

Yes, but it was put there by subsidiary legislation and therefore if we now by primary legislation do anything which is in conflict to what has previously been done by subsidiary legislation this, in my opinion, takes precedence but it is a very technical point. I am obliged to the hon Member for pointing it out. No doubt the Attorney-General and her law draftsman will want to consider the point and if they think it necessary to

tidy up these regulations in this way then I am sure that she will give me the necessary brief or advice. .

Question put.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson

Abstained: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

Absent: The Hon E G Montado

Clause 40 stood part of the Bill.

Clause 3(3)

Question put.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson

For the Noes: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

Absent: The Hon E G Montado

Clause 3(3) stood part of the Bill.

Schedules 1 to 3 and the Long Title

Question put.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson

Abstained: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

Absent: The Hon E G Montado

Schedules 1 to 3 and the Long Title stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Social Security (Closed Long-Term Benefits and Scheme) Bill 1996, has been considered in Committee and agreed to, with amendments, and I now move that it be read a third time and passed.

Question put.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson

Abstained: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

Absent: The Hon E G Montado

The Bill, as amended, was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Monday 14th October 1996 at 2.30 pm.

Question proposed.

MR SPEAKER:

I have received a notice from the Leader of the Opposition that he wanted to raise two matters on the adjournment. One is in relation to the Police and the other in relation to the meeting in London on the 27th of this month. I do not consider the Police matter as urgent and of public interest so I will not allow the matter to be raised. On the second one, I consider the matter has public interest.

HON J J BOSSANO:

Am I to understand, Mr Speaker, that the other matter I will be able to raise on the final adjournment or not at all?

MR SPEAKER:

Not unless you put a motion with proper notice and everything.

HON J J BOSSANO:

I see. Mr Speaker, the forthcoming meeting in London is one around which there has been a certain amount of controversy. We have taken the view that before we proclaim our opposition or support of this meeting, we should give the Government an opportunity to clarify precisely what is taking place in London in the light of the conflicting statements that have been made. I would draw the attention of the House to the fact that when this was originally announced in 1994 following a meeting between Douglas Hurd and Senor Solana, in the course of an interview with GBC on 20th December the Foreign Secretary made clear that the proposed mechanism would not be going ahead unless the Government of Gibraltar chose to participate and that they were free to do so or not. He then used, for the first time, in expanding when asked by GBC about the tripartite nature of those discussions in that forum which were to improve co-operation to combat drug trafficking in the area around Gibraltar, he then described them as what is sometimes called 'two flags three voices'. The GSLP Government at the time when invited to participate given that in the joint statement it said that early in the new year in 1995 the nature of the mechanism would be developed, took the view that we would await further communication from London as to what was in the mind of those

that had discussed the creation of this mechanism and since nothing further materialised, we issued a press release at the time saying we were taking the initiative because this was a very important area where we wanted to participate to avoid any possible charge that there was any reluctance on the part of the Government to join in the international fight against drug trafficking. And we proposed, from Gibraltar, what should be the composition, that there should be three delegations, that it should be kept apolitical, that it should involve people who were technically involved in the fight against drugs from the United Kingdom, from Gibraltar and from Spain. When in fact the Spanish Government decided that their delegation would be headed by the Civil Governor of Cadiz we pointed out to the United Kingdom that we thought that it would be preferable that it should be customs officers, police officers and legal experts given the fact that we were looking at the legislation in the three jurisdictions and at the resources in the three jurisdictions. And it was on that basis that they started and it was on that basis that they continued and it was on that basis that the last meeting would have been held in Seville if it had not been for the fact that 48 hours before they were due to take place, the Civil Governor of Cadiz, chose to issue a press release in Cadiz saying that they were bilateral meetings with the presence of the representatives of the local authority in Gibraltar. Frankly, that was not what we had agreed to in January 1995 and it seemed to us that there was an attempt to bounce us into something different which had nothing to do with the efficacy of the mechanism in combating drugs but an attempt to score a political advantage in a situation which should not be the subject of manipulation of this kind. And the Gibraltar delegation went with a brief, which we recently made public, which clearly stressed our desire to continue with the co-operation in this field but the need to be sure that we were not being downgraded, a position that the United Kingdom fully supported because clearly the United Kingdom has argued that as a British dependent territory we may not be a sovereign state but we are a separate jurisdiction. If there is a need to amend any law in Gibraltar, it is not the United Kingdom Parliament that has to do it but this House, and therefore if we are looking at the respective laws to see if there are problems of co-operation created by the fact that the laws are different here, not just from those of Spain but also from those of the United Kingdom, even though they may be similar to the United Kingdom ones, then the logic of that is that the responsibility of the delegation can only be to go as far as the elected Government have provided them with the brief as to how far they may go. If all that was happening was that there was local representation from Gibraltar as part of the United

Kingdom delegation and local representation from the Campo as part of the Spanish delegation then obviously the major decisions on policy and on legislation and on co-operation would be taken by the two parties in a bilateral forum and the local authorities in the area would, at the end of the day, do what they were told to do by the Sovereign power. The statements that have been made in the last 24 hours which are very pertinent to this, suggest that the Spanish Government are not simply going back to the position which many of us initially thought was an initiative of the Civil Governor of Cadiz at the time but, in fact, to be claiming that what happened in the first two meetings was not what was agreed originally on the 20th December and that something different was agreed on the 20th December. We feel it is important that that mechanism should continue but we feel it is even more important than the support that there is in Gibraltar for the fight against drugs should not be taken advantage of by Spain to seek to obtain a lead in the position on other issues in relation to discussions over Gibraltar which run contrary to what all of us in Gibraltar are prepared to accept. Therefore before we go down the route of saying we do not support the participation of Gibraltar, we wish to give the Government an opportunity in the House on the record to reaffirm, if that is indeed the case, that the view that we took when regrettably, and we said that we regretted it, the meeting that was scheduled in 1995 never took place because the Spanish delegation would not agree to accepting the fact that the Gibraltar delegation was there in its own right, which we at the time made public and which was supported by the Government from the Opposition and other political parties, that that continues to be the Gibraltar position, that it had the backing of the United Kingdom Government then, that it continues to have the backing of the United Kingdom today and that if anybody is in the wrong in this one it is Spain and that much as the continuation of international co-operation against drug trafficking is a commitment which every responsible Government has to have, we should not allow our commitment in that direction to be taken advantage of by Spain to downgrade the position of the Gibraltarian contingent in that tripartite forum. I hope that in replying the Government will be able to reaffirm in unambiguous terms that that continues to be the position and that they will continue to pursue that line on which they will find that they have our support. Clearly if it is felt that the position of Gibraltar is one which ought to be sacrificed because it is more important that the talks should take place, then that is something we cannot support and we do not agree with.

HON CHIEF MINISTER:

The Government agree with everything that the Leader of the Opposition has said. The position of the Government on dialogue with Spain whether within or without the Brussels Agreement is that it has to be at the very least on the basis of two flags three voices. The Gibraltar Government have issued a press release asserting that these talks are on the basis of two flags three voices. The United Kingdom have assured us, as hosts, that they are on the basis of two flags three voices. I have asked for those assurances in writing. It is being confirmed to me orally that such assurance will be forthcoming. The Gibraltar delegation has left for London on this lunch time flight on the clear understanding which I have communicated to the Foreign Office through the Convent, that they will not participate in the talks unless before the talks begin I have received written assurances from the British Government that these talks are on the basis of two flags three voices which is what they have repeatedly said to me orally. The Spanish Government have not denied, following our assertion that they are two flags three voices, that they are on that basis. Should the Spanish Government deny that they are on that basis, the Gibraltar delegation will not join the talks and should they deny it during the talks the Gibraltar delegation will withdraw. What the Spanish Government have done this morning is that they have reissued the press release that they issued on the 20th December 1994 which, for the sake of the record, I will read out. It was the Ministerial Joint Statement and it reads, "The following is the text of the joint statement by Douglas Hurd, Secretary of State for Foreign and Commonwealth Affairs and Javier Solana, Foreign Minister of Spain, issued after their meeting in London today. The British Foreign Secretary, Douglas Hurd, and the Spanish Foreign Minister, Javier Solana, met in London on the 20th December 1994 under the terms of the Brussels Agreement of 1984. They reaffirm their commitment to the Brussels process. They agreed on the importance of Gibraltar developing a sustainable economy. They recognise that there was a problem of illegal trafficking in particular drugs in the Gibraltar area and agreed on the need to establish an effective mechanism which should include the competent local authorities to improve consultation and co-operation. On the basis of normal and regular movement between Gibraltar and the neighbouring territory and in a spirit of co-operation, they will review progress towards agreeing on such a mechanism in the new year." Madrid has this morning, according to information given to me by the British Embassy in Madrid, Madrid has reissued that joint communiqué. It is the

communiqué establishing the parameters under which the first Gibraltar delegation participated in the first round of talks at Seville. So what the Spaniards are saying is that the position is what it was in December 1994 just before Mr Bossano sent his delegation to Madrid. In addition, we have now had added a new condition and that is that not only should it be on the basis that the Government of Gibraltar first attended but that it should comply with our policy on all forms of dialogue with Spain, namely that they should be on the basis of two flags three voices in addition to this. We have asserted that they are, and the Spaniards have not sought to deny it, we have the assurances of the United Kingdom that as far as the United Kingdom is concerned, they are. We are expecting written confirmation of that assurance. If either that written confirmation is not forthcoming or Spain should before or during deny in terms that these talks are on the basis of two flags three voices which has been agreed to them before, then the talks would not meet the conditions of the Government for dialogue with Spain whether at Seville or otherwise and Gibraltar will not take part. That is the position of the Government of Gibraltar and the United Kingdom Government are intimately familiar with that decision.

Question put on the adjournment. Agreed to.

The adjournment of the House was taken at 6.05 pm on Wednesday 25th September 1996.

MONDAY 14TH OCTOBER 1996

The House resumed at 2.30 pm.

PRESENT:

Mr Speaker (In the Chair)
(The Hon Judge J E Alcantara OBE)

GOVERNMENT:

The Hon P R Caruana - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Dr B A Linares - Minister for Education, the Disabled, Youth
and Consumer Affairs
The Hon Lt-Col E M Britto OBE, ED - Minister for Government Services
and Sport
The Hon J J Holliday - Minister for Tourism, Commercial Affairs and the
Port
The Hon H A Corby - Minister for Social Affairs
The Hon J J Netto - Minister for Employment & Training and Buildings
and Works
The Hon K Azopardi - Minister for the Environment and Health
The Hon Miss K Dawson - Attorney-General
The Hon E G Montado OBE - Financial and Development Secretary(Ag)

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon J L Baldachino
The Hon Miss M I Montegriffo
The Hon A Isola
The Hon J Gabay
The Hon R Mor
The Hon J C Perez

IN ATTENDANCE:

D J Reyes, Esq, ED - Clerk to the House of Assembly (Ag)

BILLS

FIRST AND SECOND READINGS

MR SPEAKER:

I have an announcement to make. Before the last sitting I received notice from the Hon the Leader of the Opposition of his intention to raise two matters on the adjournment. It was not clear in his notice whether he was relying on Standing Order 24A or 24B. 24A deals with urgent matters of public interest. The nature of the two matters led me to believe that both were intended to be urgent; the London meeting and the civilianisation of police posts.

I ruled that the one concerning the London meeting was urgent but not the matter relating to the Police and I so ruled.

The Hon the Leader of the Opposition has written to me and we have had a talk. It is now clear to me that neither of the matters were urgent and that the intention was to speak on both of them at the conclusion of the meeting, that is, the final adjournment.

He has persuaded me for the time being that I have no say on whether to allow him to raise the matters as I would have under Standing Order 24A. He is sure he is right, I am not so sure. I will allow him to proceed without thereby creating a binding precedent.

DOCUMENTS LAID

The Hon the Financial and Development Secretary moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of a document on the table.

Question put. Agreed to.

The Hon the Financial and Development Secretary laid on the table Amendment No. 1 of 1996 to the Integrated Tariffs notified by the Sixth Supplement to the Gibraltar Gazette published on 22 August 1996.

Ordered to lie.

HON K AZOPARDI:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the First and Second Readings of a Bill.

Question put. Agreed to.

THE IMPORTS AND EXPORTS (AMENDMENT) ORDINANCE 1996

HON K AZOPARDI:

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 K AZOPARDI:

I have the honour to move that the Bill be now read a second time. About a month prior to the general election the previous administration, by Legal Notice 54 of 1996, introduced the Imports and Exports (Control) (Amendment) Regulations 1996. There were several potential criticisms of that measure, the first that it required, in that form, to be placed in primary legislation before the House, given that it was controversial as to whether the so-called empowering sections under which it had been made did indeed give power for those amendments to be put by Regulation. The second, was that perhaps, those Regulations needed to include recourse via an appeal mechanism for a court to review decisions taken by the Collector of Customs under those Regulations. The effect of this Bill before the House now is to provide, firstly, for the crux of those Regulations to be put into place in primary legislation. It will revoke the Regulations, it will provide for an appeal mechanism and it will also achieve further purposes in the amendments that I seek to introduce and present, when we get to the Committee Stage of the Bill. I

mention, out of courtesy to the House, that I do indeed mean to put amendments to the Bill when we get to the Committee Stage. I think that hon Members should have been copied into the correspondence on the amendments which I placed before Mr Speaker, but certainly the purpose of the amendments and the effect of the same together with the introduction of this Bill will be to place it all in primary legislation and to streamline the effectiveness of the legislation to provide for compensation and to clarify the workings of this particular measure. The Bill, in short, will allow the Collector of Customs to continue in the assessment that he was empowered to make by virtue of the Regulations put in place by the previous administration. He will be allowed to continue to assess the situation and if satisfied that the vessel is, has been or is likely to have been used to import or export drugs, then the vessel can be forfeited, whether or not a person is charged. Similar provisions already exist whether or not a person is charged in relation to the importation of goods. This measure will attack the vehicle in which that importation or exportation is to take place. Our view is that the effect of this Bill is another measure which will strengthen our laws in our continuing campaign to combat drug trafficking and I commend the Bill to the House.

Mr Speaker invited discussion on the general principles and merits of the Bill.

HON J J BOSSANO:

It is difficult for me to speak on the general principles and merits of the Bill in the knowledge that notwithstanding what the mover has said the amendments that he has given us notice, and I am grateful to him for circulating those amendments because in fact they are substantial amendments which go to the root of the Bill. Therefore, given that I want to go by the Standing Orders and that I do not want to say in the general principles what I should be saying in the Committee Stage or in the Committee Stage what I should be saying in the general principles, I thought I needed to preface my remarks by explaining the need that I have perhaps to make some reference to amendments that have not yet been moved. I do not see how I can deal with this in any other way.

MR SPEAKER:

Perfectly entitled.

HON J J BOSSANO:

- -

Thank you, Mr Speaker. The Bill does not have an explanatory memorandum and therefore we do not know what the purpose of the Bill is other than the explanation that we have been given. Let me say that the Regulations that were brought in in April this year, according to the Minister, had given rise to criticism because there was no recourse to appeal and no mechanism for appeal from the decisions of the Collector. That is not true, that is to say, I am not aware that there were any criticisms, certainly not in public and it is certainly not true that there was no mechanism in the law already. There was a mechanism and it is still there, so if the reason for bringing the Bill is a misconception as to what the appeal mechanism is, then what the Bill is doing is certainly not in fact strengthening our laws as the Minister claims to be doing but if anything weakening our laws. I find it odd that the Government should have decided that they needed to give an owner of a vessel suspected of having been involved in carrying drugs three months to appeal and we would certainly not have supported those three months. In fact, we have been told a week ago that it is now going to be one month instead of three but I find it odd that they should have decided to do three in the first instance, given the fact that these are policy decisions and one would have expected an explanation on the general principles of the Bill why it was thought necessary, first of all to give people three months and why it is now thought necessary not to give them three months but to give them one. We believe that there is no need in fact to give them three months or to give them one month because there is already provision in Schedule 3 of the Imports and Exports Ordinance, as it stands at the moment, and has always been there, that is to say, it is not true that somebody whose boat was forfeited did not have recourse to go to court. The provisions in Schedule 3 of the Ordinance, for any offence, whether it is drugs or anything else, is that where the Collector exercises the power that he has to forfeit a vessel, he informs the owner of that vessel and the owner of that vessel has a month in which to go back to the Collector and say, "I do not agree with you" and if he does that, then the Collector cannot proceed without going to the Magistrates' Court and getting an Order. So that is the mechanism, the mechanism is that if the person in that one month does not in fact raise any objection as to the legitimacy of the action then after the one month it is too late. I am sure the Government must know that there have been instances of boats that were taken into custody by the Customs where somebody then turned up

after the expiration of the one month and they were told, "Look, whatever strength of argument you may feel you have, the law is very clear, you have got a month in which to do it and if you come back one day too late after the month, there is nothing you can do". The law is clear, "You have a month in which you can claim". That is a way in which the aggrieved person has an opportunity because the Collector then has to convince the Magistrates' Court to confirm, as it were, his original judgement that he had the power in law to do what he was doing. Therefore, the provisions as to forfeiture that were introduced in the regulations in April which then went on to treat a confiscated vessel as one which was to be taken into custody using the same procedure as is used for a prohibited import, triggers off this chain of events. In terms of what the general principles of the Bill are, we have to say we have not been given a satisfactory explanation why we need to make special arrangements in the case of boats suspected of carrying drugs, which were certainly more generous than in anybody else's case when it was three months and which even now do not indicate to us what it is we are doing to strengthen the law or be tougher or be more draconian. The indications we have had in the press is that what the Government were doing was working on legislation which would build on what was already done in April, not in fact dilute what had been done in April. I can confirm that the view of the Foreign Office was that it was preferable to bring in primary legislation at an early opportunity and to do what had been done by Regulation in April by primary legislation when the opportunity arose and on that basis we would support the transposition, as it were, of what is in the Regulation into primary legislation because, if the Foreign Office felt that it was less open to challenge that way, then we would want to put it in the way that was least open to challenge. We were committed to doing that and we would have supported it on that basis. However, the amendments that are going to be made in clause 2 of the Ordinance, to new Section 119A, raise new issues of principle which are not reflected in the original Ordinance but which are reflected in the amendment, and this has nothing to do with strengthening the legislation or with the need to replace what is in the Regulation now. Again I find it extraordinary, Mr Speaker, that in August, the Government were happy to keep the wording of the Regulation that was done in April and in September, they apparently consider it to be unsatisfactory, presumably, no explanation has been given and they substitute it with something that changes fundamentally the concept that weakens the position that makes it more difficult for them to act to stop boats using Gibraltar, because it requires that the boat within our jurisdiction should actually do something that

constitutes a way of inducing the commission in another place. That is what the new provision is, none of that was required under the existing Regulation and none of that is required under the Bill before the House. If we look at clause 2 of the Ordinance one will see that in new Section 119A(1)(b) is reproduced the provisions that are contained in the Legal Notice 54 of 1996 of the 17th April which is the Imports and Exports (Amendment) Regulations which brought Regulation 2A into effect. Regulation 2A(1)(b) says, "If they do not occur in Gibraltar, would constitute such an offence if they had occurred in Gibraltar" and 119(1)(b) says, "if they do not occur in Gibraltar, would constitute such an offence if they had occurred in Gibraltar" so this is identical and this is clearly what the Minister said when he spoke. What we are doing here is putting what was in the Regulation into the Ordinance and we agree with that and we would vote in favour of that but we will not support the deletion of that, which is what is proposed now, and the substitution of that, by words which alter fundamentally the concept, because what do we have? We have a situation where what they are saying is, "a vessel may commit an offence in being engaged in drug running outside Gibraltar", and if the Collector is satisfied that if the action that was taken with that vessel in another jurisdiction would have been illegal if it had been done in our jurisdiction, that is enough. It does not have to do anything here. The moment it enters our territorial waters in the knowledge that it has been up to something or may intend to be up to something, the net is drawn very widely, but of course this affects every single type of vessel and this does not just affect a rigid inflatable boat, this can be a cargo vessel. This can be a cargo vessel that is known to have dropped a container of cocaine somewhere and with the original wording we can actually act against it the moment it arrives here. But not with the proposed new wording, because with the proposed new wording, it is necessary that the boat should be used in Gibraltar in a manner such that it would assist in or induce the commission in any place outside Gibraltar of an offence. The fact that it requires that it would assist, would indicate that whatever happens in Gibraltar has to happen in Gibraltar before it happens in the other place. It cannot be something that happens in Gibraltar afterwards, but in any case it seems to me that to be able to demonstrate all that, makes it much more difficult for the enforcement agencies to be able to defend themselves against the challenge. And why are we making it more difficult for the Customs to defend themselves against the challenge by owners of vessels that are believed to have been involved in the transportation of drugs? Why? When we are supposed to be making the legislation tougher. I do not understand it.

Mr Speaker, in the opening remarks of the Minister he said that the new legislation will not alter what the Regulation does because the Collector of Customs will continue to be able to use these powers if he is satisfied in his assessment of the situation that there is justification for proceeding to forfeiture. Well, I am afraid that if that is what he wants to do, he should not be removing the word "satisfied" and replacing those words by "has reasonable grounds for believing". I am sure I do not need to tell the Minister, who is a lawyer, that if he had a client to defend he would find it easier to defend a client if the Collector had to act reasonably than if the Collector had to be satisfied. He has told us that the Collector will still be able to do it if he is satisfied but in fact we are removing the very words that were put there deliberately so that if he was satisfied it was enough. He now has to have reasonable grounds and I would imagine that the reasonableness of the grounds is subject to challenge. So this is not something that makes it tougher, it does not even keep it as tough as it was, it is something that makes it easier for somebody to challenge that decision.

There is nothing in the Bill before the House about compensation but the Minister has mentioned it in his opening remarks as something that will be put in the amending clauses. We cannot understand why since the 23rd August, when the Bill was published, the Government felt that there was a need to require the courts to give compensation to the owner of a boat that has been forfeited and it is certainly not clear from the way it is worded what this compensation is supposed to be about. I am not sure from the wording that has been circulated, whether that means, that the person does not get the vessel back but can only get £5,000 irrespective of whether it is a rowing boat or a cruise liner that we found with drugs or whether the person gets the vessel back and for the disruption that has been caused he gets compensation. I am not familiar with provisions in our law that make it mandatory for the courts to award compensation and also provide a ceiling. It is not something I am familiar with in the time that I have been here in terms of the legislation we have brought to the House. I do not know where this has come from and I do not know why the Government feel that they need to make such a provision. Obviously, it is wrong. The Constitution provides protection for people not to be deprived of their property without compensation when they are going about their legitimate business, but of course we also know that sometimes people might not get convicted and therefore they are not guilty of committing any offence simply because there is insufficient evidence, but one would expect that in the normal run of events the

enforcement agencies, the people who are professionals, who are dealing with this all the time know when they act and when they do not act and who they are acting against and who they are not acting against. It is not very likely that they are going to get it wrong very often. If they get it badly wrong I would say probably £5,000 for somebody who is an innocent party enjoying the pleasure of his property may be an insignificant and insufficient amount. If they have got it right but it is not possible with all the protection that is being given to make sure that possible drug traffickers do not have their human rights invaded, with all that protection, it may be that somebody can convince the Supreme Court that there is no evidence that the vessel was being used in any way in Gibraltar to support or induce the commission of an offence somewhere else. But if we all know in our hearts of hearts that the vessel has been up to no good, do we really want to require the Supreme Court to give compensation nonetheless? I would suggest, Mr Speaker, that the Government should not proceed with the Committee Stage and should give the matter more thought, unless they have got concern that the Regulations that have been there since April and have been used since April and to my knowledge have not been challenged so far, are on the point of being challenged. If it is the case that somebody is going to get away with it, as it were and we need to deal with it urgently, fair enough but I have to say that other than the business of the one month instead of three, we are decidedly less happy with the amended version than with the original version. If we had to choose between the two then we would have supported the Bill that has been published with the one month instead of three even though we believe that the provisions already in Schedule 3 are enough. All that we are doing here is making special machinery for people who are thought to have vessels that are believed to have been involved in drugs. The machinery that exists for people who have vessels that may be engaged in breaking the law somewhere else but not with drugs we are not making special provisions for, we are not giving compensation to. Why do we want to be nicer to the people that it is intended to attack with this legislation than to other people who are in breach of the Imports and Exports Ordinance? The whole thrust of the legislation is supposed to be to send a very clear message that we want Gibraltar to have nothing to do with drug trafficking and we want people who have something to do with drug trafficking to have nothing to do with Gibraltar. Therefore, the tougher, the more draconian, the more intransigent we are in that area the likelier

we are to protect ourselves because people will choose a less harsh environment from which to operate than ours and that is what we all want to achieve. I do not believe this legislation, as it is intended that it should be amended, does anything at all in that direction and, if anything, it does the contrary.

HON CHIEF MINISTER:

Mr Speaker, if the Leader of the Opposition thinks that the Government have gone to the trouble of having this Bill drafted and bring it to this House in order to be nicer to drug smugglers than it is to other criminals, then either the Leader of the Opposition has no clue as to what this Bill is trying to achieve or he is simply trying to mislead this House and others who may be listening to believing that this Government are somehow soft or softer on drug smugglers than those who drafted the Regulations. He may be decidedly less happy with this than he was with the Regulations. Those lawyers that are advising the Government are not decidedly less happy, they are decidedly more happy. It is regrettable that the Leader of the Opposition should put arguments in this House which, in reply, may strengthen the hands of those who in future will seek to challenge the previous legislation. I must therefore choose my words very carefully to ensure that in participating in this debate we make no concessions that will prejudice such law enforcement effort as has already occurred in this regard, that certainly curtails the clarity and strength with which I can make certain points in reply to those made by the Leader of the Opposition. The view has been expressed by more than one person, it is not a view that the Government share but the view has been expressed, that the Regulations of April this year suffer from a number of defects which open them and action taken by the law enforcement under them to challenge. Indeed, the view has been expressed, which the Government do not agree with, that some of those defects cannot be corrected and that this Bill certainly does not correct them. Therefore if the exponents of those views are correct, which we say they are not, this Bill, at best, closes the door on two or three but not on all of the possible grounds for challenge of the Regulations and the Government thought it better to close some of the doors rather than to close none of the doors to argument. The hon Member may be decidedly less happy now but the view is being put on behalf of aggrieved citizens who say that the Government had no power under the Ordinance to introduce the Regulations in April of this year and that therefore they are ultra vires, the Government, and that therefore all the actions that have

been taken by the Customs and the Police under them, are illegal. Of course the Government will be defending ourselves against such allegations and seeking to uphold the legality of the administrative act made by the Opposition Members when they took that step but certainly we have thought it prudent to close that particular argument whether or not it is capable of being put successfully. We have thought it better to close that door as soon as possible.

HON J J BOSSANO:

The Chief Minister seems not to have grasped what I have said. I have said the Bill as it stands before the House we will support, which is the Bill that is supposed to be ensuring that that loophole is closed by replacing the Regulation by an Ordinance. What I have said is I am decidedly less happy with the proposed amended version than with the unamended version, that is what I am saying. I am not saying I am less happy with this than with the Regulations.

HON CHIEF MINISTER:

I thought we had agreed that the Leader of the Opposition was speaking to the Bill with the amendments that he knew are coming. I thought that was the clarification that he had made. Mr Speaker, this question of the right of appeal, the Hon Mr Azopardi, the mover of this Bill, will go into a little bit more detail on that issue but what is given, it is argued, what is given in Schedule 3 is not a right of appeal, it is a right within 30 days if one discovers that one's boat has been forfeited. It is the right to give notice of objection. The Government have received advice that it is arguable, no more than arguable, that that does not constitute an adequate right of appeal in an administrative provision of this harsh characteristic. And therefore we have taken advice in order to render the legal measure more effective and less open to legal challenge. These are not, as the Leader of the Opposition said in his contribution, matters of policy. The only policy here is the desire that this should be an effective tool in the fight against drug smuggling and anything which exposes the legislation to challenge, and therefore the act of the law enforcement agencies under it, is not a matter of policy, it is a matter of technical, legal and professional advice which is what the Government are acting under. This is not a matter of policy. The hon Member has spoken about the extra territoriality of the offences in question. Well, again, Mr Speaker, it has been put to the Government, the Government

make no concession to that argument, but it has been put to the Government that as drafted the section may be unconstitutional in the sense that it penalises in Gibraltar the consequences of acts which take place outside of the jurisdiction and it is a matter of trite law that constitutional legislators cannot legislate with extra territorial effect. Again the proposed amendment is an attempt to perfect, to protect the legislation against that possible argument and it does so by reference to a formula which the Government feel is less open to challenge, that is, that the acts have to be done in Gibraltar thereby making it not extra territorial in effect and those acts are acts preparatory to the commission of an offence abroad. We are advised that that measure, that that amendment, makes the Ordinance less open to challenge whilst at the same time leaving intact the ability of the law enforcement agencies to deal with it. The same comment applies to the amendment in relation to compensation. It is not that the Government wish to be nice or nicer to drug smugglers. It is really that only drug smugglers face what has been described as the draconian measure of confiscation by administrative acts and before legal process. The Government have received advice that it might be open to challenge under the Constitution, that such arguably confiscatory measures, of course, the Government do not accept that this is confiscatory under the Constitution, but the Government have been advised that it might be so argued and that one way of protecting the Bill from any successful deployment of that argument would be to include compensatory measures in it. Therefore, Mr Speaker, the suggestion I think, implicit in the contribution of the Leader of the Opposition that this amendment weakens the legislation, is not one that the Government share. It is a carefully considered set of amendments to do all that the Government can to protect the legislation from argument that it is invalid and exposing consequentially the taxpayers to claims for compensation as well as preventing the police from using it in the future. It is an attempt to make the legislation as effective as possible without leaving it open to unnecessary legal challenge. This has not been done by the Government as a matter of political policy decision. It has been done exclusively on the advice of lawyers and of other professionals engaged in the operation of this piece of legislation. Therefore, on that basis, the Government will not avail themselves of the Leader of the Opposition's suggestion that we do not proceed. The Government are aware exactly of what these amendments bring about. They have been considered. We are aware of what it achieves and what it does not necessarily achieve

but we hope it achieves, and the Government are satisfied that this is the best that can be done in the circumstances.

HON K AZOPARDI:

I am grateful indeed for the Chief Minister outlining the general intention and purpose of the Bill before the House. It will allow me to be shorter in my reply and to deal with specific points made by the Leader of the Opposition. Let me say that we do not accept that the amendments and the Bill act in a different way. The Government are quite satisfied that the amendments that will be sought to be made to the Bill, together with the original form, all complement each other. The Bill intends to achieve forfeiture of vessels. The Bill, as amended, will achieve forfeiture of vessels. It will only be complemented by an appeal mechanism and by compensation procedure but it will certainly not alter the effect and the purpose of the Bill which is to achieve forfeiture of vessels where the Collector of Customs has grounds to believe that those issues arise. The explanatory note was omitted because these Regulations were indeed introduced by the previous administration, so we thought they needed no note to explain it to themselves for that purpose. I think I mentioned in my original contribution that this was a matter of potential criticisms. I did not say, "I do not think", I said it and certainly I did not intend to lead the House to believe that these were criticisms that had been voiced publicly. I said in my contribution that these were potential criticisms of the original Regulations, potential criticisms that have been outlined in more detail by the Chief Minister so I do not think it is helpful for me to go into those criticisms once again. I do not accept the point or the suggestion, let me say.....

HON J L BALDACHINO:

Would the Minister give way for a moment. He just mentioned that there is no explanatory memorandum on the Bill because this Opposition, at the time, were in Government and therefore they thought that we did not need any explanation on the Bill before the House. Is he aware that this Bill is also made public and there are other people who at the time were not in Government, would they not need an explanation?

HON K AZOPARDI:

I am certainly aware of that decision and the hon Member will recall that at the time the Regulations were introduced there were several press releases from what then was the Government of the day, explaining it to the public so I did not see the need of further doing so. Now that this Bill is before the House and this debate is indeed public also, this is being aired on GBC, so it is public as well. I am returning to what I was saying, that a clarification of the Bill is a weakening, rather I think it consolidates and strengthens the Bill to have amendments made to it at this stage which will then minimise the risk of challenge being put to the Ordinance once it is on the statute book. It is I think rather narrow-minded to think that just because one amends the Bill or clarify it, that then is a dilution. Amendment or clarification which is what the amendments seek to make, will merely in our view, it is the Government's position, it will strengthen the legislation because it will minimise the risk of possible challenge that anyone else can put to the Supreme Court.

The hon Member mentions Schedule 3 and then questions whether it was necessary to inject an appeal procedure given that there was, he says, something already on the statute, Schedule 3 to the Ordinance. Let me say that the purpose is quite different in Schedule 3. Schedule 3 makes it mandatory on the Collector to give notice of forfeiture in almost every case but not all. In this particular Bill the difference is that there will be notice in all cases but that is not the biggest difference. The biggest difference is this; that the effect of Schedule 3 is to allow someone aggrieved to give notice within a month and then go to the Supreme Court to question whether the forfeiture should be made. In effect, what it is, Schedule 3, is a suspended forfeiture mechanism. The purpose of this Bill is not to suspend the forfeiture by appeal but rather that the forfeiture takes place but then if the Supreme Court is satisfied that on a balance of probabilities that there were no circumstances made out, a person will be paid compensation in lieu of the return. There will be no return of the launch. That is the intention of the Government when proceeding and I will explain it because the Leader of the Opposition made a reference to it as to whether we were going to pay compensation and then return the launch. That is certainly not the intention. The effect of this Bill is different in that Schedule 3 is a suspension of forfeiture appeal mechanism and we do not think that this amendment, that we seek to make, will have that effect.

HON A ISOLA:

Would the Minister give way. Mr Speaker, is my hon and learned Friend saying that in the event of a cargo vessel being seized under these new provisions coming in and the case is not made out, that in fact the cargo vessel will not be returned, just a maximum of £5,000?

HON K AZOPARDI:

I will come to that but our view is that yes, that analysis is correct. That is why we think this is a strengthening of the legislation and not a dilution. The purpose of the deletion of sub-paragraph (b) has already been gone into by the Chief Minister so I do not see the need of doing so once again. Let me say, that I do not consider that the substitution of reasonable grounds for satisfying, has any dilution. It is in my view almost synonymous in law and I do not think that it alters the fact. Rather, it is a commonly used expression in statutes of criminal law that there should be reasonable grounds and it is a concept that the courts are far more accustomed to determine and to interpret than the other expression. I certainly do not think that it alters the scope or the intent or the purpose or the effect of the Bill as presented in the House. I was going to deal with the effect of the compensation section when I presented the amendments at Committee Stage but they have been touched upon by the Leader of the Opposition so I briefly want to touch upon them as well. Certainly it is true that now the courts can have references to Hansard after the case of Pepper and Hart. They can have reference to Hansard when considering legislation, so it is important for the Government to place the intention of the legislature before the House so that the courts, if indeed they seek to interpret that particular piece of legislation and if indeed they seek to extract the intention from the speeches in the House, can have clear what the intention of the Assembly is. The Government's position is that in circumstances that the Collector holds in on, then there will have been a breach of the law and accordingly forfeiture will take place. What the amendments seek to do is instil an appeal mechanism by which the court can be asked to review the decision. If the court is satisfied on a balance of probabilities that the circumstances have not been made out, in other words, there has been no breach of the law, then the person aggrieved will be paid compensation, assessed by the court to a maximum of £5,000. There will not be a suspension of the forfeiture. The forfeiture will take place. The reason I say that, is that section 6 of the Constitution makes clear that if

someone has their property confiscated there needs to be in the public interest a compensation scheme but then it goes on to say in one of the sub-paragraphs of the Constitution, I think it is section 6(4) of the Constitution that the operation of section 6(1), in other words, the compensation scheme, if there is a breach of the law it is exempt from the provisions of section 6(1). In other words, we interpret that as meaning this: if circumstances have been made out that there is a breach of the law and no compensation scheme will take place, the forfeiture will go forward. If the circumstances have not been made out then for the property to be confiscated in the public interest, there needs to be a compensation scheme but the property can be acquired compulsorily, it can be confiscated in our interpretation of the Constitution, and that is why I said before the House that that is the Government's view and interpretation of what this amendment will seek to do in the light of the constitutional provisions which I think deal with the points made by the Leader of the Opposition. It is certainly the intention of the Government, that by injecting this compensation procedure in the terms that it has been injected, the constitutional provisions are protected and so is the public at large because the confiscation will still take place. But in the public interest compensation will be paid if the circumstances have not been made out. In other words, if there is no breach of the law. Because if there is a breach of the law the operation of section 6(1) is exempt, it is not contrary to provide for an acquisition of the property in those circumstances without compensation.

Mr Speaker, I have no further comments to make on the other matters. If there is need to clarify any other amendments that I seek to make when I put them at Committee Stage, I will.

Question put. Agreed to.

HON K AZOPARDI:

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

HON J J BOSSANO:

I have already suggested to the Government Members that they should leave it for another day but I am not going to use the technical rule to stop it, if they want to go ahead, we will not object.

MR SPEAKER:

It is not a question of objecting, it is agreeing, do you agree?

HON J J BOSSANO:

Yes.

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the Imports and Exports (Amendment) Bill 1996, clause by clause.

THE IMPORTS AND EXPORTS (AMENDMENT) BILL 1996

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

Clause 2

HON K AZOPARDI:

I have got several amendments to put to clause 2. Will Mr Chairman indicate to me whether I should put every amendment individually and will take a discussion on it?

MR CHAIRMAN:

Yes, I think so, that is best.

HON K AZOPARDI:

Mr Chairman, I hope that hon Members have the notes of the amendments before them because it will assist me in making the proposed amendments. I move the amendment in the heading of clause 2, of the deletion of the words and figures "Section 119 of", In clause 2

the deletion of the words and figures "Section 119 of the" at the beginning by the word "The". In other words, it would then read: "Amendment to the Imports and Exports Ordinance 1986", and then it would start, "2. The Imports and Exports Ordinance 1986 is.....". The purpose of that is, that strictly, this is an amendment to the Ordinance but not to the section.

HON J J BOSSANO:

We support that particular amendment since all it is doing is correcting not very good drafting, more than anything else.

MR CHAIRMAN:

Could I suggest that we vote on each particular amendment so in the end that will be easier.

HON K AZOPARDI:

On a further amendment to that clause I would move the amendment in sub-section 119A(1) the insertion of the words "attempt to use or allow the use of" after the word "use" in the first line of that sub-paragraph. The purpose of that is to extend the scope of the section.

HON J J BOSSANO:

I do not know whether the Minister feels he needs to give any explanation as to why that is being introduced there. It was not in the published Bill and of course the reference to attempting to use or allowing the use is consistent with, it seems to us, the part of the Ordinance which deals with the use outside Gibraltar but if that is being introduced in 119A(1)(a) where it says, "if they occur in Gibraltar, constitute an offence under sections 15 or 80" then it must follow that the attempting to use or allowing the use themselves must be offences against sections 15 and 80, does it not?

HON K AZOPARDI:

I am not sure that when the Leader of the Opposition makes the point, that he should only make it in relation to (a). Certainly the intention is for the scope to be extended by not only it targeting offences of use but

rather attempting to use, in other words, when the court thinks that it is more than merely preparatory, they can target those particular circumstances also. Of course by inserting it at the point that we have, it will also be within the scope of the amended sub-paragraph (b) as the amendment is accepted by the House. I am not sure if I have dealt with the point, I am not quite sure if I see the point that the Leader of the Opposition is making.

HON J J BOSSANO:

The point I am making is, as the Bill stands unamended and as it stood in the Regulations, the drawing the net wide in respect of vessels outside Gibraltar was covered already in the Collector being satisfied in the other sub-section. It seems to me the difficulty here is if one is talking about something that is an offence and if one is saying that a person shall not attempt to use a vessel in circumstances which constitute an offence, then attempting to use the vessel must constitute an offence. Whereas, if the fact that they may be attempting to use it is already covered by the subsequent part where the Collector can actually act without an offence being committed, without a prosecution for any offence, on the premise that he is satisfied or what the Minister considers to be synonymous words, but we do not, "has reasonable grounds for believing that it is being used in circumstances which can be conducive to the committing of an offence".

HON K AZOPARDI:

The Leader of the Opposition will see as I go along that I am also suggesting an amendment further along of the deletion of the words "where it is likely to be used". In other words, the circumstances that the Collector will have to be satisfied are "that the circumstances have been, is likely to have been or has been used". That by deleting "is likely to have been" I think we are excluding matters such as attempt and we need to then put in the reference to attempt at that stage because if circumstances arise where a vessel is used or attempted to be used in the importation or exportation, then it will be caught by this amendment. Whereas if there has been no such circumstances then I cannot see how it can be caught unless we make a reference to attempting.

HON J J BOSSANO:

The point I am making is that those references are already coming in at the subsequent part of the Ordinance. It seems to me that if one introduces it in this introductory paragraph or sub-clause (a), my reading of it is, that what the law will be saying is, "no person shall use any vessel in circumstances which if they occur in Gibraltar constitute an offence under sections 15 or 80", and if we are saying, "he shall not attempt to use or allow the use of" in that first line, then what we are saying is, "no person shall use, attempt to use or allow the use in circumstances which constitute an offence under sections 15 or 80". Now, is attempting to use or allowing the use an offence under sections 15 or 80?

HON K AZOPARDI:

Sections 15 and 80 prohibit the importation and exportation of a prescribed drug, it does not talk about ships or vessels and what we are targeting there is the use or alleged use or attempt of the use of a vessel which is not described in 15 or 80, so now it is necessary to mention it at that stage.

HON J J BOSSANO:

No, I am sorry we are not, with all due respect to the Minister. The law says quite specifically, "that the person shall not use any ship as defined in this Ordinance or any vessel as defined in the Seaside Pleasure Boat Rules in circumstances which constitute an offence under sections 15 or 80". We also already have the proviso that anything remotely associated with attempting to use it allows the Collector to forfeit the vessel anyway. That is already taken care of and introducing the words in that section seems to me to be the reasonable thing to do. What I cannot understand is how we can introduce it in this part of the Ordinance and then go on to say, "attempt to use in circumstances which constitute an offence under sections 15 or 80?" Because it will only be an attempt to use as qualified by what follows.

HON K AZOPARDI:

I do take the point but I do not think that it adds to the debate. Section 15 relates to importation, section 80 to exportation. Sections 15 and 80 do not regulate the use of a ship but rather prohibit the importation or exportation of a drug and so in our view it is necessary to regulate and tighten the use of the vessel or ship by insertion of attempt at that stage. What the Leader of the Opposition is suggesting is that by including the offence under sections 15 or 80 it must therefore follow that there must be an attempt. There could be an attempt to use the vessel in those circumstances but we do not accept the fact can be the construction laid on that original version of the Bill.

HON A ISOLA:

I think the point is, what my hon Colleague is saying is, that if what is being included is already in the old 2, what is the point of putting it in at this stage? That is the only question.

HON K AZOPARDI:

I understand the point that the Leader of the Opposition is making, but let me reiterate. Government do not accept that that is the correct interpretation that can be put on this original version. We do not think it is included necessarily or there could be a grey area. In our view it is better to be safe than sorry and that is why we are putting it in.

HON J J BOSSANO:

I am sorry but I believe that at Committee Stage when we are actually drafting the legislation we need to be clear what it is we are doing and I am asking a very simple question. As I read the amendment the Minister is proposing, it will read, "no person shall use a vessel or attempt to use it in circumstances which constitutes an offence under sections 15 or 80". Then when I asked him "what does it mean to attempt to use a vessel in circumstances which constitute an offence under sections 15 or 80?" his reply is, "sections 15 or 80 has nothing to do with using vessels". I want

him to tell me when we have passed his amendment how will somebody be charged under this Ordinance "of attempting to use a vessel in a manner which constitutes an offence under sections 15 or 80?" Because that is what he is proposing should be legislated.

HON K AZOPARDI:

No, I am not proposing that someone should be charged under this section of attempting to use a vessel. Indeed, the section specifies that no charge needs to be brought. I am surprised that the Leader of the Opposition makes a reference that he does not understand the point that I am making in relation to the use or not. The original regulations that were drafted read in the same way. I am just extending the scope. It reads in the same way. The original regulations talk about "no person shall use any ship or vessel in circumstances which if they occur in Gibraltar constitutes an offence under sections 15 or 80" so presumably they were satisfied that there was such an offence to be committed and what I am telling the House is that there is an offence, the offence is importation and exportation. The prohibition under the sub-paragraph which precedes the offence is the use of the ship. In our view the extension to attempting to use the vessel adds to the scope of the Bill and it will help the law enforcement agencies to carry out the purpose of the forfeiture.

HON J J BOSSANO:

Can I just for the record say that my copy of the 17th April 1996 reads, "no person shall use any ship as defined in the Ordinance or any vessel as defined in the Seaside Pleasure Boat Rules made under the Public Health Ordinance in circumstances which if they occur in Gibraltar constitute an offence under sections 15 or 80" which is the same as the Bill that they have published and it is not the same as the amendment he is moving and I am talking about the amendment that he is moving.

HON K AZOPARDI:

Yes, I accept that but what I have said is, I present the analogy of the regulations to explain to the House that this is not such a savage amendment but rather an extension of the scope that was already existing by the regulations that they introduced.

HON J J BOSSANO:

I am not suggesting that it is savage, if anything the Minister will not find me complaining about it being savage. All I am saying is I can understand its introduction in the second part which has to do with forfeiture even without an offence having been committed. I want to be given a very simple answer to a very simple question. What is the nature of the offence under sections 15 or 80 that it is possible to commit by allowing the use of a vessel? Because that is what the law will read. The law will say, "nobody may allow the use of a vessel in circumstances which constitutes an offence". If it is not possible for it to constitute an offence then it is a nonsense provision because we are telling somebody "you must not do something in a way which constitutes an offence" but it cannot constitute an offence according to what he has just told me about sections 15 and 80 and therefore what I am saying to the Minister it seems to me after listening to his explanation and after reading the way it would be amended that the reason why it was not put there in the first place is because it does not belong there, it belongs in the subsequent sub-section where in fact it is already provided for by his amendment. It is already in the subsequent section.

HON K AZOPARDI:

Of course there will be circumstances in which the offence will arise. The offence that arises is either importation or exportation of drugs. But the use of a vessel is not regulated in those sections. The prohibition which precedes the reference to the offence creating sections 15 and 80, attempts to regulate the use of vessels. And if one only talks about use, one is not talking about attempting to use and that is why it is properly placed in the place that it has been placed and that is why we think that the amendment should go forth.

MR CHAIRMAN:

Now we go to the second amendment. I do not know whether you want to speak on this one?

HON K AZOPARDI:

I do not think I have put the amendment yet, Mr Chairman, I am not sure if I have but certainly I move the amendments and these are relative typographical errors. These amendments are merely to the deletion of the "s" after the word "section" in Section 119A(1)(a). The addition of the words "Imports and Exports Ordinance 1986" at the end of Section 119A(1)(a) and the deletion of "any" in the first line of paragraph (a) and the insertion of "an". It is to clarify the terms of the sections.

HON J J BOSSANO:

I can understand the "s", but I cannot understand the "Imports and Exports Ordinance". Why does the Minister feel we need to say, "under section 15 or 80 of the Imports and Exports Ordinance" when in fact we are in the Imports and Exports Ordinance? It is not as if we were referring to another Ordinance. It is of this Ordinance that we are talking about, so why does he feel there is a need here, which is a very unusual provision I must say, to say "of the Imports and Exports Ordinance 1986"?

HON K AZOPARDI:

Well, it is relatively simple, because in that sub-paragraph in the couple of lines which just precede that reference to section 15 or 80 there is a reference to the different Ordinance. I do not want people to think that we are referring to that particular Ordinance. In other words, when it says "or in the Seaside Pleasure Boat Rules 1989 made under the Public Health Ordinance in circumstances which - (a) if they occur in Gibraltar, constitute an offence under section 15 or 80" we leave it there, we have just made a reference to the Public Health Ordinance so I accept that it can only really refer to the Imports and Exports Ordinance but it is better to put it in because we have just made a reference to a different Ordinance.

HON J J BOSSANO:

No, we have not, we have made a reference to the Seaside Pleasure Boat Rules and therefore it is not an Ordinance and it does not have sections.

HON K AZOPARDI:

I have just read that part where I say "Seaside Pleasure Boat Rules made under the Public Health Ordinance" so that reference to the Public Health Ordinance is included, that is why I think it would be potentially contradictory and it is better to explain it.

HON J J BOSSANO:

I see, and the Minister has looked at sections 15 and 80 of the Public Health Ordinance to see whether there is any possibility of confusion, has he?

HON K AZOPARDI:

No, it does not matter, it just clarifies the interpretation and the job of the court if it has to construe legislation for it to clearly pinpoint the sections that we are talking about and we think it clarifies these terms.

HON J J BOSSANO:

Would it not have been more logical then by this explanation to have said "this Ordinance" like it says in the first line of that section rather than..... or not?

MR CHAIRMAN:

The amendment is agreed.

HON K AZOPARDI:

It is a more substantial amendment that I seek to propose. I am not going to read from the note that I prepared and circulated because I have made a change to the draft amendment that I sought to make but rather I will read, it is not very different but there is a slight change, so it would be helpful if I read the proposed amendment. It is the deletion of 119A(1)(b) and the insertion thereof of the words "that such use would assist in or induce in Gibraltar the commission in any place outside Gibraltar of an offence punishable under the provisions of a corresponding law in that place". And then it carries on ""Corresponding law" in this part has the meaning ascribed to the expression in section 3

of the Drugs (Misuse) Ordinance". I was just going to add that that provision is akin to an analogy to Section 16 of the Drugs (Misuse) Ordinance that already makes it an offence to in Gibraltar assist or induce in the commission of an offence outside Gibraltar and there is a reference already in section 3 to interpret and define that expression, so we think it is a useful addition.

HON J J BOSSANO:

We find it worsens the amendment instead of improving it because in fact it is adding a further qualification. We start off with the situation where we have the right in Gibraltar to confiscate a vessel that is engaged in drug trafficking anywhere in the world. That is what the law provided in April and that is what the Government Members were satisfied with on the 23rd August when the Bill was published and when notice was being brought to the House. I do not know how it is that they have had technical advice, and the Minister may say it is not a political issue, it is a question of technical advice, well, it requires a political decision irrespective of the technical nature of the advice and I can only imagine that they were not persuaded before the 23rd August notwithstanding the technical advice and they have been persuaded since the 23rd August to do something which whatever the Government Members may say about their intention, I am not questioning their intention, I am questioning the effect of what they are doing and we do not want to be a party to it because we think the effect of what they are doing is in fact that it will make it more difficult not easier and the only explanation we have been given is, that somebody thinks that if we actually confiscated boats which had committed an offence outside Gibraltar, that it would be challenged. What are we doing then? We are saying something must be done in Gibraltar that would assist in the commission of the offence in the other place but if nothing is done in Gibraltar then we cannot act.

HON CHIEF MINISTER:

Let us all be clear about it, that is exactly what the Government are saying and that is exactly the intention of this amendment because the Government accept that it is open to question about whether this House is competent to legislate on matters of extra territorial effect, absolutely right.

HON J J BOSSANO:

But of course the Government have become convinced since the 23rd August. They were convinced previously of the opposite because it published the Bill on the basis that we are defending, that is to say, until the 23rd August we both agreed it could be done, since the 23rd August they have changed their minds. I do not know with what arguments they have been presented to make them change their minds but I have not been presented with any to make me change mine. Therefore the point that I made in the Second Reading is that we would have supported the original printed provision in (b) and that we believe that to forfeit a vessel and have to demonstrate that something has been done in Gibraltar is something that is likely to be challenged. If there was going to be a challenge about the extra territoriality, well, there is going to be a challenge about the use that has been made in Gibraltar which will induce the commission of an offence in another place, that would be challenged and that would be more difficult in our judgement to demonstrate, if somebody comes being chased into our waters then one grabs the boat on the basis that they are being chased because they have committed an offence somewhere, not because they are on a pleasure cruise, but of course they need not have done anything in Gibraltar which can be demonstrated to induce that. In fact, the proposed last minute amendment, which I do not know whether that is technical advice that has somehow descended from some quarter and enabled the Government to make a decision to further amend that section? But why do we want to say "that nobody shall allow the use of a vessel in Gibraltar in a manner that such use would induce in Gibraltar the commission in any other place outside Gibraltar?" So now the inducement has to take place in Gibraltar as well, why? "It would assist in or induce in Gibraltar", why do we need to have that happening in Gibraltar. Why, if it happens in La Linea it is OK and we do not act?

HON CHIEF MINISTER:

For the very simple reason, and of course the hon Member says, that it might still be open to challenge even on the basis of the amendment. And indeed it might be but it is much less open to challenge on the basis that what is required to take place in Gibraltar is the assistance or the inducement. So I cannot tell the hon Member, that having amended this Bill in this section in this way, that it is now not open to challenge at all. Indeed, I said when I addressed the House in the Second Reading that

we were doing the best that could be done in the circumstances. The fact of the matter is that the view has been brought to this House, and if this House cannot do it, certainly the Government by Regulations cannot do it, cannot seek to allow forfeiture by administrative act, cannot do anything but certainly not that, in respect of offences allegedly committed outside of the jurisdiction of the court of Gibraltar. The hon Member may as a matter of political judgement wish to disagree with that well-established principle of law. It is a matter for him. If the hon Member thinks that it is perfectly OK for the laws of Gibraltar to penalise acts which occur outside of Gibraltar, that is a matter entirely for him. The Government believe that this amendment enables the legislation to be used in much the same way as it is presently being used whilst at the same time protecting it from that argument without having to adjudicate on whether the argument is right or wrong. What this section says is, "that your boat is held on forfeiture if in Gibraltar you do anything to assist in or to induce in the commission of an offence outside Gibraltar" and that is not extra territorial. Because the objectionable act is the act preparatory, and the act preparatory is carried out within the jurisdiction. As to the last point that he makes it is, I think Mr Chairman, a standard legal distinction between inducement and assisting. I am sure that the Leader of the Opposition will know that these are what are called inchoate offences and that inducing somebody to do something is a very different act from assisting somebody in doing something. What we are saying is "that it is an offence in Gibraltar to either assist somebody or induce somebody to commit an offence outside Gibraltar" and we think that this is as far as we can go to protect the section from challenge. But we certainly cannot guarantee that the attempt will necessarily succeed in avoiding such challenge.

HON J J BOSSANO:

I have not said that the challenge would be about the same issue that the Chief Minister says the present legislation is capable of being challenged. Therefore, the two things are unrelated. If the only reason for removing what was acceptable to them until the 23rd August, and I keep on saying that because I could understand it if the Government Members had brought this Bill originally.....

HON CHIEF MINISTER:

On the 17th May.

HON J J BOSSANO:

No, not on the 17th May, they certainly had the right to say so on the 17th May but if they had brought the Bill to the House with the intention of removing the provisions that allow us to act against people that are drug trafficking outside Gibraltar then..... and I think that is a policy decision, that is a policy decision because presumably the Chief Minister did not discover this on the 23rd August, he knew about the argument before and as a matter of policy they did not accept the argument and now they have accepted the argument. We have not heard why. We have not heard what has made the Government Members change their mind. They intended to keep the provisions and have now decided to discard it.

HON CHIEF MINISTER:

I am answering that point, the hon Member appears to be reducing the debate to an inordinate degree of pedantry. I have now realised that, it had not first dawned on me what the relevance of the date of 23rd August was. The relevance apparently he thinks, that we agreed with him until the 23rd August but not on the 24th was, that on the 23rd August the Bill was published. On that basis, since he presumably does not think that we came up with the idea, took the advice, drafted the Bill, sent it to the Chronicle for printing, published it in the Gazette, all on the 23rd August, presumably not even in his logic is the 23rd August the cut off date since he presumably has to accept that if we were in a position to publish this, printed on pretty green paper on the 23rd August we must at least have addressed our mind to it at some date before the 23rd August, because all these things cannot be done in one day. Having said that, Mr Chairman, the hon Member must remember not that long ago that he was in Government, he must remember that it takes time for people to make legislative proposals to the Government, for the Government to consider those legislative proposals, indeed for the Government to take advice about the legislative proposals and then approve any drafting. I do not see that the Opposition Member is entitled to assume that having been elected on the 16th May, because it has taken us until the 23rd August to bring this amendment to the House it necessarily assumes that

we have agreed with the contents of the Regulations because the 16th May, the date of our election, and the 23rd August any more that we do not agree with some of the other legislation that is on the statute book introduced by him and which we have not yet got round to repealing, which we will do. The suggestion that simply because we have delayed three months in doing this it necessarily means that somebody has changed our minds on the 22nd August about something about which on the 21st August we used to agree with him, it is absurd.

HON J J BOSSANO:

No, Mr Chairman, what is absurd is that he does not even seem to understand what he is doing. It is incredible the amount of rubbish he has just said. I have not told him that the amendment on the 23rd August was too late for him to change what was there in May. On the 23rd August he still defended what was there because he published a Bill not to amend it but to perpetuate it and therefore between the 16th May and the 23rd August all the technical advice, all the expertise, all the legal drafting, was in favour of keeping the regulations as they are and we support that and if they had continued with what they had published, we would not be debating this, we would be voting in favour. Since they published it they have produced with one week's notice, for which I am grateful, an amendment which alters the foundations of this section, which they have just further amended in the last five minutes, not after wide consultation with experts all over the place. In the last five minutes the mover has sought to amend it further by introducing the words "in Gibraltar" after the word "induce". This is not the result of detailed consideration of the arguments, this is the very opposite. It is instant legislation. This is not changing something that was there after giving the matter a great deal of thought. I assume that they did give the matter a great deal of thought and that they decided to keep it because that is what was published. Therefore I would not be putting this argument if they had published the amendments that they are moving today when they published the Bill and they had said "we do not agree with what was there, we do not think it is capable of being defended and therefore we are bringing a Bill to the House which does not simply move the regulations into an Ordinance", which was the first explanation we were given. The first thing we were told when the Bill was moved in the Second Reading was, "there are criticisms of the regulation that they may go beyond the empowering provisions of the Ordinance," and I said to the Chief Minister, "we are

aware that that argument has been put and we would have brought the same," this green paper, and would have done it but it was not prepared when we were there, they have prepared it since. No explanation has been given why it is. Is it that before this went to the Chronicle they did not know about the arguments about 119A(1)(b)? Of course they knew. They must have been satisfied until that month to continue with this and we believe they should continue with this. We believe they should not be amending and we believe that amending it removes a very important plank and that what is being put in its place, will not enable them to do the same thing and is capable of being challenged not on the same grounds but on totally different grounds, because there are so many qualifications attached. The original provisions were more draconian because all that is required was that the Collector of Customs should be satisfied, end of story, that somebody had used a boat somewhere to move drugs. What is being put in place of that, in case that should be challenged and for no other reason, that we have been given, and because that presumably has convinced them in the last five weeks but not earlier than that, is something that will not give the same effectiveness to the Ordinance that it could have had if this amendment was not being moved and that is why we do not support the amendment. We do not support the amendment because they are amending what they brought to this House which, in our view, is stronger than what they are putting in its place.

HON CHIEF MINISTER:

Well, Mr Chairman, the Leader of the Opposition can support the amendment or not as he pleases. The fact of the matter remains, to deal with some of his points, is that it is not the introduction of the words "in Gibraltar" at the last minute. The words are already there. All we are doing is putting them in a different place in the sentence. He has noticed that, presumably. This is not the addition at the last minute of the words "in Gibraltar" as if it was..... I think the phrase he used was "last minute legislation". Presumably what he meant to tell the House was "on the spot drafting". I do not suppose that he has any intention to mislead anybody, God forbid it, presumably what he meant to have told the House was that they now move the words from line one to line two in order to make the thing read grammatically better. Very different is it not? From what he has just told the House we have done. But still, never mind. Secondly, Mr Chairman, this devise of amendment to

amendments is quite extraordinary. For a Government that used to do this regularly themselves, bring last minute amendments to their own legislation and incidentally not circulate it as we have circulated this, not only with a letter setting out the amendments but indeed with the Ordinance being printed with the amendments included and underlined so that the Opposition Members would understand exactly what we were doing, they did not use to do that, they used to throw them in at the last minute whilst we were already on our feet debating, so I really do not see how it lies in his lips to criticise the concept of bringing amendments to your own amendments. Mr Chairman, I realise that the concept of consultation in the legislative process is not one that the Opposition Members understand, because they have spent eight years not doing it but presumably the Leader of the Opposition has read enough about the techniques of parliamentary practice elsewhere, if not in Gibraltar during the last eight years, to know that the object of publishing a green paper is presumably to put in the public domain, by way of consultation, the necessary legislation and unlike the Leader of the Opposition, we do not put legislation on the rare occasion that he used to bring it to the House which was not frequently, we did not say seven days' notice only because that is the minimum that the law requires, the minimum notice, this had been in the public domain since the 23rd August 1996. Of course, what this means, which of course is the purpose of publishing legislation in a form of a green paper before it is considered by the House, that having published the Bill the House received further advice, it is not required that the advice arrived to the Government all in one envelope or on one sheet of paper. The Government are quite happy to consider advice that arrives in two parts and because the point was made that this aspect of the matter ought to be legislated on and corrected as well, the Government decided, having considered it, to do so, but let me put the hon Member's mind at rest if what he fears is that between the 23rd August 1996 and now I have received instructions from the Spanish Foreign Ministry to delete from the legislation of Gibraltar matters relating to the extra territorial jurisdiction of Gibraltar's law, let me put his mind at rest, I have received no such communication from Madrid or from any other suspicious source. It is advise tendered in good faith locally by people involved in the operation of this and the Government were very happy indeed to take it on board and very grateful that the advice tendered after the 23rd August.

HON J J BOSSANO:

We of course do not know either the source or the nature of that advice and I am not sure what it is that one has to understand by him having received advice from people involved in these operations, which is the word that he has just used. Certainly, I would imagine, that the Spanish Government would not want him to bring in legislation which deprives the Government of Gibraltar of taking into custody vessels that may commit an offence in their jurisdiction because that was a very important piece of legislation which we brought and which they supported and which they were still reflecting and which would be better to keep. And until and unless we know what is the nature of the argument that is new, which has not been made public or the source of the argument which has not been made public except that we know that it is lobbying from within Gibraltar after the 23rd August that has influenced the Government to alter this, well, we are not a party to the nature of the arguments. The arguments that have been put in this House were arguments that were known before this Bill was published, as long ago as the 16th May and therefore we will not support the amendment.

HON K AZOPARDI:

The next amendment is, that I propose the deletion of section 119A(2) and the replacement of that section as drafted with the following section 119A(2)(a) "Where in respect of any ship or any vessel referred to in subsection (1), the Collector has reasonable grounds for believing that the ship or vessel, as the case may be, has been, is likely to have been, or is used in circumstances falling within paragraph (a) or (b) of that subsection, the ship or vessel, as the case may be, shall be forfeit to the Crown whether or not any person is charged with any offence under section 15 or 80 of the Imports and Exports Ordinance 1986 or in connection with the use of the ship or vessel, as the case may be. The purpose of the amendment is to delete the phrase "or is likely to be used", it does not amend the concept of reasonable grounds but it does change it from the original version of the regulations and it deletes the reference to section 119(2) by which the Attorney-General, it would seem on the reading of that subsection, would have to proceed to the court to obtain a declaratory order. But given that we are injecting an appeal procedure and a notice procedure, it seems to be cleaner to focus all the venues towards that process of appeal if indeed the person aggrieved wishes to proceed to the court.

MR CHAIRMAN:

Could we take subsections (a) and (b) at the same time or do you want me to take them separately?

HON K AZOPARDI:

The proposed amendment in relation to ((b) is to add the following new paragraph: "(b) Where a ship or vessel is forfeit to the Crown in circumstances described in section 119A(1)(a) or (b) the Collector will by notice to the Owner communicate such forfeiture stating whether paragraph (a) or (b) of section 119A(1) is relied on and informing the Owner of his right to appeal under Section 119A(3)".

HON J J BOSSANO:

The provisions of Schedule 3 relating to forfeiture say "that any person claiming that anything seized as liable to forfeiture was not so liable, shall within one month of the date of notice of seizure, give notice of his claim in writing to the Collector". What is already in the law before this provision is that on being informed or where no such notice has been served on the actual seizure taking place the person may question the correctness of what has been done. If once that happens it triggers on a requirement for the Collector to take proceedings for the condemnation of the vessel in the Magistrates' Court and if the Court finds that it was liable to seizure, then that is confirmation of the action being taken. We can see nothing there that is inadequate or insufficient protection for people who have their vessels seized here and therefore we are being given an alternative to that procedure. I am not sure whether in fact by providing an alternative people are deprived of the other procedure and of course it was originally intended to give them three months and presumably the Government have had representations that three months is too much time to give people to appeal and that is why they are amending it to make it one month and not three, which we welcome that it should not be three. But the fact that the Collector..... it says here, "will by notice to the Owner communicate such forfeiture" and at the same time inform the owner of the right of appeal, seems to us to be making a provision to make sure that the owner of the forfeited vessel is, if anything, encouraged to appeal against the decision to forfeit his vessel. Given the fact that we have already removed the provision that they do

not have to do anything in Gibraltar, one might argue that one needs to go and I think that was the kind of argument that was being used previously when these Regulations were being made, that if one were taking action which might involve vessels that were only coming into our territorial waters but were not based here, one needed to make sure that whoever was the owner of the vessel might have nothing to do in Gibraltar, was told what was going on so that he knew what was happening to his vessel within the 30 days provided for in the Ordinance as it stood in Schedule 3. Given that there is now a requirement that one can only act if there is something happening in Gibraltar we cannot see why they need to go down the route of making this special provision and not simply maintain what is there already in Schedule 3 which allows..... and as I said I am not clear, perhaps the Minister can clarify for me whether he believes that the provision of this deprives somebody of actually using Schedule 3 at the same time. Is there something here that says he cannot use Schedule 3 and therefore this is the only route, or if in fact if possible, to proceed down the two routes simultaneously within the 30 days?

HON K AZOPARDI:

I think I have explained the distinction in my earlier intervention some time ago. Certainly the intention is that the notice of procedure is incorporated into these amendments to make the distinction, to make larger the distinction between Schedule 3, the concept in Schedule 3 which is the concept of suspended forfeiture and the concept that we are trying to achieve in this amendment. The intention of the Government, and given that the intention can be referred to when the court interprets this legislation, the intention of the Government certainly is that this is the only avenue which can be pursued in relation to these matters, that is certainly the intention and the intention also, as I say, is to emphasise the distinction between the concept of suspended forfeiture which we do not want to create and we are certainly confident that we are not creating with these amendments.

HON J J BOSSANO:

Can I ask, Mr Chairman, is the deletion of the reference to 119(2) the way they think it will not be possible to use Schedule 3?

HON K AZOPARDI:

As I say, the court will have reference to the intention of the legislature. This is the expressed intention of the legislature so in interpreting the legislation we are confident that the court will rely on that.

HON J J BOSSANO:

Yes, I accept that but since I do not want to have to wait until the court does it I am asking him can he tell me now how he thinks he is doing it without my having to wait for the court to have to decide? Where, in this, I am asking him, what is it in this section that he thinks precludes the use of Schedule 3? I am asking him is it in fact the deletion of the reference to Section 119(2)?

HON K AZOPARDI:

Presumably the court will give reference to the intention expressed in this House as to when and how it interprets the legislation and I am telling the hon Member that is the intention expressed. Of course, I cannot say what the court will ultimately say and I do not control the judiciary but certainly the intention clearly is to create a funnel through which the cases will run and we are satisfied that this amendment as drafted creates such a funnel without making specific reference to it, without making specific reference answers the point that he raises. I cannot pinpoint where it says it because I am telling the hon Member that without making specific reference to it we are satisfied that it does so.

HON J J BOSSANO:

So the answer is he cannot tell me and I am asking him if it is the deletion of 119(2) and he cannot tell me yes or no?

HON CHIEF MINISTER:

Schedule 3 relates to forfeiture in the context of Section 127. Section 127 is not forfeiture by administrative act in the context of this legislation. Section 127 is headed "Stay and Compounding of Proceedings" and reads, "The Collector may, in his discretion, stay or compound any proceedings from offence or from condemnation of anything which has been forfeited under this Ordinance". It is a completely different area of

acts by the Collector of Customs and Section 127 and the Schedule which relates only to Section 127, the third Schedule, does not create any avenue of appeal to forfeiture under this section in this Bill and therefore the answer to the hon Member is that of course a court may express a contrary view but the purpose with which the Government have proceeded is that it would not be open to somebody who has his boat forfeited under these provisions to pursue by way of Schedule 3.

HON J J BOSSANO:

Is the Chief Minister saying that that avenue was never there or that it was there and by virtue of the legislation that we are considering today will no longer be there? Which of the two is it?

HON CHIEF MINISTER:

It is not my job in this House to give gratuitous legal advice to the Leader of the Opposition. If he wants to know what the law was before today it is a matter for him. I am expressing the view of the Government which is not binding in any Court, the view of the Government is that Schedule 3 does not now and never did constitute an avenue of appeal for forfeiture along this channel. Now, of course, this is an expression of an opinion by the Government, it certainly would not bind the Court. I do not know if the Court will take that view or a different view or may subsequently disagree with the view but that is the basis upon which this legislation has been drafted, let me say, by specialist draftsmen in this area.

HON J J BOSSANO:

That, Mr Chairman, is what I am trying to find out. It is not that I want legal advice from the Chief Minister, he is well down on the list of the lawyers that I would consult if I wanted legal advice. What I wanted to know was whether in fact they were removing something which they thought needed removing or whether in their view there was no need to remove it because the avenue was not there in the first place and he has just given me the answer that it is the second, so therefore the deletion in the reference to Section 119(2) as the procedure to be followed for forfeiture has nothing to do with the triggering of Schedule 3, I take it?

HON K AZOPARDI:

Mr Chairman, I propose the amendment of the insertion of "(a)" after "(3)" but before the body of subsection 119A(3) and in new paragraph (a) of subsection 119A(3) the substitution of the words "three months" by the words "one month" in the fifth line thereof. The reason for that substitution is that we feel that one month is ample time.

MR CHAIRMAN:

Are you in favour?

HON J J BOSSANO:

If we are going to have it at all, then yes we prefer one month to three.

MR CHAIRMAN:

This amendment is then agreed.

HON K AZOPARDI:

Mr Chairman, the following amendment is proposed to subsection 119A(3) by the addition of sub-paragraph (b) which reads, "If on an appeal as described in section 119A(3)(a) the Supreme Court is not satisfied on a balance of probabilities that the circumstances in section 119A(2) have been made out then compensation shall be payable to such Owner in an amount to be assessed by the Supreme Court but in any event to a maximum level of £5,000". I had already explained in the Second Reading the intention, and by reference to the Constitution, of the compensation section and I do not think I need to reiterate the exposition I made earlier.

HON J J BOSSANO:

The Constitution says "that no property of any description shall be compulsorily taken possession of except where the following conditions are satisfied", that is to say, "the taking of possession is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, the development and utilisation of any property in

such a manner as to promote the public benefit and there is reasonable justification for causing any hardship that may result to any person having an interest or right in the property and provision is made by law for the prompt payment of adequate compensation". In terms of compulsory purchase, my understanding of the Constitutional provision has always been, that in fact adequate compensation is not the compensation that is determined arbitrarily by the House but compensation that is arrived at by an independent valuation of the market value in terms of taking over private property for the public good in our Constitution, which is a normal thing in terms of compulsory purchase orders anywhere. When the Minister explained that this was not supposed to be in addition to returning the vessel but in substitution of, we raised that because it was not clear to us from the way that it is drafted. Should not therefore the section read that "the Supreme Court where it is not satisfied on the balance of probabilities that the circumstances have been made out should pay compensation but that the vessel should remain forfeited"? If the law does not say "that the vessel should remain forfeited", is it enough to say "it is the intention of the legislature that it should remain forfeited but we are not going to put it in the law"? But when the court come to decide and they cannot find it in the law they ask for Hansard and they find that it was our intention that they should not return the launch so they do not return it, should we not tell them that they cannot, if that is the intention? Then there can be no doubt. Certainly, we would be happier to see that. Given the way the original thing was drafted maybe it does not apply to the same degree today but as I explained earlier, the original provisions which dealt with vessels committing an offence anywhere in the world really enabled almost any vessel of any size to be taken into custody by the Collector simply because it had unloaded containers containing drugs at some other port and the Collector had knowledge that it had been made use of in that way. Now that the vessel has to have something being done in Gibraltar which induces its future use, that may no longer be the case so there may be an argument for having £5,000 compensation and the vessel remaining forfeited. I must say that I am not familiar with the use of this phraseology in terms of the balance of probabilities being judged by the Supreme Court, something you might have had to do in a previous incarnation Mr Chairman.

MR CHAIRMAN:

The balance of probability that we would finish today.

HON J J BOSSANO:

But does it really mean that the court would decide that the forfeiture had not been justified? Is that what it means? I can see a problem in this, in that if the court says the forfeiture is not justified, if that is what the words "balance of probability" mean in this context, and we are able notwithstanding that to say "the vessel shall still remain forfeited" and go and get £5,000 compensation, well, let us see if we are tougher and that will make sure that anybody who has got a vessel is particularly careful not to do anything that can be construed as inducing or assisting in the movement of drugs and I believe that is a good thing. Is it possible to do that? If it is possible to do that then I think what we need to do is spell it out so that there can be no doubt that that is the intention of the section.

HON K AZOPARDI:

If the Leader of the Opposition turns to his left perhaps his hon Colleague may be able to acquaint him with the concept of balance of probabilities. What it means is that it is more probable than not and it is up to the Court to determine the ambit of the concept when it construes any appeal brought before it as to the scope of that particular reference to balance of probabilities in that section. I do not think the House is well placed with a crystal ball to try to anticipate what the court will say on a balance of probabilities, it will be up to the Court.

HON J J BOSSANO:

That is not what I am asking. What I am asking is, does the use of this provision in this law mean that what we are doing is creating the possibility for the Supreme Court to rule that the Collector on the basis of circumstantial evidence did not have reasonable grounds for believing all the things that we have provided in the previous section and that therefore should not have collected, taken the boat in, is that what it leads to? That is my question. I am not asking him to tell me with a crystal ball what conclusion they will come to, I am asking what is the power that is being provided in the section for the Supreme Court? Is it, as I would understand it, that the court can look at the arguments that are being put by the appellant and then come to the conclusion that on the basis of that argument the Collector went over the top in believing that the ship was being used to induce or assist in the commission of an

offence in another territory? And, if that is what it is being permitted to do, then if we are saying notwithstanding the fact that one believes that the Collector was over enthusiastic on the balance of probability the forfeiture stays and the most that he can do is award up to £5,000. That is, as I understood it, the intention of this section. We want to be clear that that intention is as I have explained and if that is the case then I think the section should say, "the vessel shall remain forfeited" because I would have thought that one would be able to put a very compelling argument of saying, "If the Court is not satisfied that the Collector has acted reasonably why should I not get my boat back?"

HON K AZOPARDI:

I have said what the intention of the Government is, it is now up to the Court to decide what the effect of the section is in line with the Constitution, I do not know what the Court will decide, I have said what the intention of the Government is.

HON J J BOSSANO:

But, Mr Chairman, since we are still in time, what is there to stop us adding the words "and the vessel shall remain forfeited" and then we know that that is the intention and that is what the law says? Is there anything that stops us doing that? Let me say that in our view that changes totally the section, because if we are saying "the boat and £5,000" is one thing and if we are saying "£5,000 and no boat", it is something else.

HON K AZOPARDI:

If the hon Member will formulate his amendment the Government can accept it in the form, if he repeats his proposed amendment.

HON J J BOSSANO:

I am suggesting that we delete the full stop after the £5,000 figures and replace it with a comma and say "and the vessel shall remain forfeited". Will that do?

HON CHIEF MINISTER:

Can I ask the Leader of the Opposition whether that is his recommendation in the sense that that is what he thinks the law should say or is he simply putting into words what he thinks the Government are trying to achieve, without necessarily agreeing with it?

HON J J BOSSANO:

No, no, I am putting into words what I think the Government are trying to achieve and I agree with it and in fact we will support the section if it is clear that that is the intention. We are not sure that the Government will achieve it if it is not spelt out and therefore we have reservations that it was originally drafted. If that is possible then we will support it.

HON K AZOPARDI:

The Government will accept the amendment.

HON J J BOSSANO:

Then I would move that the full stop after the word "£5,000" be deleted and should be replaced by a comma and the words "and the vessel shall remain forfeited".

HON K AZOPARDI:

I think we should say, "and the ship or vessel shall remain forfeited".

Question put on clause 2.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson
The Hon E G Montado

Abstained: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

Clause 2, as amended, stood part of the Bill.

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

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

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Imports and Exports (Amendment) Bill 1996, has been considered in Committee and agreed to, with amendments, and I now move that it be read a third time and passed.

Question put.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson
The Hon E G Montado

Abstained: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola

The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

The Bill was read a third time and passed.

HON CHIEF MINISTER:

Mr Speaker, on a point of order, if I may. The next item of business on the agenda, or rather the only remaining item of business in Government Business on the Agenda is the Immigration Control Ordinance. It is the intention of the Government not to proceed with that Bill at this meeting. The hon Member asked whether we were going to withdraw it, I do not think Standing Orders are clear. Certainly, Standing Order 34 reads, and it is very brief "if the consideration of a Bill in Committee is not completed it may on motion be adjourned until the next or a subsequent sitting of the Assembly". I do not know whether that implies that one cannot withdraw a Bill from the Agenda without motion, I doubt if that is what it means but.....

HON J C PEREZ:

From my experience in the House, one has to have the law in Committee Stage and therefore one adjourns to a subsequent date and the only thing one can do is come back and take the Committee Stage of that Bill. The First and Second Readings of the Bill have not been moved and therefore I do not think one can do anything other than withdraw it if one wants to proceed with the Agenda.

HON CHIEF MINISTER:

It is precisely because it has not yet been read a first time that I would say that I can just indicate to Mr Speaker that we do not intend to proceed with it. If we had ruled beyond First Reading then it would be formally before the House and I think the position would then be as the Opposition Member has explained but as it has not been read a first time, perhaps the hon Member has forgotten that we jumped over it, we have not read it a first time because we have jumped backwards and forwards during this meeting from the First and Second Readings to Committee Stage and back, but I am entirely in Mr Speaker's hands.

MR SPEAKER:

I am entirely in the hands of experienced Members.

HON CHIEF MINISTER:

Just for the purpose of information to the House, the reason why we are not taking it at this stage is that the Court of Appeal has reversed the ruling of the Court of First Instance which made this decision and therefore the Government now need to consider with greater care whether given that ruling of the Court of Appeal it is still a good idea to proceed with the Bill or whether there is now no need to do so, there seems no need now to rush into this legislation.

The House recessed at 4.50 pm.

The House resumed at 5.15 pm.

PRIVATE MEMBERS' MOTIONS

HON J J BOSSANO:

Mr Speaker, I beg to move, that:-

"This House:-

1. Notes that in answer to Question No. 120 the Government stated that any decision to temporarily second a UK Police Officer to implement such parts of the Grundy Report as may be accepted will be taken on the basis of technical advice as to the expertise required to manage the introduction of such changes
2. Notes that in a Convent Press Release dated 25th July it was stated that a decision had already been taken to second from the UK Police Service an officer to be the Project Officer of the RGP to carry forward the recommendations of the Grundy Report

3. Notes that in answer to supplementary questions to Question No. 120 the Government stated that the Convent Press Release of 25th July had the prior approval of the Government who fully approved of the secondment of a UK Police Officer as Project Officer on technical grounds equivalent to the expertise obtained for the tax office by having on contract a UK tax inspector
4. Notes that the Convent Press Release of 25th July stated that the UK Police Officer would at the same time serve as Deputy Commissioner answering to HE the Governor as well as the Commissioner of Police
5. Considers that no justification has been provided as to why the position of Deputy Commissioner has to be filled by a UK Officer seconded to the RGP to provide expertise as Project Officer
6. Considers that there is no precedent for the Deputy Commissioner post to be answerable to His Excellency as well as to the Commissioner of Police thus altering the established chain of command
7. Considers therefore that the Deputy Commissioner post should be filled on a temporary acting basis by a permanent officer of the RGP in accordance with established practice, and not by a temporary seconded Project Officer, providing expertise on implementing changes in the future structure of the force".

Mr Speaker, when we decided to bring the motion to the House it was on the basis of the information that had been provided at question time. It seems to us that the function of the UK Officer that was predicted would be in post in September, and as far as I am aware has not yet happened, on the basis of the answers that we got and on the basis of the press release of the 25th July, are distinct from the position of Deputy Commissioner. We have had officers within the RGP acting as Deputy Commissioner and indeed as Commissioner on occasions during the period in question since the 25th July. It is the practice to give officers within the RGP the opportunity of attending courses in the United Kingdom that are designed to provide the necessary management skills for police forces in the United Kingdom. Our officers attend the same

course as officers from within the United Kingdom, receive the same training and there has been, as there is in other areas, a long tradition of our officers doing well on these courses and coming back with good results. We understand the sensitivity of that particular post being filled since it is a subject which gave rise to certain enquiries and the occupant being suspended from the post and therefore presumably until that goes through the course that it has to go through a final decision cannot be taken. But there is absolutely no reason why it cannot be filled as far as we can tell, on a temporary basis, and why the UK Project Officer needs to be doubling his role. Nor can we see that the rationale for one applies to the other, that is to say, if the argument is that the UK Officer will be able to provide assistance in the alterations that flow from the Grundy recommendations and on the basis of the summary published on the 25th July, we have already expressed our reservations about the technicalities in these recommendations which requires somebody from the United Kingdom. Certainly many of those recommendations clearly do not require somebody from UK, some of those recommendations were implemented almost simultaneously with the publication of the recommendations. The press release of the 25th July makes clear that it is not something that is going to happen overnight, but something that will be happening gradually and it may well be that the RGP will benefit from having somebody from the UK assisting them in implementing those changes but no argument whatsoever has been put as to why that person is better equipped to act as Deputy Commissioner, presumably to act as Commissioner, when the Commissioner is absent for any reason because he is the Deputy and certainly even less for this innovation that the Deputy, which does not happen in any department in the rest of the Government, should answer to His Excellency the Governor that has a role in relation to the Police similar to what would be the case with the Minister in a department. It would be as if we had a situation where we said there is a Director of Education and a deputy and the deputy answers to the Minister as well as to the Director, that would be a very unusual thing and one that we would have thought, from the point of view of the sound management of the day-to-day issues of the administration of a Department, carries with it risks of unnecessary friction if the second-in-command can go over the head of the first-in-command to the policy decider. On the basis of the information that is public and on the information that is available to us we believe that it is a mistake to go down this route. We believe that if the Government have been persuaded by the arguments in the Grundy Report which we were told in answer to Question No. 120, that notwithstanding the categorical

statement on the 25th July that the report will not be made public, and let me say that we are not asking for it to be made public because for all that we know the report may contain in it identification of some areas of police work which need strengthening and it may not be in the public interest that that area that is identified should be available to everybody who may want to take advantage of any weaknesses in the structure. So we can understand that there is a level of sensitivity in that police work is one which clearly we would not want any weaknesses in the structure to be identified publicly, if it is thought in the public interest it should not be. But the Government in any case have said they have not yet made up their minds finally on whether this is to be made public or not. It is, of course, a matter of disappointment that we should have been refused a copy of the report on a confidential basis, which of course we would have respected and it would have enabled us to make a better judgement on the basis of more information if there were arguments in that report which justified what is being done.

Mr Speaker, as I have made clear on a number of occasions when we bring things to the House, we do it because we take seriously our role in this House, from this side, in contributing to matters of public policy which is a right that we have and it is a reason why we are here and we can only do that based on the information that is available to us and if we are given information. We had a recent example in the question in the House on telecommunications where, if it is better for Gibraltar that something should not be debated here, then we would not do anything in this House that would make something that was good for Gibraltar more difficult to achieve and we would not do it in a sensitive area like the work of the police. But on the basis of the recommendations that have been published we will of course monitor the implementation of those recommendations when the UK Officer arrives and seek in future information as to where the expertise is being translated into doing things that otherwise would not have been done without the expertise. The answer to Question No. 120 in the supplementaries, as I mentioned in the text of the motion, was that the Government had approved the Convent press release prior to its publication. That Convent press release stated that the UK Officer would be the Deputy Commissioner and therefore we believe that if the Government are convinced that the UK Project Officer needs to be the Deputy Commissioner then there has to be very compelling reasons for having come to that conclusion. We do not even know whether in fact this was recommended by the Grundy Report, certainly on the basis of the summary of the recommendation

there is no indication that that was recommended, there is not even an indication that he recommended the recruitment of a Project Officer, never mind one that would have a double role as Deputy Commissioner as well. It is bound, inevitably, to generate the impression that within the force we do not have capable people that can act in this post. There is no reason for that conclusion on the basis of experience today as far as I am aware, there have been many occasions when officers have acted as Deputy Commissioner and we have no reason to believe that the officers from within the force cannot continue to do so and therefore we would urge the Government, having decided on the basis of the knowledge that they have of the analysis made by Mr Grundy, which we do not have, that there should be a Project Officer, that they should desegregate the two roles, keep the Project Officer that they have decided to upset but maintain the integrity of the management structure of the Police Force as it is now until such time as it is decided to change it. But by changing it simultaneously with the recruitment of the UK temporary secondees it seems to us that we are pre-empting already what may or may not materialise as a result of the time that he spends with the force in bringing in other changes that there may be in the report and therefore we hope the Government will either give us an explanation which so far has not been given why they want to go down this route or in the light of the arguments that we are putting, reconsider the position and take the view that the two things can be and should be kept separate. I commend the motion to the House.

Question proposed.

HON CHIEF MINISTER:

Mr Speaker, the Grundy Report as hon Members know, was carried out by the Inspector General of Dependent Territories Police Forces and his Deputy back in February of this year, that is to say, during the term of office of the Opposition members. I am not aware whether Government approved of the conduct of this enquiry at the time or whether indeed they were consulted on it but certainly what we found when we arrived in office was that the report was produced to us. I remember speaking to this gentleman at the time in my capacity as Leader of the Opposition but we do not know in what circumstances this report was commissioned or whether the Government played or did not play any part or whether it was just His Excellency in exercise of his constitutional responsibilities that commissioned it. The Leader of the Opposition's disappointment at

not having had a copy of the Report in confidence is one with which I wholly sympathise because he will remember that when during 1994 the Principal Auditor commissioned Price Waterhouse to carry out a value-for-money study which related exclusively to those areas of responsibility for which the House has got responsibility, namely the cost of the Police, I was refused, as Leader of the Opposition, access to or sight of even that value-for-money report, let alone now one which relates not just to value-for-money but indeed to areas of the Constitution which are not the responsibility of this House. Certainly, I share his frustration at not having sight of this confidential document but it is a position and is a path well worn by previous Leaders of the Opposition before him, including myself as recently as 1994 in the case of the Price Waterhouse Report.

Mr Speaker, I think that it would be fair for me to say, and I am not at liberty at this stage to put contents of the Report into the public domain, but I think it is correct for me to say that the Grundy Report is entirely friendly to the Royal Gibraltar Police and furthermore it is entirely friendly to the concept of a Gibraltarian-led RGP. On the whole, what the Report seeks to do is no more than to bring about, I say no more - there is one area in which the Government have not yet agreed and are unlikely to agree, but on the whole, what the Report seeks to do is to give to the Royal Gibraltar Police the benefit of that process of modernisation, of those efficiency and efficacy-enhancing techniques which the United Kingdom Police Forces already benefit from. I can assure the House that that is the spirit in which the Report is written and that is the thrust of its recommendations and I have to say to the Opposition Members that the Government and the RGP itself wholly welcome those objectives.

Mr Speaker, the Grundy review team identified a number of management issues which need to be addressed to make the RGP a more efficient and open organisation. These included a development strategy, performance measurements, career development, training and communication. The Report also addresses matters related to budgetary management, cost control and resources management and I do not mind indicating to the Opposition Members that it is in the area of the Report's recommendations on matters of budgetary management that the Government have signalled that we have serious reservations about what the Report contains by way of recommendation and that certainly the Government have not accepted those recommendations. So, as I say, Mr Speaker, the Report addresses matters of budgetary management, cost control and also resources management. It makes a

total of 28 recommendations with a view to increasing effectiveness both in operational and administrative matters. The review team claim to have found a considerable desire by middle-ranking and junior officers in the Police Force for a greater sense of direction and improved standards of policing. These sentiments, I believe, are also shared by Senior Officers who similarly recognise that policing in Gibraltar and the RGP itself will benefit from a modernisation of the Force and its management and operational techniques. Mr Speaker, the review team expressed the opinion that it would require outside police management expertise to effect the necessary changes, that is the advice contained in the Report. The review team concluded, that the management of change to the extent needed would require specific expertise, considerable experience and an awareness of modern police management principles. The review team's advice, is that whilst there is expertise within the Royal Gibraltar Police, they did not think that at this time there is the appropriate skill and experience to manage the changes within a reasonable period of time. The review team concluded that the Royal Gibraltar Police and by implication the community as a whole, would therefore benefit from having the skill and experience within the ranks of the Force itself of people who have had experience in implementing similar proposals in the United Kingdom.

Mr Speaker, the review team further advised and does advice in its Report that it is highly desirable for the Project Officer to be a senior-line-commander in order to put him in a position to effectively manage the introduction and implementation of the changes. In other words, what the Report is saying is, "you will not be able to deliver these changes within a reasonable period of time if the guy driving it is sitting in an office at the end of a corridor, advising on a consultancy basis and is not living the day-to-day experiences of the Police Force's work". This, they say, is the experience in the United Kingdom. For these recommendations to be taken on board and to be accepted by the Force and by the Officers in it in a way which is likely to enhance the cohesion, acceptability of the changes within the Force they have to be introduced by somebody who has their sleeves rolled up and is mucking in with the effort of the Royal Gibraltar Police. That is the advice that the Report gives and of course the Government have no reason to doubt, at a technical level, and no means of challenging that assessment and that advice.

Mr Speaker, contrary to the clear, and I accept that the impression given in the Convent press release is clear but unintended implication to the contrary in the Convent press release of the 25th July, the Deputy Commissioner would answer to the Commissioner and I say this by way of 'ex post facto' clarification because I accept that the Convent press release of the 25th July certainly implied clearly to the contrary, and of course, to the Governor but through the Commissioner as is the case now. The Deputy Commissioner would not answer directly to the Governor just as he does not do so now. The Convent has confirmed that that is the position and that the position is as I am now stating it in the House, that is to say, the established chain of command is in no way altered, that that is the unintended effect of the juxtaposition of words in that sentence, that has never been the intention of the Convent and it has certainly never been the intention of the Government and I can state in the House that that position has been confirmed to me by the Convent who have expressed happiness that I should make this clarification statement in the House. Paragraph (5) of the Leader of the Opposition's motion states, and I quote it, "Considers that no justification has been provided as to why the position of Deputy Commissioner has to be filled by a UK Officer seconded to the RGP to provide expertise as Project Officer". Actually, this is not correct. The Grundy Report does indeed provide justification why the Project Officer should be a UK Police Officer. It is true that because the Grundy Report has not been made available to the Opposition Members they are not privy to those arguments by way of justification but certainly the Grundy Report does make a cogent case why the Project Officer should be a temporarily-seconded UK Officer. Mr Speaker, obviously the Government are not in a position to judge whether this has to be a Deputy Commissioner of police level as opposed, for example, at Chief Superintendent level. Certainly it is the point that I have raised and had raised before the exchange between myself and the Leader of the Opposition at Question Time, why it was thought necessary that it should be at the number two spot instead of at the number three or number four spot. The view that was put to me in reply was that it was felt, that given the breadth of these changes affecting as they do right across the board of the police activities, that it required somebody who had line control all the way down and that the Chief Superintendent, for example, is not in such a position. I have to say that as far as the Government are concerned we retain a doubt based on our laymen's view of things as to whether this needs to be at Deputy Commissioner of Police level or at Chief Superintendent level but frankly, given that the Government have made it very clear to the Convent that this is a single purpose, namely for the implementation of these changes, a single purpose and very temporary

secondment, we do not think that anything can, or anything of enduring importance terms on whether it is at level two or at level three within the Force. Frankly, the position of the Government is that where the expertise is available all the senior posts in the Police should be held by local persons and we do not distinguish in terms of acceptability or unacceptability between the position of Deputy Commissioner and Chief Superintendent. The principle of the Government defence is that all the senior ranks in the Police should be held by local persons and therefore whether this particular temporary task is justified to introduce somebody from the UK on temporary secondment at Deputy Commissioner of Police level or at Chief Superintendent level does not raise an issue as opposed to the other issue that I have just described, be it a long-term issue that this has got to be temporary and that these posts, where there is local expertise, have got to be held down by local people.

Mr Speaker, it is also worth commenting that the Government of Gibraltar, as the Leader of the Opposition knows, because he was in a very similar position I suspect in other areas, that the whole situation of the Police in relation to the Constitution of Gibraltar is an extremely difficult area. He knows very well that whereas we pay for it and therefore claim for that reason to have a say in its affairs, on the other hand it is clearly in the Constitution, it is clearly not the business of the Government and therefore the Government of Gibraltar and I am sure this was the case with the previous Government, I do not say this in any attempt to suggest that it was different before, but certainly this Government of Gibraltar do not interfere in the appointment of senior Police Officers and do not interfere in questions of promotions within the Police Force. We take the view that that is constitutional and obviously we expect to be consulted if there is going to be a departure from established practice. We expect to be kept informed and consulted about things that the Convent may want to do in the Police with money that this House votes and with local taxpayers' money. Indeed I am happy to report that the Governor does that but at the end of the day, if a United Kingdom report recommends that this needs to be done temporarily by a UK seconded Deputy Commissioner and the Governor expresses the view that that is his view and that view is put to the Government, as one with which others have expressed agreement, then given the constitutional position, the Government of Gibraltar have two choices, either one says to the Governor, "Yes, Your Excellency if that is what you want to do, given that it is your constitutional business and mine provided it is clear that this is temporary for this purpose only, go ahead" or we can say "this is the ground upon which I am going to fight the Constitution pitch battle with you because the Government of Gibraltar

are not willing to allow you to second temporarily a Deputy Commissioner of Police from England in order to within a period of 18 months, 24 at most, modernise the Gibraltar Police Force". Certainly we do not take the view that the issues raised by this matter are of that order and the Government are satisfied on the basis, firstly of the technical advice in the Grundy Report, secondly on the basis that it is clearly understood by everybody that this is a temporary secondment for this purpose and for this purpose only that on that basis the Government do not consider that there is any interest of Gibraltar that is under threat and that it had needed to have been protected by the Government taking another line. Therefore, Mr Speaker, I do not know whether the clarification that I have made of the Convent's position in relation to the question of line of answerability would be enough to persuade the Opposition Member that the motion is unnecessary or whether he takes the view that paragraphs (5) and (7) remain relevant to him notwithstanding that clarification. But in either case the Government, for the reasons that I have explained, will not be supporting the motion, we will not seek to amend it and introduce our own motion because we take the view it is a legitimate issue to air in the House and for every Member of the House and for both sides of the House to express their positions on it. But certainly the Government will be voting against the motion for the reasons that I have stated.

HON J J BOSSANO:

Mr Speaker, I think the reply of the Government clarifies point six of the motion and confirms that as we say in the motion, there is no precedent for the Deputy Commissioner post to be answerable to His Excellency as well as to the Commissioner of Police. Certainly, it was an impression created on the 25th July which would have continued to be the impression had we not brought it up on this occasion in this motion. I am satisfied with that answer on that particular point, and the fact that it is of course a matter of public record means that no doubt if in practice something other than what has been said here should begin to happen, there are avenues which people can pursue given the clear statement that has been made. But I do not think that the Government have made a compelling case why a post on the complement and on the establishment has to be occupied by a UK secondee. There is absolutely no reason why, irrespective of the level, he is at Deputy Commissioner level and not at the Superintendent level? I am saying, why is he going to be doing the job of Deputy Commissioner as well as the job of Project Officer? I would have thought the job of Deputy Commissioner was

already a full-time job in itself which would not leave the man with the spare capacity to implement 28 recommendations. Now, I do not know what is the nature of the argument in the Grundy Report which suggested that it was, and I am not sure whether if the suggestion is that it was necessary or preferable, that it should be occupying a working position in the Police Force at the same time as being the Project Officer. But it is certainly not one of the 28 recommendations. Whatever the importance attached to this..... [HON CHIEF MINISTER: *Is the hon Member acceding that he is satisfied with the 28 recommendations?*] No, I am saying that they were summarised on the 25th July. [Interruption] Well, if there are not 28, they cover sufficient ground to suggest that everything that has been identified, and I would have thought for something as important as this, in the press release it would have been easy enough to say that the Project Officer should occupy the post of Deputy Commissioner given the fact that this was bound to be something that would get questioned. Having identified that the Accounts Department should be computerised, that the paper system for recording crimes should be modernised, that there should be biennial independent inspections, given all these things, it is not an unreasonable deduction that there was not a recommendation saying "we recommend that the man should be given the position of Deputy Commissioner" which presumably he would not have been given other than in the present circumstances because if that job had been filled normally already, then presumably we were not going to have the incumbent of the post temporarily removed so that it could be temporarily occupied by somebody from UK. It just happens to be an accident that at this point in time the position can only be phased on an acting basis. That does not justify that the Project Officer should occupy it because if in fact the argument that is used is that for the other recommendations to work it is necessary for the Project Officer to be both Project Officer and Deputy Commissioner it is obvious that that would have been a recommendation in its own right because it was a recommendation pivotal to the rest, if it was that important to do it. It has not been presented like that and therefore it could be argued and I do not dispute that, that an officer from the United Kingdom might think, on the basis of UK experience, that the person who is in the Force is in a better position to supervise the introduction of the changes but it is quite possible that that happens on the basis that the person is already in the Force in the United Kingdom and not that they would send somebody. I can tell the Chief Minister that certainly the initiative for carrying out the inspection came from the United Kingdom, via the Governor, and that the only input that we had in it was that we thought that it would be

useful, which does not appear to have been done, for somebody with a police background to take a second look at the Price Waterhouse recommendation on civilianisation. That is what we suggested to Mr Grundy, that he should look at that because in fact we were not convinced by the Price Waterhouse Report. We did not proceed with implementing the changes that they recommended, which were purely changes based on an accountant's view of whether it was better to have a Police Officer doubling as a typist or not, irrespective of the fact that if they have a typist in an emergency they cannot get that typist and put her on patrol but if they have a Police Officer they can. Therefore the argument that it gave a reserve to the Force was an argument that had been completely ignored by Price Waterhouse and we said to Mr Grundy, "If the Governor wants you to come and look at the Police Force in terms of its management and its structure, what we want you to do is to take a look at the issue of civilianisation from the point of view of looking at it not purely from an accounting perspective". I do not call the then Leader of the Opposition having been refused a copy on a confidential basis of the Price Waterhouse Report. I do remember him asking whether we were going to make it public and we said, "No because we do not intend to implement it". There are recommendations, we have studied them, we have discussed it with the Police Association and the answer is that having set up a committee to discuss the contents of the Report with the Police, the results of the work of that committee, which involved the Association, was that a decision was taken to limit it purely to immigration control at entry points, which in any case we knew was an area, where if and when, we managed to get the veto removed on the External Frontiers Convention, would lead to a removal of control on entry points from anybody coming from elsewhere in the European Union, so it was the only area that we felt we should move on. Certainly I can tell the Chief Minister that it seems inconsistent to be thinking of making it public and not being willing to make it available to us, but it is their prerogative and I accept it.

HON CHIEF MINISTER:

Would the hon Member give way? With this report, as in the case of the Price Waterhouse Report, it is not a Government report. The Grundy Report is not the Government's to make public just as the Price Waterhouse Report was not the Government's then to make public. Both are reports that were commissioned by and belong to the Governor and certainly if the Governor wishes to make this report public, certainly the

Government would not stand in his way from doing so. I certainly would not want anyone to run away with the idea that we could make this public if we wanted to but have chosen not to. If the decision rested with us there are issues to take into account on both sides of publication. The Leader of the Opposition has identified one of the issues on the negative side of making it, there are others but that would be a judgement for us to make. Let me tell him that the Convent has made a copy of the report available to me on a confidential basis, that is to say, on the basis that I am not free to discuss it or to pass it to anybody else as I am sure that was the same basis upon which the hon Member got a copy of the Price Waterhouse Report when he was sitting in this chair.

HON J J BOSSANO:

I am grateful to the Chief Minister for that clarification. Let me say that we remain of the view, that notwithstanding the explanation on the reference to a direct reporting function to His Excellency the Governor which we welcome, having had that clarification from the Chief Minister, we still think that the position of Deputy Commissioner should be filled. In fact if we are talking about 18 to 24 months it seems to us even more reason why there should be a local appointment to that and that does not mean of course that the grading of the Project Officer will depend on the grading that he has in the United Kingdom when he is seconded here. So we do not see that he needs to come to Gibraltar to be either downgraded or promoted, he is coming out here to give advice and we believe that the giving of advice and the taking of advice should be in the hands of two different people.

HON CHIEF MINISTER:

Would the hon Member give way because otherwise I cannot participate further, I am grateful to him. My understanding of it on the basis upon which the decision has been taken is that this man is not coming just to give advice. The hon Member when he was speaking before about the Convent press release of July and went through the things that were being recommended identifying the things that needed doing is just part of the job, the other part of the job is actually implementing them which also requires expertise. I am advised that one does not need the expertise just to identify that something needs to be done. One also needs expertise in doing it and introducing the systems and putting in place the system and indeed training local officers into how the system

should continue to work after it has been implemented. Therefore, certainly, Mr Speaker, if I had thought that this chap was coming over just to give advice on a consultancy basis there would certainly have been no case for him to be in the line control at all. The whole point of Grundy is that it recommends and advises that for these recommendations to be implemented effectively it has to be done by a man who is actually in the thick of it, in the line-of-command. The Grundy Report suggests that it should be a Deputy Commissioner of Police level. I have to say that as a layman I share the hon Member's reservations about whether it had to be at Deputy Commissioner level as opposed to some other level. I am not competent to decide whether the Grundy Report can be better implemented by somebody who is a Deputy Commissioner of Police as opposed to by somebody who is something other than Deputy Commissioner of Police but certainly, let us be clear that the advice in the report is that and the Government either take the advice or rather the Government either say to the Governor, "We will not allow you to do this because we do not accept the advice" or we allow the Governor to take the advice on the basis that that is the advice.

HON J J BOSSANO:

Mr Speaker, I think if we keep on going we might find out what the rest of the report is bit by bit. I am not suggesting that the Government have only two choices which is to say to the Governor, "We will permit you to do it" or "We will block what you are trying to do and have a constitutional showdown". What I am saying is the Government have got two choices of saying, "We support what you are doing" or "We disagree with you but if that is what you want to do, it is your responsibility and we, politically, do not back it". That is certainly two options open to the Government and therefore it was on that basis that we asked Question No. 120 and it was on the basis of the answer, which I quote in my motion, that initially we got the impression that in fact the Government at that stage were still evaluating what was in the report and are still not decided what they could give support to politically and what they could not in the exercise of their judgement. Since in the supplementary we were told that this had been issued with the prior approval of the Government, then we are treating it, as I said we would, as a statement of the policy of the elected Government and not just of the policy of the Convent because otherwise it would not and should not have been issued with the prior approval of the Government of Gibraltar. In that recommendation that is not important enough to feature as one of the

recommendations highlighted in the summary, the issue is not the level. The Chief Minister has just interrupted me, when I gave way, to repeat what he said at the beginning and I have already answered that point. I do not think any of us are qualified to say at what level the man who is doing the project management should be graded. The point is, if there is already a full-time job as Deputy Commissioner which needs doing, then the additional job of managing the implementation of 28 recommendations must be at the expense of something else. I would have thought operationally, we are not saying it should be on some God forsaken corner of Gibraltar out of touch with everybody else, there is nothing to stop him being based in the Central Police Station. But the point is that his appointment is to a post in the establishment of the Royal Gibraltar Police voted by this House and he is going to be appointed to be the Deputy Commissioner. It is not that he is the Project Officer and in his spare time he will be the Deputy Commissioner. He is going to be the Deputy Commissioner and that is going to be the substantive post and as Deputy Commissioner he will be implementing these recommendations. This suggests that we do not need a Project Officer if the man is the Deputy Commissioner. The way that it is being put is that he will have a dual role, one is the role of implementing the recommendations, another one is the role of doing the work that would be done by an officer of the Force, which has been done and is being done. At the moment there must be somebody acting there presumably and we send people to the United Kingdom and we have sent people to the United Kingdom recently to prepare them for doing it and presumably when the Commissioner is on leave the UK Project Officer, logically, since he is the Deputy Commissioner having been appointed, will be the acting Commissioner and the Project Officer. We do not see that that makes a lot of sense and the only reason that has been given is that it is better for him to roll up his sleeves. There is nothing to stop him rolling up his sleeves, he does not have to be occupying a position in the Force and therefore although we accept the explanation that has been given as to the line-of-command being through the Commissioner and not direct to His Excellency the Governor, we do not accept that there is anything at all in what has been said today in the House that precludes the selection of somebody from the United Kingdom to go through the 28 recommendations to sit down presumably with different areas of the Force. If the man is involved in managing the computerisation of the Accounts Department, when that is being done he will have to spend time in the Accounts Department, whatever the Deputy Commissioner does normally presumably will not get done while he is in the Accounts

Department doing that and then when he moves to another area he will have to get on with another part of the recommendations that have been made. We cannot see that this makes sense other than as a way of justifying having somebody from the United Kingdom taking the number two job in the Force. If that is the real reason then let us be told that that is the real reason and that is it. We may like it, we may not like it, but we have to live with it. I commend the motion to the House.

Question put. The House divided.

For the Ayes: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

Abstained: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson
The Hon E G Montado

The motion was defeated.

ADJOURNMENT

HON CHIEF MINISTER:

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

Question proposed.

MR SPEAKER:

But before voting I received notice from the Hon J J Bossano on a matter he wants to raise on the final adjournment.

HON J J BOSSANO:

Mr Speaker, the question that I wish to raise on the adjournment is the announcement made by the Government in a press release on the 6th September where they said that there are going to be 12 posts of Police Officers in the Royal Gibraltar Police who will take on different duties because of the civilianisation of the police work. The question that we wish to raise therefore at this stage in order to obtain clarification from the Government is, what are those 12 positions in the Royal Gibraltar Police about which there is no public information? We had in Question No. 120 in the House where we raised the recommendations of the Grundy Report and of course one of the recommendations of the Grundy Report is that there should be an independent study made. In the press release of the Convent which the Government told us in Question No. 120 had met with their approval and which we understand they had accepted was that there should be an independent manpower review which would look at civilianising posts where possible. On the following day they announced that 12 posts, which have not been identified, had been civilianised or are to be civilianised. That is not the result of an independent review, because if the review had not been done the previous day when they answered the question and unless they stayed up all night to carry out the review, I do not see how they could issue a press release on the following morning announcing that decision. In terms of whether it is desirable to civilianise these 12 posts it is not possible to make a judgement without knowing what posts we are talking about. I must say that our own view, given what I have already told the House about the input that we had in the Grundy Report, was that we expected the Grundy study to look at the civilianisation exercise that had already been carried out and to give their views on it. It seems very strange that somebody should be carrying out a study of the Police Force, have already had in their possession a copy of the Price Waterhouse Report and come up with the recommendation that there should be an independent manpower review. I do not know whether Mr Grundy felt that the manpower review linked to identifying posts, where civilianisation was possible and that had already been conducted by Price Waterhouse, was not independent enough. So it is difficult to

understand why his recommendation should be that there should be a further review and not as we have expected that he should express a view from the point of view of the structure of the police, of the wisdom, of the advisability of the posts that had already been identified, which were 60-odd posts in the study commissioned on the initiative of the Principal Auditor. But certainly, if the recommendation was that there should be an independent manpower review before any civilianising took place and that independent review has not taken place and the Government did not tell us in the House at Question Time that they had already made up their minds to civilianise a number of posts, we find it very peculiar that they should issue a press release the following day announcing the decision. As I say, the purpose of raising it in the adjournment is because we are not expressing a view for or against until we know which posts we are talking about. In the Government press release that was issued, they said that the civilianised posts would be undertaken by other people within the Government service and from our recollection of what was in that Price Waterhouse study we are not very sure which these 12 could be, so we have not even really been able to make even an intelligent guess at where the 12 are. So essentially what I am asking by raising the matter on the adjournment is for further clarification on where these 12 posts are to be found in the structure of the Royal Gibraltar Police. The gradings of the people who are there at the moment doing that job and whether this means that the recommendation which is one of the 28 recommendations, I take it, that there should be an independent review carried out to identify what could be civilianised has been now rejected and there is not going to be an independent review to identify, or whether in fact apart from these 12 it is still intended as recommended in the Grundy Report to look at other posts that could be civilianised? I think based on that clarification and on the information that we get, we will decide what our position should be on this matter.

HON CHIEF MINISTER:

Mr Speaker, I do not consider that motions on the adjournment are for the purposes of enabling the Opposition to extend Question Time beyond the position that it occupies in the Order Paper. Certainly motions on the adjournment are not in order that the Government should satisfy the desire of the Opposition for information so that they can decide whether they are for or against a particular issue and certainly I doubt, although of course I have had absolutely no notice of Mr Speaker's ruling in this

regard and therefore this matter takes me entirely by surprise, I frankly doubt whether the question whether what has been civilianised is the marine mechanic or the vehicle mechanic or the storekeeper or the record keeper in the Gibraltar Police Force, is a matter of public importance as it is required to be under Standing Orders for this to be an appropriate measure to raise on a motion on the adjournment. But since we are here and since I have every desire to satisfy the Opposition's thirst for information whenever I possibly can, I do not mind answering the question, which is an unusual thing to do in any motion, let alone one on the adjournment.

The answer is that this batch of recruitment has nothing to do with Grundy whatsoever. The fact of the matter is that independently of Grundy, as the Government that have a manifesto commitment to increase the resources available to the police, were satisfied that manpower levels had fallen beyond the point at which the police could reasonably be expected to discharge the duties that the community expects from them. Indeed, that is true and that has been demonstrated to the point that during the last month or two the police have had to move from a four shift system to a two shift system whereby the entire Police Force has been working 12 hours on and 12 hours off because there were simply insufficient manpower to put in the streets to man four shifts, or three shifts. The manpower shortage had risen to such crisis level that in the judgement of the Government we could not wait for a formal independent manpower review and therefore the Government took the decision, regardless of Grundy, to authorise the Commissioner of Police to not recruit 25 policemen but indeed to increase the complement of policemen that were fit to go out onto the streets in a shift by 25, and that whilst they were at it, we might as well kill another electoral bird with the same stone which was our commitment to the Gibraltar Services Police that those of their members to be made redundant who were suitable for recruitment into the Royal Gibraltar Police Force and who met the RGP's recruitment criteria would have a certain number of jobs reserved to them. Therefore from the 25 men that we want the police to have for active street duty, 12 were to come from civilianisation of existing police posts, which of course would result in additional clerical jobs and others depending on which were chosen for civilianisation from within the Force, 10 would be filled from recruits from the RGP and three could be recruited by the police from the general public in accordance with their ordinary recruitment procedures. The answer to the hon Member's question as to which officers, which 12

posts from within the RGP have actually been chosen for civilianisation is not a decision in which the Government have participated. That is to say, I invited the Commissioner of Police to make that decision internally, in other words, Price Waterhouse says that there are up to 80, I do not remember whether it was 80, 70, 60, anyway many more than 12 posts that were available for civilianisation. It is not my business as the Government of the day to say, "You have got to civilianise that one, that one and that one", that is an operational decision of the Force, who decide from amongst those 80 which 12 senior officers think ought to be civilianised. The Commissioner of Police wrote to me as a matter of courtesy, probably, on the 2nd September 1996 informing me that having enquired into this matter with his senior officers to evaluate those posts within the service which may be civilianised within a short time frame, he has identified 12 posts. The hon Member's gesticulations suggest to me that they expect me now to tell them which the 12 posts are. These posts, I do not mind advancing to the Opposition Members, because of course they will become clear as soon as those posts are themselves advertised for recruitment, but I have to enter this caveat, that I do not consider that the Commissioner of Police is bound by this list and therefore if before the recruitment process takes place the police management wishes to change its view about which posts should be selected for civilianisation, then as far as I am concerned and the Government are concerned, they are free to civilianise whichever 12 they please. There are three officers who are presently in an administrative role in the Immigration Department. There is one officer who is presently discharging an administrative role in the Records Department. There is one officer who is presently a mechanic in the Police garage. There is one officer who is presently discharging an administrative role in the Stores Department. There is one officer who is presently performing an administrative role in the Prosecution's Department. There is one officer who is presently, I suspect, making traffic signs in the Traffic Department, it says traffic signs in brackets. There is one officer who is presently doing administrative, typing and reception duties in the Traffic Department. There are two officers who currently drive the transfer ambulance, that is to say, not the emergency ambulance but the ambulance that transfers usually elderly people to and from hospital and there is one officer currently engaged on public counter enquiries. Those, I hope add up to 12, I have not counted them, but those are the 12 posts which in the judgement of the Commissioner of Police and his senior officers are the 12 that they would wish to civilianise in order to facilitate this manpower recruitment policy.

Question put on the adjournment. Agreed to.

The adjournment of the House was taken at 6.30 pm on Monday 14th October 1996.

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

25TH NOVEMBER, 1996

**(adj to 2nd December 1996
and 7th January 1997)**

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Fourth Meeting of the First Session of the Eighth House of Assembly held in the House of Assembly Chamber on Monday 25th November 1996 at 9.00am.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Judge J E Alcantara OBE)

GOVERNMENT:

The Hon P R Caruana - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Dr B A Linares - Minister for Education, the
Disabled, Youth and Consumer Affairs
The Hon Lt-Col E M Britto OBE, ED - Minister for
Government Services and Sport
The Hon J J Holliday - Minister for Tourism, Commercial
Affairs and the Port
The Hon H A Corby - Minister for Social Affairs
The Hon J J Netto - Minister for Employment & Training
and Buildings and Works
The Hon K Azopardi - Minister for the Environment and
Health
The Hon Miss K Dawson - Attorney-General
The Hon E G Montado OBE - Financial and Development
Secretary(Ag)

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon J L Baldachino
The Hon Miss M I Montegriffo
The Hon A Isola
The Hon J Gabay
The Hon R Mor
The Hon J C Perez

IN ATTENDANCE:

D J Reyes Esq, ED - Clerk of the House of Assembly

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 4th September 1996, having been circulated to all hon Members were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The hon the Minister for Trade and Industry laid on the table the report and audited accounts of the Financial Services Commission for the year ended 31st March 1996.

Ordered to lie.

MOTIONS

HON CHIEF MINISTER:

Mr Speaker, I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the motion standing in my name.

Question put. Agreed to.

HON CHIEF MINISTER:

Mr Speaker, I beg to move the following motion:

"That this House:

1. Resolves that the following British Members of the European Parliament, having expressed their willingness to represent the interests of the people of Gibraltar in the Parliament, are formally recognised by this House, on behalf of the people of Gibraltar, as representing their interests, namely, Mr Alf Lomas, Mr Brian Simpson, Mr Tom Megahy and Mr Barry Seal;

2. wishes to express the thanks and appreciation of the people of Gibraltar to the aforesaid Members of the European Parliament for their interest, for their goodwill and for their initiative in ensuring that Gibraltar is represented in the European Parliament, as an interim arrangement, in an indirect way;

3. warmly welcomes the Gibraltar in Europe Representation Group on its visit to Gibraltar."

Mr Speaker, the importance of the issue of representation to Gibraltar and its people takes several different forms. First of all there is the principle of enfranchisement and that is a principle regardless of the need that Gibraltar might have for direct representation, the principle that we are entitled to be enfranchised is a principle that the people of Gibraltar do not wish to surrender. But it is also important that Gibraltar should assert all its rights within the European Union and should not permit the erosion of rights, especially not of fundamental rights which enhance the case of those that argue that Gibraltar's status within the European

Union is somehow not a full one. The third and perhaps on a day-to-day basis the most important reason why the people of Gibraltar need representation and are grateful for the indirect representation that the British Members of the European Parliament mentioned in my motion provide, is that it is clear that Spain has identified the European Union as a principal focal point of its assault on the economic, social and political rights of the people of Gibraltar and that it is in that forum that Spain now seeks to progress Gibraltar's marginalisation politically from Europe by a systematic exclusion of Gibraltar from increasingly important measures and Directives.

If I can, Mr Speaker, address first of all the voting rights issue. In a sense some might argue that the fact that Gibraltar does not have its own Member of Parliament in the European Union results in the somewhat privileged position where we have several. This, of course, ensures that our interests are looked after on a day-to-day basis by people who voluntarily and out of no obligation give of their time and interest to Gibraltar but it is not a substitute for the rights of the people of Gibraltar to be enfranchised. The Treaty of Rome says, "That the rights of voting for the European Parliamentary elections should be by universal suffrage." Universal suffrage means everybody. Nobody in the European Union doubts that Gibraltar is integrally part of the territory of the European Union. Nobody doubts that the residents of this territory of the European Union have to abide by the laws of the European Union and have to comply with the very onerous, for a small community, burdens imposed on us by the European Union. It therefore seems extraordinary to us that we should be denied that most basic of rights in a democracy where, collectively, decisions are made that bind everybody, that the people of Gibraltar should be denied that most basic right of voting for the Parliament. Mr Speaker, as you know, the case for Gibraltar in terms of the voting rights issue has the support of the Petitions Committee of the European Parliament and when the Commission is pressed on the issue it says that it is a matter for the United Kingdom and not a matter for the Commission. That, of course, is true. The arrangements for voting by citizens of Member States is a national issue and Gibraltar's exclusion, Gibraltar's disenfranchisement is the direct result of the fact that when the United Kingdom's national voting arrangements for elections to the European Parliament were enacted, Gibraltar was excluded and no provision was made for Gibraltar to participate in the election of the British contingent of Members of Parliament. This is an issue which of course has been raised by successive Governments and by successive and by numerous pressure groups with the British Government. Mr Speaker, the

arguments deployed by the British Government for its continuing failure and refusal to enfranchise the people of Gibraltar are fundamentally two and in the opinion of the Government completely devoid of merit. The first argument is that because Gibraltar on the advice of the United Kingdom Government, when we acceded to the European Union with the United Kingdom in 1973, because with that advice Gibraltar is excluded from the Common Customs Union and therefore does not pay VAT, or does not levy VAT, that it would be unfair for Gibraltar to be represented at a Parliament that spends money that we do not contribute to the raising of. In other words, it is a sort of bastardisation of the concept of no taxation without representation. This is rather perversely no representation without taxation which is a principle for which there is absolutely no foundation in one thousand years of British political tradition. It would, for example, raise the question whether the United Kingdom itself would have to disenfranchise from elections to its own House of Commons people who for one reason or another do not pay tax in the United Kingdom, perhaps because they do not earn enough and they are not in the tax threshold, or perhaps because they are exempted for some reason or another. The argument that because you do not pay taxes you are not entitled to a vote is in the opinion of the Government bankrupt of political merit and in any event it is not a principle that is applied by other Member States. After all, the Canary Islands, Ceuta and Melilla, all of them Spanish territories within the European Union, none of them, levy VAT and all of them participate in votes to the European elections. Similarly, with some of the French overseas departments and in any event with the Maastricht changes which gave the Parliament a much bigger say or indeed a say in the formulation of Directives and Regulations to the system known as co-decision, the Parliament in which we are not represented now plays an increasingly important role in making legislation, which apply to Gibraltar and which Gibraltar then has to transpose if they are Directives into our own laws. Therefore, we are in the position where the Parliament is no longer just concerned with budgetary approval, it is now concerned with general legislation. Legislation which applies to Gibraltar and yet which Gibraltar representatives have no say in debating or in the legislative process. The second argument that the Foreign and Commonwealth Office gives for its refusal to enfranchise Gibraltar is a purely mathematical one, namely, that the United Kingdom constituencies are of the order of 500,000 each and Gibraltar is only 30,000 people and this throws up what the Foreign Office calls disingenuously "logistical problems". Well, the reality of it is that there is no European principle of the size of constituencies. The fact is that in Germany constituencies are about 750,000,

in the United Kingdom they are about, perhaps a bit more than 500,000, in Luxembourg it is 150,000 and in preparations for the accession of Cyprus and Malta, although Malta now looks increasingly doubtful, they were pencilled in with constituencies of 50,000. So, if you can have a constituency of 750,000 in Germany and 50,000 in Cyprus, that we should have one of 30,000 in Gibraltar does not seem, that outrageous to me. In any event Gibraltar would and has indicated that as a first step and given that Gibraltar is part of the Member State, United Kingdom, for European Union purposes that Gibraltar would, as a first step, settle for being added to a constituency in the United Kingdom for the purposes of enfranchisement. Mr Speaker, it seems to the Government that this is an issue which raises fundamental issues of democracy. If the European Union is genuinely seeking to develop into the politically more relevant, as opposed to the economically relevant Union that it used to be, I do not see how it can continue to turn a blind eye to the disenfranchisement of 30,000 British citizens of the European Union and, it is incomprehensible to the people of Gibraltar that our disenfranchisement should be the act, the conscious, voluntary, premeditated act of those that are the founders of parliamentary democracy in Europe, those who sit in a Parliament that likes to call itself the 'Mother of all Parliaments'. It is therefore an issue that the people of Gibraltar are not lightly going to concede in relation to.

Mr Speaker, I have said that there is now an increasing need on a day-to-day basis for representation. There is an ever-increasing need for vigilance in relation to Gibraltar's interests and affairs within the European Union since, as I said at the outset, this is one of the fora within which Spain most aggressively pursues her campaign against Gibraltar. Hon Members and indeed the Members of the European Parliament being recognised today present in this House, listening to this motion, are aware of the several and various issues on which Spain pursues aggressively her claim against Gibraltar in the forum of the European Union. Really, most visibly we have the way in which she operates her frontier with Gibraltar. To say that it is against the spirit of the European Union I think would be an understatement and I would assert with confidence that it is also a breach of the letter of her European Union commitments.

Mr Speaker, the territories of Spain and Gibraltar are both territories of the European Union, yet we have a frontier which is often operated not unlike Checkpoint Charlie in the days of the Berlin Wall. There is no Red or Green Channel. There is no connection. There is no deployment of human resources in terms of frontier guards, customs officers, commensurate with the volume of

traffic. In other words, it matters not whether there are 10 cars or a 1,000 cars, it is one single file, headed by one single immigration officer and it really is extraordinary that the European Union should be willing to tolerate this regime between two member territories. It seems extraordinary that in the European Union, on the eve of the 21st century, between two member territories, there should be no maritime links, there should be no air links. There are other issues. There is the refusal of the Spanish Government to recognise Gibraltar's ID cards, ID cards issued by the Government of Gibraltar as valid travel documents. This is an issue that goes straight to the root of the European Union recognition of the constitutional relationship between Gibraltar and London given that the argument by Spain is simply based on the fact that it does not recognise that Gibraltar has a status to issue any governmental instruments. It has to be said that the Spanish Government is engaged in an aggressive campaign of lobbying other Member States of the European Union to recognise their position, in other words, to join Spain in refusing to recognise Gibraltar ID cards and there is a need for vigilance on that issue.

There is the issue of Spain's stated intention to refuse to recognise Gibraltar licensed financial institutions for the purposes of access into the single market in financial services. There are attempts, increasing attempts by Spain to exclude Gibraltar from fundamental, especially single market, Directives. Most notoriously Spain has signalled that she will veto the External Frontiers Convention unless Gibraltar is excluded from it. The External Frontiers Convention is in effect the nearest that the European Union will ever have come to physically delineating the territory of the European Union for single market purposes and it would be for single markets, not just in financial services, not just in freedom of movement of people but also of workers and for all future regimes that the European Union may establish common to all Member States. It therefore is a fundamental issue that if Spain succeeds in excluding Gibraltar from that most fundamental of European measures, the External Frontiers Convention, it will be tantamount to the expulsion of Gibraltar from the European Union. It is not limited to the physical issue of frontiers. Hon Members will know that Spain has entered a reservation to the four Directives which constitute the so-called Monti package of Directives which are a central pillar in one of the important single markets, namely the single market in people, the freedom of movement of people and workers. Spain has entered a reservation stating that these Directives should not apply to Gibraltar and similarly it goes without saying that if Spain were to succeed in that then it would augur terribly for Gibraltar because it would be an effective

success for the Spanish Government in marginalising Gibraltar from the heart of the European Union. Of course Spain does not hesitate to recognise Gibraltar's membership of the European Union when it comes to the burdens of membership. We have seen that happen on the matter of pensions, where Gibraltar has had to pay enhanced pensions as a result of our indisputable membership of the European Union. Similarly, Gibraltar accepts frontier workers from Spain and places no impediment on them out of a sense of, well for reasons of obligations under the European Union. The latest and I think increasingly worrying manifestation is, that Spanish commissioners now make it their business, in pursuit of the Spanish national interest to pressurise the European Commission to commence infraction proceedings against Gibraltar which, of course, quite apart from being an obvious recognition by Spain of the fact that we are in the European Union, something that she sometimes concedes and sometimes seems to question, depending on where her interests lie, it is a frankly worrying matter that commissioners sent to Brussels by Spain that are supposed to be working for the European Commission and not in defence of the interests of the country that sponsors them, should be agitating, within the Commission for infraction proceedings to be commenced against the United Kingdom in respect of Gibraltar Directives.

Mr Speaker, there are many issues upon which Gibraltar needs vigilance. There are many issues upon which Gibraltar would like to be able to stand on the floor of the European Parliament and speak for itself and represent itself and be vigilant for itself. Because we are disenfranchised it is not possible and whilst the principle that the people of Gibraltar seek to assert is, that we are entitled to direct enfranchisement, it is for reasons that I have set out in my address that the people and Government of Gibraltar are grateful for the time, the interest and the effort deployed on our behalf by our friends in the European Parliament who represent our interests, I suppose much as happens when two countries do not have diplomatic relations and a third country represents the interests of another in that second country. We are grateful to them. They are doing for us a sterling job of vigilance, of defence of our interests and it is a privilege for me and for the Government Members to recognise and acknowledge that effort that they make, that interest that they show, to express the gratitude of the people of Gibraltar to them in this House in their presence during their visit to Gibraltar for which we are all so grateful.

I commend the Motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, the Members of the European Parliament representing Gibraltar have been doing so for a number of years and it is an honour to have an opportunity to have them in the House as we pass a motion formally recognising them as our representatives. This is the closest we have ever been to voting for MEPs in the sense that those of us who have been voted to this Parliament are in turn voting to nominate those that protect our interests in the European Parliament. It is, of course, and has always been the view of this House that that should be an interim arrangement not because there has ever been any doubt as to their commitment to our cause, what greater evidence could we have that they are committed to defending our position than the fact that they do it unpaid, but it has always been the view that the principle of direct elections to the European Parliament was an important principle to defend in the context of our credentials as an integral part of the European Union which we have been since the 1st January 1973. Of course, it is absolutely true that the protection of Gibraltar's interests inside the European Union is especially significant because of Spain's hostility towards us and its attempt to abuse its position in the Union to progress its claims over Gibraltar. But what we cannot simply leave out of this debate if we are going to point out to the Spanish aggression is the British omission, because of course Spain joined the Community in 1986 and we joined in 1973 and there were 13 years when Spain had no say, never mind a veto, they were not involved and we were left without the right to vote well before Spain joined. In fact, the United Kingdom for years used the argument that in principle they agreed that we should be given the right to vote but that there were practical difficulties and then when the number of Members of Parliament were increased a few years ago by six it was indeed the leader of the group, Alf Lomas, who lobbied the United Kingdom Government at that stage when it did not mean having to take an MEP from somebody else for us to have the allocation of a seat from the national group.

Gibraltar's status within the European Union is of course unique, because we are not a part of the United Kingdom. Not only do we not vote in the European Parliament we do not vote in the Parliament of the United Kingdom, whereas the overseas territories of other Member States are all integrated and the national laws of the Member State apply to the overseas territories. In our case, under Article 227(4) of the Treaty of Rome we are a territory for whose external relations a Member State is

responsible. We cannot be both, that Member State and the territory for which it is responsible, and therefore our view in the GSLP is that we are not a part of the United Kingdom inside the European Union. We are in the European Union as a territory under Article 227(4) and the membership of the United Kingdom is under Article 227(1). In the case before the European Court of Justice over the exclusion from the Community system of air travel in 1987 of Gibraltar, the first time we have had an extraordinary development in terms of law and in terms of the application of law to citizens, we had a law which specifically contains a clause system, "This law shall not apply in Gibraltar until two Member States have decided between them that it should apply." That was included in the 1987 Air Services Liberalisation Directive and repeated in every subsequent one and when that came up before the ECJ, the Spanish argument was that the airport and the isthmus on which the airport is to be found had not joined the Community in 1973 under Article 227(4) but had joined the Community in 1986 as part of the Kingdom of Spain under Article 227(1). So we are not members under Article 227(1) from the lighthouse to the frontier fence and therefore we are not part of the United Kingdom's membership. We went in in tandem with the United Kingdom on the basis that they represent us and they are the Member State responsible for our external affairs. Let me say that not only did the UK leave us out of the right to vote but in fact at the very last minute, when they had run out of arguments, they produced the argument, which must have been there from the beginning, that in any case in order to enfranchise us they would need to go back to Community partners and get unanimity and that Spain would veto it. If that is indeed the case all the more reason why they should have done it before 1986 and all the more reason why they should have told us post-1986 that Spain had a say on whether we could vote or we could not vote for European Parliamentary elections. But of course the members of the Gibraltar Group in the European Parliament who always supported our right to direct elections, in this particular area now find that it is not just the Gibraltarians that are being deprived of the right to vote because it is the territory that has been excluded, not the people. A Gibraltarian is able to vote if he is a resident of the Kingdom of Spain in a Spanish constituency and the same is true in every one of the 15 Member States. The figures that we have of the population of Gibraltar shows that we would not have a constituency of 30,000, we might have a constituency of maybe 20,000 because there would be 2,000 non-British Community nationals who would be enfranchised at the same time who are not enfranchised today. We have got French citizens, Italian citizens, Greek citizens, all of whom are entitled under Community law to vote in the

constituency in which they reside and if Gibraltar was a constituency those citizens would have a vote. The Gibraltarians are citizens of the Union, as I have said, they can vote in every existing Member State and presumably that right to vote will continue to be expanded with the enlargement of the Community. So if Malta decided to join we would be able to vote in Malta but we would not be able to vote in Gibraltar. The absurdity of that position is one that is tolerated by the European Union although it is currently being challenged simply because throughout our membership of the Union since 1973 and particularly post-1986 what we have seen is other Member States with more than enough problems of their own not wanting to be dragged into problems that they consider to be of the UK's making. Therefore the position when Gibraltar petitioned the Petitions Committee of the European Union was for that Committee to put the ball back in the UK's court saying, "This is entirely a matter for the Member State, there is nothing to prevent the Member State through boundary changes or through proportional representation or through whatever mechanism it chooses to give the people who live in the territory of Gibraltar the right to participate in elections to the European Parliament." This view of the Petitions Committee was at the time not contested by the UK although subsequently they have argued that it would require the agreement of Spain for us to become enfranchised.

Mr Speaker, the list of things that the Chief Minister has mentioned that Spain pursues against us in the European Union are not something that Spain now seeks. It is something that Spain made clear it intended to seek even before it joined and immediately after joining, Fernando Moran who had been the Foreign Secretary and who is now the leader of the Socialist Group of Spanish MEP's, made clear in a television programme on Canal Sur that as far as they were concerned as members of the club they were entitled to have a say in every change that occurred in the rules of that club and that they considered it a perfectly legitimate thing to do, to influence those rules in a way that would advance their prospects of recovering Gibraltar. This is not some hidden campaign of Spain. Spain has set out to do this and considered it to be an entirely reasonable thing to do. They want Gibraltar, they wanted Gibraltar for a long time, they saw an opportunity of furthering their prospects by having a way of putting pressure on the UK Government because of course the infraction proceedings are against the United Kingdom not against Gibraltar.

The United Kingdom is responsible for our external affairs and presumably their theory is that the more they hassle the British Government of Gibraltar the more

amenable the British Government will be to doing a deal with them. Obviously, tested though there might be some people in the Foreign Office, there are enough defenders of Gibraltar to make sure that that does not happen, including the four members of the European Parliament that we have in the House today. But that position I regret to say in the view of the Gibraltar Socialist Labour Party is a position which was already predicated to happen in 1984 when Spain was successful in getting this House to approve the infamous Brussels Agreement in which Spain obtained Community rights in Gibraltar eleven months before it joined the Community. That was the first difference. The very essence of our argument in this House today has been, we want to be the same as everybody else, we do not want a different relationship, we want to be treated according to our rights just like we are expected to meet our obligations. Spain successfully got the British Government to agree to the granting of EEC rights in Gibraltar which was ratified by this House with us voting against. In exchange for that, Spain agreed before it joined the Community, to have a red and green channel which 12 years later it does not have, to restore the ferry which 12 years later it does not have, and to improve air communications which 12 years later has not happened. All these things that Spain committed itself to doing and has not honoured, were in exchange for something that we were being told they would have to do 11 months later. At the time the British Government was thinking, no more than that, that they would veto Spanish entry into the European Union if Spain did not remove all the restrictions that had been imposed unilaterally, without a quid pro quo and as a condition of entry and having withstood a siege for 15 years and one month, to capitulate 11 months before the deadline when the siege is due to be lifted, is something that we in the GSLP have never been able to understand or accept. Since 1986 the position of the Spanish Government has been to question the applicability of Community law when it suits them and to demand Community rights from the United Kingdom, never from Gibraltar, because they have never recognised Gibraltar, from the United Kingdom in the area of Spanish pensions and in a number of other areas. And the United Kingdom have always given in to Spanish demands and never obtained redress against Spain for the things that they were doing which were challengeable, because the United Kingdom Government have chosen never to threaten Spain with infraction proceedings, and they still do not do it. The closest we have ever been to having the European Commission requiring Spain to observe Community law, and it is an important achievement because it is the only one, was when Spain not only refused to recognise Gibraltar identity cards as valid travel documents at the Gibraltar/La Linea frontier, they also refused to

recognise Spanish identity cards as valid travel documents. Therefore every Community national, other than a Gibraltar and a Spaniard, could cross the frontier without a passport. That matter was taken up by the Commission and Spain was told, not that the United Kingdom would commence infraction proceedings, that the Commission would commence infraction proceedings if they did not recognise the identity cards of their own nationals whom they were preventing from leaving Spain with an ID card. Spain was forced to back down. In fact, at one stage the conflict between the Ministry of the Interior and the Ministry of Foreign Affairs was such, that they announced in the morning, on a Thursday, that people could travel with their ID cards to Gibraltar and then by 3pm the Ministry of Foreign Affairs had overruled the Minister of the Interior and the ban on ID cards had been re-imposed. Eventually when the matter got to the Commission and the Commission took a tough line, Spain had no choice but to back down in the knowledge that it would lose the case in court. The importance of that single incident in 12 years of common membership by ourselves and Spain in the European Union is that it demonstrates that it is possible, if we persevere, to actually get the Commission to require Spain to observe Community law in its relations with Gibraltar. I think all the indications that we have is that getting the recognition of our rights and indeed of the right of the territory of Gibraltar to be included as community territory for voting purposes will continue to be a long and uphill struggle and that therefore it will be still of enormous importance to our people that we will have defenders inside the European Parliament familiar with the reality of the situation of Gibraltar and its European neighbour and able to put the record straight whenever the Spaniards raise matters in the European Parliament, taking advantage of the fact that when issues are raised which are very specific there tends to be, inevitably, a lack of involvement or interest by most other MEPs of other Member States. There have been occasions, I remember one particular occasion, when the Spaniards sprung a surprise motion accusing Gibraltar of polluting the surrounding environment and fortunately Tom Megahy was in the parliament at the time and was able to filibuster and keep the thing going till the early hours of the morning so that in fact the motion failed through lack of time. Our MEPs have a commitment to our people and it is important to record that the defence of the principle of enfranchisement for all Community nationals resident in Gibraltar will one day be successful and one day we will have an MEP for whom we will have voted directly by universal suffrage. But that we can never hope, when that time comes, to find more loyal, more dedicated and people who are more committed to our cause than the ones who have today, who put themselves out

totally for us in the knowledge we cannot even vote for them if we wanted, and that is usually the greatest stimulus that Members of Parliament have in defending their constituency. We fully support the motion before the House.

MR SPEAKER:

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

HON CHIEF MINISTER:

Mr speaker, I think that there is nothing that I need add to what I have already said and to what the Leader of the Opposition has said, except that certainly as far as the Government Members, Opposition Members, and I suspect the same goes for the sentiments expressed by the two party leaders I am sure represent the sentiments of everybody on both sides of the House.

Question put. Passed unanimously.

ANSWERS TO QUESTIONS

The House recessed at 11.40 am.

The House resumed at 3.05 pm.

Answers to questions continued.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Monday 2nd December 1996 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 5.05 pm on Monday 25th November 1996.

MONDAY 2ND DECEMBER 1996

The House resumed at 10.00 am.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Judge J E Alcantara OBE)

GOVERNMENT:

The Hon P R Caruana - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Dr B A Linares - Minister for Education, the
Disabled, Youth and Consumer Affairs
The Hon Lt-Col E M Britto OBE, ED - Minister for
Government Services and Sport
The Hon J J Holliday - Minister for Tourism, Commercial
Affairs and the Port
The Hon H A Corby - Minister for Social Affairs
The Hon J J Netto - Minister for Employment & Training
and Buildings and Works
The Hon K Azopardi - Minister for the Environment and
Health
The Hon Miss K Dawson - Attorney-General
The Hon E G Montado OBE - Financial and Development
Secretary

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon J L Baldachino
The Hon Miss M I Montegriffo
The Hon A Isola
The Hon J Gabay
The Hon R Mor
The Hon J C Perez

IN ATTENDANCE:

D J Reyes Esq, ED - Clerk of the House of Assembly

ANSWERS TO QUESTIONS (continued)

The House recessed at 11.55 am.

The House resumed at 12.10 pm.

BILLS

FIRST AND SECOND READINGS

THE BANKING (AMENDMENT) ORDINANCE 1996

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a Bill, the primary purpose of which is in fact, as itemised in the first paragraph of the Explanatory Memorandum thereto, that explains, that the Bill provides for the Commissioner of Banking to be able to licence branches of banks which have their head offices outside the European Economic Area, the EEA. The Explanatory Memorandum goes on further to explain that the additional purposes of the Bill is to enable the Commissioner, in certain circumstances in situations where we are talking about a Branch from a non-EEA territory to rely on the relevant supervisory authority of such country and it also then in fact makes various other provisions which are corrections and omissions in what is currently the form of the Banking Ordinance. This Bill, does not in any way impinge or affect any of the passporting issues which this House has debated in the past and which is in constant debate with regard to financial services. Indeed, it would be clear from the amendments made in this Bill to Section 38 of the Banking Ordinance and indeed from the terms which Section 38 as it currently stands, that passporting, namely passporting within the European Union, is not something which extends to branches of non-EEA countries, branches of banks established in non-EEA countries. It is therefore really simply a mechanism which will allow banks established outside the EEA to branch into Gibraltar and establish themselves here to do business.

Mr Speaker, I have given notice of various amendments to the Bill and I apologise for one that came in only this morning which is of a really drafting type rather than one of substance and I will deal with those if the House so wishes at Committee Stage. The amendments are really again of a technical nature rather than anything that goes towards the substance of the Bill itself.

Dealing with the Bill in a more detailed fashion, Section 2 thereof is the section that does the main job in this Bill, namely it allows Gibraltar, the Commissioner, to licence a bank established outside the EEA and further on in that sub-section allows the Commissioner to rely on the type of supervision exercised by the authority in such a non-EEA State. The other sections of the Ordinance are primarily concerned with making clear that many of the provisions of the Banking Ordinance, some of which refer to passporting but not necessarily, that those provisions are limited purely to banks incorporated in Gibraltar or subsidiaries thereof. Effectively, it tidies up aspects of the Banking Ordinance which now become clearly requiring attention in the context of this amendment. One practical effect of this amendment is that branches of banks currently established in Gibraltar, even branches of EEA States that have had to comply with certain requirements of the Banking Ordinance will no longer have to do so because there will be the ability to rely on the supervision of the home territory in which the head office of that branch is established.

Mr Speaker, by way of further background I will inform the House that this proposal is propelled by an actual application which is pending in Gibraltar, an application for a bank which is based, which has its head office outside the EEA and which wishes to establish itself in Gibraltar. Indeed, the original drafting goes back to the earlier part of this year and what we are bringing to the House today is the product of the work over that time and which hopefully will allow for that branching to take place and therefore for a presence of a further institution to be made a reality.

I commend the Bill to the House.

HON A ISOLA:

Mr Speaker, as the hon Minister has said, this arises from an enquiry into the possibility of setting up what in effect is a parallel structure to passporting where banks with their main office outside the EEA are able to in effect, using the same words, passport into Gibraltar by setting up a branch using the certificate it has from its head office. This, the Minister has said, came, I understand in April of this year and part of the drafting was done prior to that date. Opposition Members certainly welcome the Bill. It is a conduit to new business, to more opportunity and we support that move. The only reservation that I would make is that as the hon Member has said I assume it would not in any way conflict or will cause difficulty to the provisions that are expected in respect of passporting within the Union. It

is clear that a branch setting up from outside the EEA, even if it is licensed as a branch, will not be able to passport and it would be unfortunate if the effect of this legislation will bring difficulty to the future stage where the banking passporting is brought to this House when all the necessary legislation is in place. Mr Speaker, we support the Bill and will get to details later but certainly the principle of the Bill, Opposition Members support.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

THE TRAFFIC (AMENDMENT) (NO 2) ORDINANCE 1996

HON E M BRITTO:

I have the honour to move that a Bill for an Ordinance to amend the Traffic Ordinance; to further provide for the transposition of Council Directive 74/561/EEC as last amended by Regulation 3572/90/EEC, Council Directive 74/562/EEC as last amended by Regulation 3572/90/EEC and Council Directive 77/796/EEC all as consolidated in Council Directive 96/26/EC on the admission to the occupation of road haulage operator and road passenger transport operator and the mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations; and for connected purposes be read a first time.

Question put. Agreed to.

SECOND READING

HON E M BRITTO:

I have the honour to move that the Bill be now read a second time. The main purpose of this Bill is to complete Gibraltar's transposition of three EU Council Directives which have already been partially transposed dealing with road passenger transport operators and road haulage operators. The Directives in question are 74/561/EEC, 74/562/EEC and 77/796/EEC which were consolidated in Directive 96/26/EC. The purpose of these

Directives are to set out standards of competence for road transport operators. Operators should be of good repute, that is without criminal records, of appropriate financial standing and must pass the necessary examinations to satisfy the conditions as to professional competence. The Bill amends Section 73(d) of the Traffic Ordinance and introduces a new Schedule to the Ordinance in order to give effect to the transposition. The main implications for the future are firstly, that since neither Gibraltar nor the United Kingdom, for that matter, has the continental system of public judicial registers of criminal convictions, the applicant for licences will have to declare whether or not he or she has been convicted. Convictions and failure to declare them would then be grounds for refusing a licence. Secondly, financial standing involves being able to have available £2,500 per vehicle, that is about 3000 ECUS, or £125 per seat in the vehicle, that is about 150 ECUS. Thirdly, there is a need to establish an examination system for professional competence as set out in the Bill.

Mr Speaker, I apologise for the lateness in doing so but I have circulated this morning three minor amendments to the Bill which Opposition Members should have in their possession. These deal mainly with the definition of who is the Minister involved and who has responsibility and a consequential amendment because of that and a further amendment which is purely to correct an error in the drafting.

I commend the Bill to the House.

HON J C PEREZ:

Mr Speaker, it would seem, having looked at this in some depth, that the provisions that are being introduced in this Bill have in part already been introduced in respect of road haulage transport. What is being done in this Bill is to extend those provisions some times in the same way and on other occasions with variations to road passenger transport as well. But I would put it to the hon Member that Legal Notice No. 97 of 1995 actually already transposes part of the Directive that is being transposed in this Bill, although this one extends it further to road passenger transport. In respect of the areas where there is a duty to keep a record of journeys, I think and I would ask the hon Member perhaps to seek clarification between now and the time we come to Committee Stage, that the exigency of a tachograph of this vehicle, which is a Community obligation and which is already, in effect, in Gibraltar, by virtue of the fact that drivers are stopped on the road and asked for records of tachographs, has not been included in the

legislation. To give the hon Member the whole background to it, let me say that the equipment is so expensive to have in Gibraltar in order for a tachograph to be installed in one of these vehicles that the nine or twelve vehicles that on road haulage are expected to carry them - there was a clarification made by the Commission and by the UK that it was stated at the time that the tachograph could be installed in Algeciras and that it did not necessarily need to be installed in the country of origin of the vehicle - except that prior to leaving office I can recall that the Assistant to the Deputy Governor was chasing me around wanting to know the returns that needed to be given to the Commission of the tachographs installed in Gibraltar. The tachographs were not installed in Gibraltar, they were installed in another Member State, be it the United Kingdom or Algeciras depending on the route that the vehicle was taking. The information in the tachograph is available in case the vehicle is stopped for the inspector to inspect but since the inspector, because we have not got any roads of ours included in the use of tachographs, the inspector inspects it in respect of the Member State where there is an exigency to be used but we have no one qualified in Gibraltar. Although we could have, but we have no one qualified in Gibraltar to read those tachographs and to then make the return to the Commission. I think that it is an omission of one of the Directives that is being transposed today not to cover that particular area and not to clarify the confusion that already exists in that area where we are talking about keeping records, we are not specifying how those records should be kept and there is already Community Directives saying how and what methods need to be used and how those returns need to be made to the Commission. In applying it to Gibraltar I would like the hon Member to take into account all the difficulties and the background that already exists in that respect.

Let me say that on the issue of conviction and criminality where the hon Member quite rightly said that in Gibraltar and in the UK there is no public register of criminal convictions made, it is true that the Traffic Commission uses the convictions that are known to the Police locally in order to look at licences for other public vehicles in Gibraltar and related to this Ordinance. I would like to say that if the Traffic Commission is going to be given the powers to look at these matters that we have to be very careful that the local people, because they are local and because of the availability, perhaps, of those records to the Commission, ought not to be discriminated against from a person that might come from Germany, where we do not have any records, where that person might state categorically that he has no criminal convictions and we might

discriminate because there is no way of going back and checking that person out before a licence is given to that individual. Another area which concerns us is, I think, in respect again of 2(b) of relevant conviction where there seems to be a.... and I know that it exists in respect of public vehicles in Section 2(a) of the Traffic Ordinance, where in respect of an accident not only the driver is held responsible but perhaps the owner of that vehicle is held responsible if there is an accident for insurance purposes and so on. But to say that the speed at which a vehicle may be driven, which in my view can only reflect the competence of the driver and it is the driver on his own that can be convicted for an offence of speeding, that that speeding offence could be something which brings a conviction against a transport manager or a holder of a licence employing that driver, seems to me to be rather draconian and not necessarily.... and I am definitely not sure whether that particular aspect of it is contained in the Directive itself. But it would seem to me that that is certainly not fair on the employing party where there are other aspects of it where the records need to be kept and where the rest days need to be observed which are a responsibility of the employing party but if there is a driver that is speeding, that the employing party should also be a party to be convicted in that offence seems to me to be unfair, to say the least.

Where we cannot agree at all with the provisions that have been made here in Schedule 2 in respect of professional competence is that the Minister and in the case of the Minister as is made known by the amendment it is the Minister for Traffic, should be the authority that is being included in the Ordinance to decide certificates of competence, diplomas, qualifications or, indeed, bodies or authorities that need to be approved by professionals. For a Party that has made so much play and dance about Ministers interfering with the professionals when we were in Government and they were in the Opposition, Mr Speaker, I find it incredible that they should think that a Minister is the responsible authority for deciding professional competence in respect of this Directive. Let me say that there is no need for this to happen. There are competent people within the Service able to decide this without having to bring in the Minister who is definitely unqualified to do so but even if he, by chance, was qualified to do so the fact that being a Minister he need not be qualified to do so should immediately eliminate him from the procedure. I do not see how this can be the case. I remember that when I first came into office that the exemption of roads in Gibraltar, of weights of roads in Gibraltar, were signed by the Minister and it was one of the things that I changed because I was signing things that I knew

nothing about and I said, "Look, it is not for me to decide whether a vehicle can pass a road which can only carry so much weight and I am giving it exemptions, it is up to the professionals to decide whether that can be done or not". I immediately introduced legislation excluding myself of that responsibility. I think the areas touched upon here are not of the competence of the Minister and should be removed from the ambit of the Minister. I reserve my position on whether we are going to support this Bill or not depending on the reply that we get either here or if the hon Member needs to think more about it at the time of the Committee Stage.

HON CHIEF MINISTER:

Mr Speaker, I would just like to deal with two points made by the hon Member. His first one related to the degree to which this was an extension of something that had already been done in respect of road transport or passenger transport. That statement is, of course, true in so far as it goes but it also extends or rather supplements the transposition that had already previously taken place in respect of road transport. For example, the hon Member will know that the road transport aspects had been transposed by Section 73(d) of the Traffic Ordinance which speaks of road traffic operators being of good repute. Those requirements in terms of that statement, a road transport contractor shall be of good repute, in respect of contractors of road transport was already transposed in 73(c) but there was not and there had been a failure in that earlier transposition to transpose the remainder of the Directive describing just what that term means. So the hon Member will see that Section 73(d) is now extended and the Bill now includes a Schedule 2 which gives more definition.

HON J C PEREZ:

Would the hon Member give way? I definitely understand and I have noticed that. I was just querying whether there might be a need for certain Sections, not all of it, of Legal Notice No. 97 to be taken out of the Legal Notice. I think the view of the hon Member is that if there is enacted an Ordinance, the Ordinance takes precedence to the Legal Notice but certainly Legal Notice No. 97 sets out certain aspects of this Bill, not all of them and the variations that the hon Member is mentioning are definitely in the Ordinance which extends rather than takes away powers.

HON CHIEF MINISTER:

My understanding of it is that this Bill can be read in conjunction and amends and extends what is already in the law introduced by the Regulation so this Bill really does two things - it extends the regime to passengers as well as transport and it embellishes the existing provisions in respect of transport by defining what is meant by good repute, in effect. I just mention that because the hon Member, I think, I do not know whether he intended to do so but gave me the impression that what he was saying was that this simply extended the existing regime that applied to transport to passengers. Yes, it does that but it also upgrades the earlier transposition in relation to transport and then applies that uplifted transposition to passengers as well.

Mr Speaker, I do not agree with the point that the hon Member has made in relation to 'Minister'. The Section does not say that the Minister is going to decide who gets the licences and who does not. What the Minister is going to do as a matter of policy is to decide which certificates are recognisable. That is not the same thing as saying, "You can have it, but you cannot". Ministers are not competent to do almost anything of what the legislation imposes. [Interruption] No, no, Ministers are politicians. Ministers are not technical experts in the matters of their department for which they have political responsibility. The hon Member, if he were to take his view to an extreme, on all numerous occasions where we have said, and we both agree that 'Governor' should be changed to 'Minister' when it comes to the exercise of powers under Ordinance, under Bills, in almost all of those cases where powers.... why should a Minister make regulations? What does a Minister know about the price of fish that qualifies him to make regulations about the price of fish? The answer, nothing. The answer is that in a parliamentary democratic system like we have Ministers act on the basis of advice from their officials and let me tell you that this follows the United Kingdom transposition where this power is vested on the Secretary of State for Transport. I think the hon Member goes one step too far when he says that the fact that the statutory power is vested on the Minister means that he exercises it as a capricious matter of personal decision. That is not the case, but if it were the case, I would invite the hon Member to acknowledge that this instance of ministerial power is so different to almost all the others where we give a power that had always traditionally been held by the Governor, that we now give it to a Minister in an attempt to further repatriate political autonomy to the elected Government of Gibraltar. That is the sense in which 'Minister' is referred to there and not because the

Minister is personally going to..... I will give way to the hon Member.

HON J C PEREZ:

If the Bill had read that the Minister could appoint a body to look at it, it might do what the hon Member says. All the other Ordinances do, but when we are talking about professional competence, which is the heading of the thing and we are talking about whether a certificate of competence or a diploma or a qualification should be recognised or not, even if the Minister takes advice from civil servants, the Ordinance is making the Minister fully responsible for taking a decision and I think that the hon Member is not competent and should not be the body responsible for having to take the responsibility of approving that. The hon Member is right in saying that when it is a transfer of responsibility from the Convent to No. 6 Convent Place where we omit the Governor and put the Minister instead, that that is something which I think both sides of the House support, where previously there might have been a different interpretation of it because we both agree that that transfer of responsibility should be a local defined domestic matter rather than held with the Governor but this instance is not the same because we are talking about the professional character of the role of the Minister and therefore it is not one where a Minister ought to be expected to be able to be in a position to certify competence or diploma or qualifications.

HON CHIEF MINISTER:

Mr Speaker, what the hon Member has just said, which is true.....

HON J C PEREZ:

Thank you.

HON CHIEF MINISTER:

.....it is true of almost every exercise of Ministerial powers. In England when the Home Secretary decides whether a prisoner should be released on parole or whether there are grounds to send a case back to the Court of Appeal for reconsideration or when the Minister for the Environment decides whether a public inquiry should be called into the building of a particular motorway or not, no one pretends, I suppose when the Home Secretary happens to be a lawyer, the Home Secretary might be qualified to take his own view, about whether there is grounds sufficient in terms of new evidence to justify sending this case back to the Court of Appeal.

But when the Home Secretary is not fortunate enough to be a lawyer but is in a much more humble occupation, the Home Secretary makes those decisions on the basis of advice that he receives from officials in the Minister's department but then the guy that gets sued, the guy that gets taken on judicial review, and it happens to Ministers in England all the time, is not the official that gave him the advice, it is not the official that says to the Home Secretary, "Home Secretary, look, I have read through the papers in this case and I advise you that there are or there are not grounds to take this case to the Court of Appeal". It is not the official that says to the Minister for the Environment in England, "Secretary of State I think that in this case you should or should not announce a public enquiry". It is the Secretary of State who has no technical expertise whatsoever in matters of town planning or in legal matters that is judicially reviewed. That is not to say that he is being made personally responsible. He is not being sued in any personal capacity. He is being sued as a representative of a Government that are collectively, both politically and administratively responsible and therefore all I am saying is, that the criticism that the hon Member is levelling at the use of the word 'Minister' as the residing of these powers on the Minister and the arguments that he is mobilising in support of them, would apply to almost every ministerial delegation, every ministerial power both in Gibraltar and in the United Kingdom which is the closest system with which we can draw a parallel on.

HON J C PEREZ:

We do not agree, Mr Speaker.

HON E M BRITTO:

Mr Speaker, I have taken note of what the Opposition Member has said specially on points that have not already been dealt with. I disagree on his point on the speed on which vehicles are being driven although I appreciate what he is saying. If we are to look at the offence purely as being the responsibility of the driver, then things like keeping of the records are something that the driver is doing without the direct supervision of the operator. I think the spirit of the legislation is that the operator has to exact a certain degree of discipline from the driver to maintain the requirements of the legislation and if there are persistent offences by a particular driver then there is obviously a responsibility for the operator to do something to correct this, or if not, then to accept the responsibility for the offence as the operator himself.

On the question of convictions I hasten to reassure Opposition Members that far from local operators being discriminated against, if they had read the spirit of the Bill they will have seen that in the initial implementation of the legislation, existing operators will be deemed to qualify without needing to apply again and similarly even subsequent additions to the licences will be covered by this provision and in terms of newcomers who are not local operators. In fact the opposite applies, rather than locals being discriminated against, precisely because as the hon Member has acknowledged, precisely because Continental jurisdictions have a system of public judicial registers for criminal convictions then it will be possible for the competent authorities here to check with registers in other countries to establish whether in fact there are any convictions on the part of those applying. In fact, if anything, it will work the other way.

The hon Member's comments on the tachographs and the difficulties that they present are noted. They are obviously something that the Government are aware of and that is why the whole issue has at this stage been excluded from the legislation because there is importance in getting the issue through but I have taken note of what he has said. I will go back and find out more about this particular subject and I have no doubt that we may see this subject cropping up as the subject of possible amendment.

HON J C PEREZ:

Mr Speaker, our vehicles are already needing to carry the tachographs in question so it is something we need to face immediately because there is an exigency from the Commission for us to report back on the records of those tachographs and it does not seem that there is anybody competent, able to do this other than if we send someone from the MOT Test Centre to do a course, I think it is in Belgium or in the UK to be able to do this. That might be necessary or we might find that since we have no roads, long haul roads, ourselves, that it is not necessary for us to do so. Those records need to be sent by the people that stop the vehicles in the country where that vehicle is working at the time. But that was not clarified by the 16th May and that was left pending.

HON CHIEF MINISTER:

Mr Speaker, I think the point is.....

MR SPEAKER:

On a point of order now, I think he was in the final analysis, it was, "a give way".

HON E M BRITTO:

Mr Speaker, I have in fact come virtually to the end of what I was due to say. I gave way in deference to the Opposition Member. That is all I have to say except to say once again that I have taken note of what the hon Member has said and I will try to come back with more information at a later stage.

Question put. The House voted.

For the Ayes:

The Hon P R Caruana
The Hon P C Montegriffo
The Hon Dr B A Linares
The Hon Lt-Col E M Britto
The Hon J J Holliday
The Hon H A Corby
The Hon J J Netto
The Hon K Azopardi
The Hon Miss K Dawson
The Hon E G Montado

Abstentions:

The Hon J J Bossano
The Hon J L Baldachino
The Hon Miss M I Montegriffo
The Hon A Isola
The Hon J Gabay
The Hon R Mor
The Hon J C Perez

The Bill was read a second time.

HON E M BRITTO:

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

THE EMPLOYMENT (ARCHITECTS) (EEA QUALIFICATIONS) ORDINANCE 1996

THE HON J J NETTO:

I have the honour to move that a Bill for an Ordinance to give recognition to the qualifications of architects

awarded in the European Economic Area be read a first time.

Question put. Agreed to.

SECOND READING

THE HON J J NETTO:

I have the honour to move that the Bill be now read a second time. The main purpose of this Bill is to transpose into Gibraltar law the requirement of four Directives of the EU which deal with the mutual recognition of the qualifications of architects, namely 85/384/EEC, 85/614/EEC, 86/17/EEC and 19/658/EEC. The Directives in question already extend to the Economic European Economic Area by virtue of the EEA Treaty and afford rights of establishment throughout the EEA for architects. In essence this is achieved by requiring mutual recognition of each EEA State's qualifications by all other States. This Bill seeks to make this qualification equally valid in Gibraltar. At present the profession of architect is not regulated in Gibraltar by any person and any person may establish himself as an architect. In reality, the domestic qualifications are invariably those awarded in the UK. However, because of the absence of indigenous qualifications in Gibraltar the proposals in this Bill simply require that in respect of nationals of the EEA, persons with the qualifications listed in the Bill, will be entitled to practise as architects in Gibraltar. In effect, this will put UK qualifications on a par with qualifications awarded in other States of the EEA. In so far as nationals of third countries are concerned, the proposed new law will have no effect on them so that they will be able to continue to practise their profession in Gibraltar.

I commend the Bill to the House.

THE HON J L BALDACHINO:

Mr Speaker, as the hon Member has just stated, in Gibraltar there is no law which regulates people who can practise as architects.

May I take it from the point of view of the qualification and not from the employment point of view. I would understand that we should be transposing the Bill if we had already a law regulating architects or in the process of making one. As the hon Member states even though he just mentioned third countries, there will not be in our law a regulation on the qualifications required by third countries because this law only deals with the European Economic Area. Yet, if you look at the Bill it is clear

that if we have an EEA national who has a qualification from the United States or a Canadian or an Australian one he will not be able to practise because it actually mentions nationals in the actual Bill. If he reads the Bill it says in paragraph 3(1), "National of an EEA State may only style themselves, or hold themselves out to be "architects" if they have obtained one or more of the qualifications set out in the Schedule", which actually is the qualifications under the EEA countries. We do not consider that there was any requirement for the transposing of this Bill or this law into our national law. One of the reasons is, that here we are not discriminating against any nationals and therefore as far as we are concerned, as we did not have a discriminating law, and the whole objective of the Directive was actually to stop discrimination between nationals, we think that actually by doing this, where we have no restriction, no discrimination, we are actually bringing into our law a discriminating procedure that we did not have before.

HON CHIEF MINISTER:

The Directive, transposition of which is a matter of requirement, not a matter of choice with which we are concerned here, deals with recognition of qualifications not with regulating the profession. The two things have nothing to do the one with the other. Professions do not have to be regulated in order for the law to state that you must recognise somebody else's qualifications. There is nothing to require us now to let a French architect practise here. The Government may or may not have allowed it but there is nothing that requires us to do it. In other words, we could have passed a law tomorrow saying, "French architects will not be allowed to practise...." now we cannot. We have not, but we could have. The fact of the matter is that the Directive deals exclusively with recognition of qualifications. The view that transposition of this Directive is not required, I regret to inform the hon Member is not shared by the European Union Commission that is about to commence infraction proceedings against the United Kingdom for Gibraltar's failure to transpose this Directive. As it appears from the hon Member's objection to the Bill it appears to be not that he disagrees with the substance of it but that he does not think it is necessary. As he does not appear to object to the substance but simply appears to feel that it is not necessary, as others appear to think that it is necessary, I suppose he has no difficulty with supporting the Bill at least to save infraction proceedings, since he appears to have no objections to its content. The Bill I do not think has the effect that the hon Member has suggested that he thinks it has, which is that it excludes Australians and

Germans because the Bill does not say that, "Only EU nationals can be recognised", it simply says, "That EU nationals in effect must be recognised". Gibraltar is still free to recognise an Australian architect if Gibraltar wants.....

HON J L BALDACHINO:

Would the hon Member give way. Actually I have not said that, what I have said is that under the Bill, an EEA national requires to have the qualifications that are stated in Schedule 1 of the Bill. I have not said that we can still allow Canadians and people from the United States and Australia to come in with their qualifications but what I have said, that if there is an EEA national who has a qualification from those countries for a third country that is not in the EEA, he will not be allowed to practise his profession within the EEA because that is what it clearly states in paragraph 3(1).

HON CHIEF MINISTER:

An EEA national that obtained his qualification in America will be in the same position as an American architect. In other words, certainly the fact that he is a Frenchman does not enable him to avail himself of these provisions but he is in the same position as an American national architect. In other words, we are still free to allow Frenchmen who qualified in America to practise architecture in Gibraltar but the Frenchman cannot point to this Directive and say, "You must let me practise." Because he is not the holder of an EEA national qualification. The second is true but not the first. The Frenchman who qualifies in America is in no worse off position than the American who qualifies in America.

HON J J BOSSANO:

Our understanding of the law that is proposed, based on reading it is that, a national of an EEC state may only style themselves as architects if they have obtained the qualifications set out. Surely, that means that if they have got other qualifications they cannot call themselves architects. They may call themselves whatever they like but they cannot call themselves architects and by definition since the whole purpose of saying who can call himself an architect is to establish who can practise architecture then that is what it seems to do. Obviously, if it is a question of the United Kingdom facing infraction proceedings, we are not going to be against something being done to avoid that. I think we have got to try and avoid them facing infraction proceedings. The nature of the argument that we have used in the past in relation to issues like this and the

arguments we have put to the Commission on issues like this means..... or it is supposed to have been put to the Commission, I do not know whether it means the Commission turned it down, is that where under Community law we are required to remove obstacles, the obstacle that is being removed has to exist and this is a Directive designed to remove obstacles which impede the freedom of movement of people to practise their profession. We do not impede anybody, so why do we need to have a law saying we are no longer requiring people because that is the essence of what the law is supposed to do. We are giving recognition to qualifications awarded in the Economic Area in order to remove the problems that they now have in coming here. Well, they do not have a problem in coming here and our argument at the time was..... and there are many other Directives I can tell Government Members which we were under the impression had been successfully argued in the Commission not in the sense that they were not applicable in Gibraltar but that in the sense that our laws were already so liberal that they did not need to be liberalised. Clearly, if there is now a pre-169 threat of infraction proceedings then it is better to do this, unnecessary though it may be, simply for that reason. That is good reason enough, but it is not going to be the first time or the last and I would have thought the Government would be interested in knowing that when we looked at this area we put the argument back and the response that we got was that it was a valid argument, that if we did not have restrictions.....if you do not have for example a trade licensing regime then you do not need to amend that trade licensing regime to give equal treatment. That is the parallel here, in the trade licensing we have it, in architects and vets we do not and presumably the same argument applies to both of them.

We will go along with the Bill purely because of the reason that has been given that there are menaces of infraction proceedings because otherwise we would have wanted to put the case that following this route, which is unnecessary, just means clogging up our statute book with laws which have no particular use for anybody anyway and I think as my Colleague pointed out and I think the Government Member introducing the Bill pointed out, non-EEA nationals are not covered by this so they will be able to establish themselves as architects in Gibraltar without having to have one of these qualifications. That in fact means that in some respects to the extent that these constraints people, non-EEA nationals are now better off than EEA nationals. So without the law the EEA and the non-EEA are treated the same and the Gibraltarians are treated the same and the UK is treated the same. After the law, there will be different treatments and indeed non-EEA nationals will be getting

beneficial treatment if we take it that the present system is in fact easier to cope with because it does not require you to produce a piece of paper from a particular institution in a particular country. The other thing is, of course, the Directive lays down procedures for ensuring the validity of these certificates. I do not think we are putting anything here to do that and I certainly would not recommend that we should anyway because that just means burdening the administration with having to check qualifications in areas where, frankly, there has never been a problem here. When there has been a foreign investment in Gibraltar they have brought about, whether it is a Moroccan for the mosque or a Dane for something else, they have brought who ever they wanted to bring and obviously the client must be satisfied with the competence of the architect because nobody is going to employ an architect that would not produce work required by the customer. But it would not be the first time if having implemented something that did not appear to be necessary in the first place they then came round a second time and said, "Now that you have implemented, who is monitoring all these qualifications which is one of the elements in the Directive?". By going down this route we may actually find out that at a later stage the Commission then comes back saying, "Well, we want to know who it is that people have got to apply to in order to have their qualifications accepted as valid and what machinery do you have for investigating that and so forth", because the Directive says that that is also supposed to be happening.

HON CHIEF MINISTER:

Mr Speaker, I hear what the hon Member says about whether Directive transposition is necessary when your laws already permit what the Directive seeks to make mandatory. I can only assume that the Commission have taken the view that permissiveness is not the same thing as mandatory. One thing is that your laws are silent on the matter and therefore permit what they do not prohibit and another thing is having your laws positively giving the right as a mandatory matter. Indeed, I have read in the past the United Kingdom arguing much the same as the hon Member has argued in relation to things that the common law in England permits, and the United Kingdom has in the past argued that because the common law of England permits certain things to happen, then it need not change its law to give the mandatory right for it to do so. The view that the Government have taken is that we do not think it is profitable to waste time and energy in making legal arguments prevail with the Commission, especially not after pre-169 Infraction Proceeding letters are issued when it is almost easier if not easier just to do

the transposition. In other words, the fact that the legislation is not strictly necessary is not a reason to find ourselves embroiled in arguments with the European Commission that may simply just spend whatever credit we might have with the European Commission in matters which are much more important. But certainly the hon Member should not assume that for that reason we are giving up the principle altogether of the necessity for recognition. The instances will be treated on a case by case basis on their merits, depending on when the Government feels that they have a genuine political or greater interest in not transposing than in transposing.

HON J BOSSANO:

Mr Speaker, I have already indicated that we will vote on the basis that if there is an imminent Infraction Proceedings letter then it is something we want to avoid, it is no good for UK and no good for us because people outside do not understand the significance of us facing Infraction Proceedings. They do not go into the detail of it and therefore all that ever gets reported is that we are behind with the Directives and that there are Infraction Proceedings irrespective of the merits of the case. I am glad to hear that this is not going to be taken now as being automatically applicable in all other cases but of course the more of this we do the weaker our argument will be when the time comes to say we do not want to do it. I believe the Government should continue to maintain that if this is to eliminate barriers, then if our laws do not create the barriers, then we do not need to eliminate it and that is fundamental in what this is all about. It is about the freedom of movement.

Question put. Agreed to.

HON J J NETTO:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

THE VETERINARY SURGEONS (EEA QUALIFICATIONS) ORDINANCE 1996

HON J J NETTO:

I have the honour to move that a Bill for an Ordinance to give recognition to the qualifications of veterinary surgeons awarded in the European Economic Area be read a first time.

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I have the honour to move that the Bill be now read a second time. The main purpose of the Bill is to transpose into Gibraltar law the requirement of Council Directive 78/1026/EEC which deals with the mutual recognition of qualifications of veterinary surgeons by virtue of the EEA Treaty. This Directive is also extended to all Member States of the EEA. Essentially, all that this Bill does is to extend the right of establishment in Gibraltar to persons having been granted the qualifications of veterinary surgeons in each of the EEA States through recognition of these qualifications as being equally valid in Gibraltar. Hon Members will see that each of the States concerned are mentioned in the Bill. As in the case of architects, the profession of veterinary surgeons is not regulated in Gibraltar and any person may establish himself as a vet. Again the domestic qualifications are those awarded in the UK. However, because no such qualifications are awarded in Gibraltar the proposed law will simply require that in respect of EEA nations, persons with the qualifications listed therein will be entitled to practise as a vet in Gibraltar. This will, in reality, put the UK qualifications on a par with the EEA qualifications. Nationals of third countries, that is, those from countries outside the EEA will continue to be able to practise in Gibraltar.

I commend the Bill to the House.

HON J L BALDACHINO:

The position of the Opposition is exactly the same as the one for the architects but after hearing the hon Chief Minister's reasons why he is bringing the Bill to this House and seeing that we could face Infraction Procedures then obviously we will be supporting the Bill on that basis and on that basis alone.

HON J J BOSSANO:

Mr Speaker, I would like to ask why it is that in the vets the qualifications are described as being in the UK and in the architects it says UK and Gibraltar? The other one is, that in the architects' qualifications, as we have already established, in Section 3(1) it says, "Nationals may only style themselves or hold themselves to be architects if they have obtained one of the qualifications", which means that they have no choice but in the case of the vet the word "only" does not appear,

it says the national..... sorry it is my mistake, it appears further down the line, I was looking for it in the same place. The only question that I have got is the one about UK and Gibraltar in the Schedule.

HON CHIEF MINISTER:

I can only assume that it is, in one or other cases, it is an omission or an inclusion by the draftsman. I do not think anything turns on it being left out. I am quite happy to write it in. In neither case does Gibraltar issue qualifications, it is not possible to qualify as a vet or as an architect in Gibraltar. In both cases it really is only the United Kingdom which is the qualifications that are the Gibraltar national qualifications because we do not have any of our own. So, wearing my political hat I would say that we have Gibraltar in both but wearing my sort of pragmatic hat I suppose the inclusion of Gibraltar in both adds nothing to the United Kingdom in terms of qualifications, given that Gibraltar has no separate qualifications either in vets or in architects.

Question put. Agreed to.

HON J J NETTO:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later on today.

Question put. Agreed to.

MR SPEAKER:

We are going to recess for lunch, back at three o'clock?

HON CHIEF MINISTER:

There is only one point in returning at three if the Opposition Members are going to agree to take the three Committee Stages that we have indicated we would wish to take today. If the hon Members are going to object, then we would recess until tomorrow rather than this afternoon. It is entirely a matter for them. There is just no point in making us all come back at three o'clock if they have decided not to agree to the Committee Stage.

HON J J BOSSANO:

Mr Speaker, I think we would prefer to come back tomorrow because there is the question which I put in late.....

HON CHIEF MINISTER:

Whether or not we come back today, this afternoon or tomorrow, the House is not adjourning sine die, the House will be adjourned to a date to be fixed. So the hon Member's motion on the adjournment, as I understand it, would not arise today or tomorrow, whatever they decide on Committee Stage.....

HON J J BOSSANO:

It would only arise on the final adjournment?

HON CHIEF MINISTER:

Indeed, and whatever he decides on the taking of the Committee Stage today is not going to be today or tomorrow, it will be on the 7th January.

HON J J BOSSANO:

Then we would be happy to come back this afternoon and finish the Committee Stage.

The House recessed at 1.30 pm.

The House resumed at 3.00 pm.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

Mr Chairman, I have the honour to move that the House should resolve itself into Committee to consider the following Bills clause by clause:

1. The Banking (Amendment) Bill, 1996;
2. The Employment (Architects) (EEA Qualifications) Bill, 1996;
3. The Veterinary Surgeons (EEA Qualifications) Bill, 1996.

THE BANKING (AMENDMENT) BILL, 1996

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

Clause 2

HON P C MONTEGRIFFO:

I beg to give notice of two amendments affecting this Section. The first is the addition of the word "and" to be inserted in sub-section 2(b) after the words "soundness of applicant" where they appear in the new sub-section (4) and the second amendment, Mr Chairman, is to omit the words "a Member State of the EEA" where they appear in the proposed new sub-section 18(4) and to introduce the words "and EEA State" in substitution. It has been brought to my attention that the EEA does not have Member States and accordingly it is in fact consistent to the rest of the Banking Ordinance that the phraseology should rather be the "EEA State" which is indeed a defined term in the Banking Ordinance itself.

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

Clauses 3 to 10 were agreed to and stood part of the Bill.

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

THE EMPLOYMENT (ARCHITECTS) (EEA QUALIFICATIONS) BILL, 1996.

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

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

THE VETERINARY SURGEONS (EEA QUALIFICATIONS) BILL, 1996

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

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

THIRD READING

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to report that:

1. The Banking (Amendment) Bill, 1996 with amendments;
2. The Employment (Architects) (EEA Qualifications) Bill, 1996;
3. The Veterinary Surgeons (EEA Qualifications) Bill, 1996;

have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Question put.

The Bills were read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that this House do now adjourn to Tuesday 7th January 1997 at 10.00 am.

Question put. Agreed to.

HON CHIEF MINISTER:

Mr Speaker, as this is the last sitting before the Christmas festivities it just remains for me to wish the House the traditional best wishes of the season and I hope that we all have a very festive Christmas season.

MR SPEAKER:

I join with that and that you will all make New Year's resolutions.

The adjournment of the House was taken at 3.15 pm on Monday 2nd December 1996.

TUESDAY 7TH JANUARY 1997

The House resumed at 10.00 am.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Judge J E Alcantara OBE)

GOVERNMENT:

The Hon P R Caruana - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Lt-Col E M Britto OBE, ED - Minister for
Government Services and Sport
The Hon J J Holliday - Minister for Tourism, Commercial
Affairs and the Port
The Hon H A Corby - Minister for Social Affairs
The Hon J J Netto - Minister for Employment and Training
and Buildings and Works
The Hon K Azopardi - Minister for the Environment and
Health
The Hon Miss K Dawson - Attorney-General
The Hon T J Bristow - Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon J L Baldachino
The Hon A Isola
The Hon J Gabay
The Hon R Mor

ABSENT:

The Hon Dr B A Linares - Minister for Education, the
Disabled, Youth and Consumer Affairs
The Hon Miss M I Montegriffo
The Hon J C Perez

IN ATTENDANCE:

D J Reyes, Esq, ED - Clerk of the House of Assembly

OATH OF ALLEGIANCE

The Hon Timothy John Bristow took the oath of allegiance.

DOCUMENTS LAID

The Hon the Minister for the Environment and Health moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of a document on the table.

The Hon the Minister for the Environment and Health laid on the table the report and audited accounts of the Gibraltar Health Authority for the year ended 31st March 1995.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

SUSPENSION OF STANDING ORDERS

The Hon the Minister for Government Services and Sport moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed to the First and Second Readings of various Bills.

Question put. Agreed to.

THE INSURANCE (MOTOR VEHICLES) (THIRD PARTY RISKS) ORDINANCE 1986 (AMENDMENT) ORDINANCE 1996

HON E M BRITTO:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 90/232/EEC on the approximation of laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles be read a first time.

Question put. Agreed to.

SECOND READING

HON E M BRITTO:

I have the honour to move that the Bill be now read a second time. The main purpose of this Bill is to implement the third Council Directive 90/232/EEC on the approximation of laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles by amending the Insurance (Motor Vehicles) (Third Party Risks) Ordinance, 1986 in four respects. First, in accordance with Article 1 of the Directive the insurance required should cover every person carried in or upon a vehicle and liability must relate to the use of the vehicle generally and not just on a road. Secondly, the definitions of motor vehicle and of road are extended to cover situations not previously envisaged in the existing legislation. The definition of motor vehicle will now cover any vehicle

whether or not constructed exclusively for road use and that for road will include any road belonging to the Crown. Thirdly, in accordance with Article 2 of the Directive, the insurance required should include the cover required by the law applicable where the vehicle is normally based when that cover is higher, and fourthly, in addition, the powers of the police have been widened to enable them to obtain the names and addresses of drivers and others and to require the production of evidence and insurance.

I commend the Bill to the House.

HON J J BOSSANO:

Mr Speaker, on the general principles of the Bill and this applies in fact to all the other Bills except one, which also deal with the transposition of Community law into the national law of Gibraltar, I think it is important to know whether there are any elements in this or any of the other Bills which are not in fact purely the transposition of Community law, because as far as we are concerned, the transposition of Community law is an obligation that Gibraltar has by virtue of its membership and therefore we will support that transposition. But if it is at the same time being used as an opportunity to introduce something which is purely a local policy decision, then we would like that identified so that we can decide whether it is a policy we can support or not. The hon Minister introducing the Bill talked about it applying to all Crown lands. I take it that that is a reference to the new definition that is being included of any public place under the control of ownership of the Government of Gibraltar. As far as I am aware this is the first time that any land in Gibraltar in any law of Gibraltar is described as being owned by the Government of Gibraltar because all the land of Gibraltar that is owned by the Government of Gibraltar is owned by the Crown and not by the Government. That would seem to be an interesting Constitutional development and may not be a requirement under Community law. There is also the power of the constables to obtain names and addresses of drivers and that again we want to know whether that is the transposition of a Community requirement or a decision of the Government of Gibraltar to introduce that under a Bill that has to do with motor insurance as opposed to, presumably, the power that the police officers have already to stop somebody if there is an accident and obtain evidence of the ownership and the name of the driver and presumably whether the vehicle is insured. I understand that in our other legislation we refer to police officers and not constables and this may be a slip of the draftsman being used to draft the legislation in the UK where it may well be constable.

HON CHIEF MINISTER:

Just to address the Leader of the Opposition's initial point, as far as the Government are aware and I will explain what I mean by that, these transposing Bills are exclusively the transposition of Directives and indeed we seek confirmation of that fact specifically from those who draft the Bills for us in the EOU. That said, because the Government does consist of people who are also lawyers, we do to a degree, to the extent that time permits, compare the Directive with the Bill as a sort of random double checking process. But certainly as far as the Government is concerned there should be, and we are told that there is not, anything in these Bills which is more than a minimal transposition of the Directive. Occasionally as the hon Member knows issues arise about whether the transposition if not done minimally because the UK has not done it minimally and there are not, as far as I am aware, any such departures in this Bill or in any of the others before the House at this stage. The point that the hon Member made arising out of Article 2(a)(3) of the Bill relating to the definition of road, the point being made there is not to distinguish between Crown Land as between land owned by Her Majesty and the Right of the Government of the United Kingdom and the Crown and the Right of the Government of Gibraltar but rather to distinguish between land owned directly by the Crown and land which are public in the sense that they are owned and controlled by the Government but through the medium of Government-owned and controlled companies. That is the distinction that the draftsman seeks to make. I accept the observation implicit in the point made by the hon Member that the phrase under the control or ownership of the Government of Gibraltar is a pretty oblique way of making a reference to directly or indirectly owned by the Government, the Crown or through a company owned and controlled by the Government which is what the intention is and it may well be that if that is not clear enough in those words that we can insert something to make it absolutely clear if it is thought to be necessary at the Committee Stage.

HON J J BOSSANO:

Is it not a fact that there is no such land owned by any Government company since any Government company that has got the use of any land has got it on a lease? There is no such thing as a freehold in any Government company and the fact that the Government may own the shares of a company that has got a lease on a piece of land is no different from the fact that there are other companies in which the Government has got no shares which have got equal leases on pieces of land and are still all considered to be Crown Property.

HON CHIEF MINISTER:

That would be certainly my legalistic view. That view would coincide with mine and that is what I would want to look into.

HON E M BRITTO:

One point in addition to what my hon Colleague has said to put the third point raised by the Leader of the Opposition on police powers, again my understanding is that we are not taking on anything extra as a matter of separate and deliberate policy. One has to understand the spirit of this Bill which is to favour the victim as opposed to the insurance company or the guilty party and as we all know there is even sometimes the case where you are involved, or a person is involved in an accident in another state or in another country and there is difficulty in tracing the other party concerned especially if the other party is a national of the particular State and sometimes it happens in reverse with our neighbours coming into Gibraltar. There is a paragraph in the Directive which addresses that specifically and which talks about ensuring that the Member State takes the necessary measures to ensure that such information is available promptly. I am quoting directly from the Directive and my understanding is that the spirit of that section or clause is to make sure that the information is available and that the police have the powers to obtain that information in defence of the victim so that they can prompt compensation and pass it on to the victim obviously.

Question put. Agreed to.

HON E M BRITTO:

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

Question put. Agreed to.

THE FACTORIES (AMENDMENT) ORDINANCE 1996

HON J J NETTO:

I have the honour to move that a Bill for an Ordinance to transpose into the laws of Gibraltar Council Directive 86/188/EEC on the protection of workers from the risks related to the exposure to noise at work be read a first time.

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I have the honour to move that the Bill be now read a second time. The main purpose of this Bill is to implement the requirement of Council Directive 86/188/EEC the noise at work Directive on the protection of workers from the risks related to exposure to noise at work. The Directive applies to all workers except those at sea outside the harbour defined by the Factories Ordinance and working in the air transport sector. Employers are required to assist and, where necessary, to measure noise levels to identify those workers and those workplaces to which the Directive applies. It is also necessary to determine the conditions under which the provisions apply. Exposure to noise is generally to be reduced to the lowest levels reasonably practical taking account of technical progress and availability of measures to control the noise. Hon Members will have noted that some of the provisions of the Directive and hence of this Bill are of a highly technical nature, particularly the Schedule involving units and advanced mathematics which few, if any, of us are familiar with. For instance, there is a requirement that where noise levels are likely to exceed 85 decibels or where the peak sound pressure levels exceeds 200 pascals, workers must receive adequate information and, where necessary, training on potential risks to hearing, measures to be taken in accordance with the Directive, obligations under national legislation, wearing of personal ear protectors, checks on hearing. Personal ear protectors must be made available to workers where levels exceed 85 decibels. Workers exposed to such levels must also have their hearing checked by a doctor. Where the daily personal noise exposure exceeds 90 decibels the reasons for the excess levels must be identified and measures taken to reduce the levels as far as reasonably practicable. Personal ear protectors must also be worn and areas where exposure to noise exceeds these levels must be marked with signs. Access must also be restricted. It is also a requirement that new plant or substantial changes to existing plant should comply with the requirements to reduce noise exposure to the lowest level reasonably practicable. Adequate information must also be made available about the new machinery where noise levels exceed 85 decibels, or 200 pascals in accordance with the above requirements. The Factories Ordinance has been amended as follows:

(1) Clause 2 of the Bill amends Section 6 Interpretation of the Ordinance to define the new technology used;

(2) Clause 3 inserts a new part 30 to the Ordinance as follows:

- a. Section 94, Disapplication of duties, sets up the categories of people excluded from the application of the part;
- b. Section 95, Assessment of exposure, imposes a duty on the employer to test the work place for hazardous noise levels in circumstances where these are likely to rise to danger levels;
- c. Section 96, Assessment records, imposes a duty on employers to retain records of noise assessments made pursuant to Section 95;
- d. Section 97, Reduction of risks of hearing damages, imposes a duty on employers to reduce the risk of injury to workers;
- e. Section 98, Reduction of noise exposure, imposes a duty on employers to reduce workers' exposure to noise when levels are likely to rise above a certain maximum;
- f. Section 99, Ear Protection, imposes a duty on employers to supply ear protectors to employees in circumstances where these are likely to encounter noise of a certain level;
- g. Section 100, Ear protection zones, imposes a duty on employers to clearly signpost ear protection zones and the need to wear protectors when entering them;
- h. Section 101, Maintain and use of equipment, imposes a duty on employers to ensure that all equipment is properly used and maintained;
- i. Section 102, Provision of information to employees, employers must inform employees likely to encounter high noise levels with information regarding the risk he might face and how to reduce such risk. Employees' representatives shall also receive the information;
- j. Section 103, Duties of employees regarding places of work and articles for use at work, sets out the principle that new plant and equipment must comply with Section 97 Reduction of risk of hearing damage. An employee must be informed of the noise levels likely to be encountered;

- k. Section 104, Exceptions, sets out that the Minister may in certain strictly construed circumstances exempt employers from complying with the requirement of Section 98 Reduction of Noise Exposure and Section 99 Ear Protection.

Clause 4 insert a new Schedule 1A into the Ordinance pursuant to Section 100 Ear Protection zones and 104 Exemptions.

I commend the Bill to the House.

HON J L BALDACHINO:

On the face value of the Bill and seeing that it is transposing into our laws EEC Directives, we would have no quarrel in supporting the Bill. However, before we do that I would like some clarification from the Government and probably the hon Minister can clarify the point I am about to make when he has the right of reply. First of all we are also concerned that workers are protected and their health obviously is a matter of concern for all and therefore that is one of the reasons that we are also supporting the Bill. However, we would like to know what mechanism will be put in place to see that employers do comply with the Bill after the law is passed. The hon Member I think said that this did not apply to aircraft. As I understand it from the Bill it does not apply to aircraft on the move and to the workers of the aircraft on the move. However, if the aircraft is on the pan and it has generators connected to it I suppose it does affect the workers there and therefore the employers will have to keep to the spirit of the law. Sometimes aircraft do refill with engines on and therefore I suppose that workers that work on the aircraft will have to comply. Could he clarify what he meant, that actually what he says in the Bill applies when the aircraft is on the move.

When he mentions, "reasonable and practicable" who decides what is reasonable and practicable? We would also like to know that and could he also see if he can tell us how many workers are affected at the present moment and what companies and what kind of industries are at the moment affected once this Bill is passed.

Will this also apply to establishments where loud music is played? For the workers in that building because it is not specified in the Bill.

We would also like to know if the intention of the Government is to introduce the Bill immediately or what time scale has the Government given itself for the

introduction of the Bill that is being passed in the House. What time scale has the Government given itself to the introduction of the Bill once it is passed in this House?

HON CHIEF MINISTER:

Mr Speaker, the Government is not able to say exactly which industries and which companies are affected by this. The hon Member expresses concern for the risks to workers and has firm support for the Bill which is welcome. It is worthy of note that this Directive has been outstanding transposition into the laws of Gibraltar since 1986 and that the Member's concern for the interest of workers has not been converted into protection action during any of the eight years in which they have had the ability to do so but nevertheless we welcome the hon Member's support for the Bill. As to whether this would apply to, I suppose he had in mind discotheque workers, people affected by music, in principle yes although what I do not know is how these figures of decibelage convert into real noise. I do not know and the Government do not know whether the noise levels at a discotheque would fall foul of the parameters set out in the legislation. The Government have not specifically established any mechanism for the enforcement of these laws, although the hon Member will have noticed that the transposition is effected by means of an amendment of the Factories Ordinance which means that the Factory Inspector assumes and incurs responsibility for enforcement just as much as any other provision of the Factories Ordinance but there is nothing specific in relation to this area, it is just another Factory Ordinance requirement. The hon Member raises an interesting point about airports and aircraft. My reading of the section is that the exemption extends only to people in the aeroplane when the aeroplane is in motion. In other words, my understanding of it is that it does not apply, the exemption does not apply, the provisions do apply to, for example, ground staff servicing the aircraft after it has landed. That is how I read the Directive and the Bill and the exemptions provided in it.

HON J J BOSSANO:

Mr Speaker, does the Government have any idea at all whether in fact the nature of the critical level of 85 decibels, the first action level as it is described in the Bill, is such that we are talking about something that will involve a large section of the working population or virtually nobody? My knowledge, as I am sure the Chief Minister has, of the kind of requirements that this has, is what has tended to be applied since time immemorial, even before there was an EEC requirement

in places like the Generating Station where people are working next to engines that produce a constant level of noise. If that is the standard then effectively we are talking about noise related to manufacturing processes where it is virtually impossible in the vicinity of the engines to keep the noise levels down and that in a place like the Generating Station, for example, people do not have to wear ear muffs throughout the Station. They wear ear muffs when they enter the engine rooms and they take them off when they come out. If that is the standard then effectively what we are doing is, as we are doing in some of the other Bills, transposing in our law something because it needs to be in our law but not because it means a revolution in working practices. We need to have, I think, an indication as to whether we are doing one or we are doing the other because I am not sure whether it is a matter that the employer has to decide whether he has to carry out this assessment intuitively or whether he has to carry out the assessment anyway, everywhere, just to find out whether his working environment is of 85 decibels or above or below. There ought to be some degree of indication of what is the impact that this is expected to have on the obligations of employers in relation to the health and safety of their workers. I think the point made by my hon Colleague in relation to this today is, that other than in the Generating Station, they seem to be the next noisiest places in which people work. Since most of our workforce is in retail trade and in the hotel industry and in the finance centre and in areas like that, I would imagine that in none of those areas are we talking about a need for people to go around with ear muffs. I have not seen it anywhere else in the EEC.

HON J J NETTO:

There are certain comments that the Leader of the Opposition along with his hon Colleague has made which are quite close. Compliance of the law once the law has been passed and what has actually taken place in the recent past like the Generating Station. One thing that needs to be made clear is that by and large good employers, be it the MOD, be it the Gibraltar Government at the Generating Station and some other employers, ship building comes to mind, Lyonnaise des Eaux at the Desalination Plant come also to mind, do provide a range of measures to protect workers from high levels of noise. However, what this Bill does is to make sure that the provisions are made in law because the first action levels that the Leader of the Opposition was referring to a minute ago, 85 decibels, is only at that particular level to make sure that the employees are given the necessary information of the damage likely to be caused to the employee and to take the necessary protection like

wearing ear protectors. One of the things that I intend to do as Minister responsible is that once this Bill has been made law I would, through the Factory Inspector himself write to the Unions and employers, the Chamber of Commerce, where there is likely to be areas where workers are at risk by the high level of noise and once we have ascertained all the areas in the various sectors of the labour market then we will be able to give particular seminars, through the Factory Inspector, to employers to make sure that the relevant clauses in this Bill are taken into account, the monitoring, the records, etc. So this is how we intend to make sure that the Bill is not just taken on the theoretical side but is taken on the practical side. The hon Opposition Member referred to in one of his comments about derogations and by whom. Derogations within this particular Bill is not something which Government have taken out of control in wishing to introduce it but it is in part reflected in the actual Directive itself.....

HON J L BALDACHINO:

Would the hon Member give way? Just a point of clarification, when he said the hon Opposition Member, who does he mean? I never mentioned in my contribution anything about derogation at all.

HON J J NETTO:

I thought, quite frankly that he has mentioned the question of derogation but if he has not then I have no extra comments to make.

Question put. Agreed to.

HON J J NETTO:

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

Question put. Agreed to.

THE PUBLIC HEALTH (AMENDMENT) ORDINANCE, 1996

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to transpose into the laws of Gibraltar Council Directives 91/689/EEC and 94/31/EC and Council Decision 94/904/EC and matters connected thereto be read a first time.

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. The main purpose of this Bill which seeks to amend the Public Health Ordinance is to transpose Council Directives 91/689/EEC and 94/31/EC as well as Council Decision 94/904/EEC on hazardous waste. Directive 91/689/EEC is the successor to the Toxic and Dangerous Waste Directive of 1978 and it sets out the additional controls appropriate for the more harmful wastes. It includes a new measure on the list annexed to Council Decision 94/904/EC. A six digit code is given to the various forms of hazardous waste. Waste Managers, Waste Holders and Regulators will need to use this list to determine whether or not the waste with which they are dealing are hazardous. The Bill contains detailed provisions regarding the testing of such waste and other prescribed activities. The Directive's approach to the list involves heavily qualifying entries including thresholds and limits. In that way the binding list is intended to cater for the fact that waste can vary considerably in hazardedness according to how and where it is produced and whether it has been treated to reduce hazards. This Directive was subsequently amended by Council Directive 94/31/EC and Council Decision 94/904/EC. All of these are transposed by the Bill as follows:-

Clause 2(a) amends Section 192A of the Public Health Ordinance to include definitions of hazardous waste and the hazardous waste Directive;

Clause 2(b)(1) and (2) make consequential amendments to the section;

Clause 2(b)(3) amends that same decision to enunciate the principle that domestic waste does not come within the ambit of the Directives;

Clause 2(c) amends Section 192(D)(2)(b) of the Ordinance with the ultimate aim of imposing stricter controls on the collection and transportation of hazardous waste;

Clause 2(d) inserts these sections 192KA and 192KB into the Ordinance as follows:

Section 192KA serves to define hazardous waste in accordance with the terms of the Directives, namely by reference to six-digit codes set out in Schedule 11A and by reference to the properties displayed by the waste concerned;

Section 192KB sets out the principle that hazardous waste and non-hazardous waste must be dealt with separately and that hazardous waste must be clearly marked as such during storage, collection and transportation;

Clause 2(e) amends Section 192L(1) to provide for the keeping of records;

Clause 2(f) and (g) amend Section 192M(2) to provide for the control of management of hazardous waste, the ascertaining of its origins and ultimate destination;

Clause 2(h) inserts a new Schedule 11A setting the codes, the thresholds and properties that define the term "hazardous waste".

I commend the Bill to the House.

HON J J BOSSANO:

Mr Speaker, the list that is provided obviously covers a huge range of types of waste, none of which exist in Gibraltar. As far as we are able to tell from this, virtually the only area which might be producing the type of material that needs disposal and which is included in this list in any kind of quantity, is the ash and related residual elements from the incinerator. Can the Government confirm that in fact in practice this is going to be affecting if anything at all the waste that comes from disposal of the waste in the incinerator? At the moment, for example, clinical waste is separated and disposed of at the incinerator and therefore all the clinical waste is here but the method of disposal has been controlled for a very long time. As we have gone through this list it would appear that the six-digit codes applies to things like fly ash from the incinerator and so forth, which may require under this law special handling. If that is the case, is this something that the incinerator operator is going to be told that he has got to do it within a certain period of time if the method that he has been using currently is not sufficient to meet the requirements of the new law?

HON K AZOPARDI:

The Leader of the Opposition highlights a couple of points one of which is just for background information for the House, this is an extension to former regulations passed by the previous administration and so the Chief Environmental Health officer now becomes immediately the competent authority to monitor this new Ordinance. There will be a framework set up. Discussions have ensued between the Environmental Agency and the Government so that this Directive can be properly enforced and

implemented and indeed any issue that arises from the Directive can be dealt with. There is a certain degree of chemical analysis and purchase of equipment that has to proceed and such is the chemical analysis and the technical complexity of the Directive that it is difficult to anticipate why we anticipate and that is my advice, that it will not have a huge effect on any industry in Gibraltar. It is difficult to precisely guarantee that that will be so. In so far as the incinerator is concerned, I understand that it will not have any operational effect on the incinerator. That is the advice I am receiving and in relation to clinical waste, I also am receiving the advice that the disposal of the same will remain unaltered. That, I think, deals with the points that the Leader of the Opposition has raised.

HON CHIEF MINISTER:

I think the Leader of the Opposition underestimates the effect of this Bill when he says that it seems to apply at least in respect of six-digit items only to incinerator fly ash. That would not appear to be so. There are several items under the oil and oily sludges, there is the question.... by way of example, this is not exhaustive, there is the items relating to the disposal of batteries and photographic wastes. There may not be sufficient quantities but one does not know as one is making this legislation, but certainly the question of batteries is relevant. Whilst the Government is not able to say exactly the extent to which this will impact on industrial operators in Gibraltar, it is not the Government's view that this is relevant only to the incinerator operator in relation to fly ash, but in relation to the incinerator and fly ash the hon Member is aware because of course contractual arrangements were entered into at the time that he was in Government, that responsibility for the disposal of incinerator fly ash is not a matter for the operators or the owners of the incinerator but a matter for the Government. So if there were any problems arising from that, it would be a matter for the Government and not for the operators or owners of the incinerator.

HON J J BOSSANO:

My question was whether in the light of this requirement, and let me say that the reason why I drew attention to the disposal of things like the fly ash is because in Part 3 it mentions thresholds of concentration and even though there may be situations where one is disposing of batteries, it is difficult to see how the quantities could be such that the thresholds of concentrations would be exceeded but obviously if they are disposing of the

fly ash and the fly ash is a toxic matter, the concentration of fly ash is a 100 per cent, you could not get it more concentrated than that. My question was whether in fact the requirement in this law would require an alteration, as far as the Government knows, in the way that we are currently disposing of that fly ash. We have been disposing it in a way which we were satisfied that the advice we had from the Environmental people was that putting it in a place which was inaccessible was a sufficient method of disposal. I am aware that when toxic matters from the ship repair yard, for example, have had to be disposed, a special certificate had to be issued to allow the trans-frontier transportation of hazardous waste requirement to be complied with because we had no way of actually burning toxic matters here because the combustion level of the incinerator was not high enough to enable that to be done. So one thing is to be able to get rid of what is left after the combustion and another thing is to be able to have a combustion process to deal with the raw toxic matters. As far as I am aware the raw toxic matters would need to be dealt with outside our territory but the residue of what we are burning here which is normal domestic and normal non-toxic industrial waste we have to dispose of. We would like to know whether because of this we have to find a new way of disposing of this or we can continue with the existing arrangement?

HON K AZOPARDI:

To deal with that point, the Environmental Agency has been advising me on the impact of the Directive and they have not advised me that it will affect the temporary storage of the fly ash but even though they will monitor and chemically-analyse in accordance with the Directives once the framework is set up but they have not advised me that it will have an effect on that matter that the Leader of the Opposition highlights.

Question put. Agreed to.

HON K AZOPARDI:

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

Question put. Agreed to.

THE PUBLIC HEALTH (AMENDMENT) (NO 2) ORDINANCE 1996

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar the provisions of Council Directive 88/609/EEC as amended by Council Directive 94/66/EC on the limitation of emissions of certain pollutants into the air from large combustion plants be read a first time.

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. The main purpose of this Bill is to implement the provisions of Council Directive 88/609/EEC as amended by Council Directive 94/66/EC on the limitation of emissions of certain pollutants into the air from large combustion plants. A large combustion plant can be thought of as a boiler and the Directive covers plants which produce energy with a rated thermal input of not less than 50 MW. Normally these plants are the largest sort of boilers found in the petrochemical, steel, sugar and oil refining industries as well as in electricity power stations. The legal definition of such a plant found in new Section 93A is copied from the Directive. The Directive contemplates that Member States will set up a licensing system. It also requires them to consider possible emissions as part of their town planning processes. These two features form the basis of the Bill now before the House. The transposition has been affected by the insertion of new sections 93A to 93F and new Schedules 5A to 5G to the Public Health Ordinance and by the insertion of a new Section 18A to the Town Planning Ordinance. It is believed that there are currently no plants in Gibraltar which would be covered by the provisions of the Directive and it is further believed that there are no indigenous deposits of lignite in Gibraltar and so therefore Article 6 of the Directive has not been transposed. The legislation gives wider powers to the Licensing Authority to set conditions when granting licences. This is in part because details of the technical requirements which might be imposed are not immediately available. Further, because the type of plant cannot accurately be predicted, it has been decided to consider each plant separately. This has been accepted by the DOE in the UK. The derogations allowed by Article 5(1) and 5(2) have been incorporated in sub-section (v) of the draft. The derogations obtained relate to very large plants of 400 MW and coal burning plants. Although neither of these seem relevant to Gibraltar, had this not been obtained then they would

still have been legislated for. Article 12 of the Directive requires cross-border consultation where the environment of neighbouring states is likely to be affected by large combustion plants. New Section 93F transposes this article. It refers to the environmental impact Directive 85/337/EEC and envisages that the procedure transposed for that Directive will be followed in respect of plants.

I commend the Bill to the House.

HON J J BOSSANO:

Mr Speaker, as the Minister has explained there are no such plants in Gibraltar, and therefore the Bill will be on the statute books but nothing else will happen and of course such is the size of the plant that we are talking about of 50 MW, considering that our normal engines in the Generating Station are five megawatts, it is difficult to envisage the type of industry coming to Gibraltar that would require this kind of plant. I think one interesting point about this is, that presumably the law of the neighbouring country should have a provision similar to the one in 93F which requires them to let us know what is happening to our environment when they have large plants, which they do and which they will. I take it that the Minister can expect to be the recipient rather than the provider of information although it is not something we can legislate to require them to do obviously.

HON CHIEF MINISTER:

Just taking the hon Member up on the last point that he makes. I think that the new Section 93F is valuable for that very reason. If we had not transposed this Directive I suppose the Spaniards could always have turned round and said, "Why should we give the information when they are not in compliance?" I would certainly expect, that the Government, concerned as we are, about reports of pollution from neighbouring industrial installations, that this will be a tool available to this and future Government of Gibraltar to obtain information, to seek information. It is interesting that it is not just from the neighbouring State but from the Commission itself, from the Community itself. This will give us a tool to seek information about the emissions from the refinery if technical advice is that the refinery is such a plant which will enable us to, not turn the screws on, but certainly to participate with more weapons in any environmental debate that others may wish to originate in relation to Gibraltar.

HON K AZOPARDI:

I have nothing further to add to the hon the Chief Minister. I believe that Spain has as yet not transposed the Directive but certainly when she does so I would expect to be the recipient of information in accordance with the terms of the Directive.

Question put. Agreed to.

HON K AZOPARDI:

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

Question put. Agreed to.

THE TRAFFIC ORDINANCE (AMENDMENT) (EEA DRIVING LICENCES) ORDINANCE 1997

HON E M BRITTO:

I have the honour to move that a Bill for an Ordinance to amend the Traffic Ordinance for the purpose of partially transposing into the law of Gibraltar Council Directive 91/439/EEC, as amended by Council Directive 94/72/EC, and Decision 7/94/EC of the EEA Joint Committee be read a first time.

Question put. Agreed to.

SECOND READING

HON E M BRITTO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, hon Members will have noted that this Bill only partially transposes into our law Directive 91/439/EEC as amended by Council Directive 94/72/EC and Decision 7/94/EC of the EEA Joint Committee. The reason is that the other provisions of Directive 91/439/EEC are being transposed into the law of Gibraltar through Regulations also published in the Gazette on the same date as this Bill was published, that is, on the 27th December 1996. These Regulations also amend existing Regulations issued under enabling powers conferred by the Traffic Ordinance and will come into effect together with this new Ordinance. Hon Opposition Members have been provided with copies of Directives 91/439 and 94/72 and should consider them together with the Regulations and with this Bill. Perhaps I should also explain that all that Decision 7/94 of the EEA Joint Committee does is to apply these Directives throughout the countries of the EEA. Essentially, what the

legislation before the House does is to bring the various categories of vehicles which persons are licensed to drive in Gibraltar into line with the categories of vehicles which all EEA States are required to introduce. A number of additional categories from F to L are provided for and they represent existing national categories which may be retained under Community law. The Bill also lays down a procedure for exchanging EEA licences as required by Decision 7/94 of the EEA Joint Committee upon holders of such licences taking up residence in Gibraltar. In particular special provision is made so that holders of EEA licences will not first have to satisfy residence requirements in both the UK and Gibraltar should they want to have a licence issued in Gibraltar. The Bill also makes provision for the appointment of competent driving examiners and lays on the Licensing Authority the duty of monitoring their work. As I have already mentioned other matters arising from the transposition of these Directives and which are not covered by this Bill are being enacted by Regulations made under the Traffic Ordinance. These Regulations cover two main areas - firstly, they set out common medical requirements which applicants for licences and drivers must meet. The standard of fitness are stricter for certain classes of vehicles, namely vans and buses than for motor-cycles and cars. For instance, drivers of the class comprising larger vehicles are disqualified if they have sight of only one eye or have diabetes, seizures or epilepsy, whereas, for instance, drivers of cars need only to show that they have not suffered from an epileptic fit in the previous year. The second main area in the syllabus is for the driving test. The Directive requires a common syllabus and provides for a theoretical and a practical test. There are particular tests for larger vehicles. The theoretical test can be by oral examination. None of these provisions seriously depart from current practice although the Directive makes clearer what is required of drivers in the way of skills. The Directive also requires the common form of paper licence for the EEA. The modern licence is set out in the Directive and is found replicated in Schedule C to the Regulations.

I commend the Bill to the House.

HON J J BOSSANO:

There are a number of points that we would like clarification on. The provisions of residence state that in determining if a person's normal residence is in Gibraltar account shall be taken of any period during which that person has lived in the United Kingdom because of the ties mentioned in sub-section (7) as if that person had lived in Gibraltar. Of course, the ties

mentioned in sub-section (7) is that in the case of a person who has an occupation and personal ties or in the case of a person who does not have an occupation or personal ties, that would appear to mean, that somebody can obtain a licence in Gibraltar provided he has presumably relatives in the UK and has spent part of the 185 days in the UK because he is with his relatives or because he has been working there. It is difficult to understand what is the purpose of that Section or in fact where there is such a requirement in the Directive. In fact, the Directive talks about residence as being under Article 7 of the Directive related to people who have their normal residence in the territory of the Member State issuing the licence. The territory of Gibraltar is the territory of the Member State issuing the licence because the licence is classified by a Member State and therefore it is a UK licence even if it is issued in Gibraltar since it carries the logo "UK". So presumably anybody in Gibraltar is in the territory of the Member State UK and everybody in UK is also in the territory of the Member State UK. It would appear that the literal reading of Article 7 would mean that the residence requirement could be met for the UK by living in Gibraltar or for Gibraltar by living in the UK, since, if you are in Gibraltar you are in the territory of the Member State and if you are in UK you are in the territory of the Member State and that is what the law says under the Directive. We are making a distinction here where we say, "You have to live in Gibraltar 185 days but if you are 185 days in the UK you can count that as if you were in Gibraltar provided you have got personal ties". Well, who is going to decide whether somebody can count the time in the UK and somebody cannot count the time in the UK and how is that compatible with what Article 7 of the Directive says? There is also a provision which says, "A person shall not be considered to have an occupational tie to a place if he is residing at that place to carry out a task of definite duration or to attend a school or university." We have not yet got that famous Sheffield University and I do not think we are about to have it. It talks about a place as if it was relevant, because we are not talking about whether as far as our law is concerned, the consideration is not whether somebody is claiming to have an occupational tie to a place but whether somebody is claiming to have an occupational tie to Gibraltar. If he is residing in Gibraltar to attend school or university then why should he not be able to apply for a driving licence and if he has come here on a contract to carry out a task of definite duration why should he not, if he lives in Gibraltar, be able to do it? It seems to me that that is a reflection of Article 9 of the Directive but it seems to be reflected in a way which says the opposite in our law to what Article 9 says. Article 9 says, "The normal

residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of his personal ties provided such person returns there regularly." Therefore, we would be talking under Article 9 of somebody that might be in university in the UK or working theoretically in Spain and returning regularly to Gibraltar, and therefore, he would still be able to argue that he can get the licence in Gibraltar. It says, "Attendance at university or school shall not imply transfer of normal residence." That seems to me that in the context of Gibraltar that means that the fact that we have got a student in the UK does not mean that he has transferred his normal residence to the UK and therefore it enables that student to apply for a licence here even though, because he is coming and going to the University, he has not got the 185 days. That is how I understand what Article 9 is reflecting in the circumstances of Gibraltar. Obviously, in other places where students might be going in both directions the thing would apply in both directions but it seems to me that in the context of Gibraltar what Article 9 would make sense as would be a situation where we would be saying, "We will continue to have somebody with the capacity to argue that he has got personal ties here even though because he is going to University in the United Kingdom he has not got the 185 days". I am not sure if I am right in what I think Article 9 is supposed to be doing. I am not sure that that is what the provision in the Bill does.

The House recessed at 11.20am.

The House resumed at 11.45am.

HON CHIEF MINISTER:

Mr Speaker, the Leader of the Opposition has made two points that I would like to address. In doing so, I think it is important that we bear in mind that the area of the Bill in which we are concerned deals with the section that relates, that is section 46, that relates to recognition of licences and exchange of licences. We are not talking here of who can sit a test in Gibraltar. I think I heard the Leader of the Opposition say that he could not find in the Directive anything which required us to take the view that people who are attending a school or university were not normally resident. I would ask the Leader of the Opposition to refer to the very last line of Article 9 which says, "Attendance at a university or school shall not imply transfer of normal residence." The regime is basically that a person, an EEA State national, that comes to live in Gibraltar can

either use his own licence which remains valid and is recognised in Gibraltar, or he can ask to exchange it. He can only exchange it if he works in Gibraltar, if he has occupational and personal ties or in the case of a person who has no occupation, that he is not working in Gibraltar, if he has personal ties. In determining a person's normal residence, in determining if a person's normal residence is in Gibraltar, account shall be taken of any period during which that person shall have lived in the United Kingdom. It is possible that a German national, this does not apply to the Englishman, because he is in the same Member State anyway, it is possible that a German national comes to live in Gibraltar, having already lived in the United Kingdom, those periods of residence in the United Kingdom shall be tallied up and shall be included in the calculation of the 185 days.

In relation to the other point about people who are in Gibraltar to carry out a task of limited duration, the position is that, and it appears at Article 9, immediately above the sentence I have just read, that if somebody moves to Gibraltar, has no personal ties and has an occupation which is only to carry out a task of definite duration, he cannot exchange his licence for a Gibraltar licence although, of course, his national licence remains valid in Gibraltar. Those are the sources of those provisions. The Government, subject to anything else the Leader of the Opposition can comment on, are satisfied that they are not a mis-transposition of the Directive which places Gibraltar in a disadvantage or which puts Gibraltar law in a more strict position, but it needs to be on a minimal transposition basis.

HON J L BALDACHINO:

There is another point I would like clarification on and that is on the age limit of drivers. In Article 6 it says that, "The age limit for sub category A1 and for sub category B1", which I think is for motor-cycles, it says, "16 years of age", even though in Article 6, sub-paragraph 2, it says that, "A, B and B + E can issue such driving licences from the age of 17 years, except in the case of the provisions for category A laid down in the last sentence of the first indent of paragraph 1(b)". In (3) it says, "That a Member State may refuse to recognise the validity in their territory of driving licences issued to drivers under the age of 18 years." In Gibraltar, I think we issue driving licences at 18 years, does that mean that we will not be recognising EEC nationals that have driving licences either at 16 or at 17? Which brings me to the point that the Chief Minister made that it does not apply to UK driving licences even though driving licences in the UK are issued at 17 years of age. Therefore, is it that the UK national may drive

in Gibraltar with the UK driving licence at the age of 17 whilst local drivers must be 18 years or over?

HON J J BOSSANO:

It seems to me that in Article 9 of the Directive the definition of residence and the qualification of change of residence in relation to carrying out a task of definite duration or attendance at a university was not limited to the exchange of licences, because in fact the opening sentence of Article 9 says, "For the purpose of this Directive". So the provisions of Article 9 in the Directive is for the purpose of everything in the Directive and not purely for the purpose of Article 8 which is the article which talks about somebody that has a valid driving licence by one Member State then taking up normal residence in another Member State. We have to use the same definition of normal residence whether we are applying that to the ability to give a licence to somebody that applies for one in Gibraltar without having one already, or to the recognition of one from another Member State which is what Section 46 of the Ordinance says, "Recognition of other Member State licences in respect of people who take up residence in Gibraltar." It seems that Article 9 applies to the whole Directive and therefore applies for determining what constitutes normal residence whether that determination is in order to recognise, in respect of a new resident, a licence originating in another EEA State or whether we are talking about issuing a licence to such a new resident or whether we are talking about exchanging a licence for such a new resident. Obviously the qualification in the last sentence, which I did mention myself, has to be taken in the context that there is another provision in the law which says, "That those who are studying, do not need to meet the requirement of normal residence anyway." There is provision in the Ordinance and in the Directive that produces an alternative to the normal residence qualification for people who are studying in another Member State. The explanation that has been given about normal residence in relation to the reference to living in the United Kingdom, we have been told, is for non-UK citizens. That is, third nationals who live in the UK will be able to count their residence in the UK as residence in Gibraltar. In fact that is not what the law says because the law says, "A person's normal residence", and unless in the definition we put that, "a person is not a UK national", then a person presumably includes a UK national. The law is drafted for Community nationals of the Member State UK which of course includes Gibraltarians. "Residence in the territory of the Member State", is what the Directive says. The Directive talks about residence in the territory of the Member State and this has always been one of the problematical areas in

transposition. Are we the territory of the Member State UK or are we the territory for whose external relations the Member State UK is responsible? That has always been the problem. If in fact the Directive says that, "people who are resident for 185 days in the territory of the Member State UK," and that is taken to mean the Member State of the United Kingdom and Gibraltar as part of that same territory, then the criteria of residence in Gibraltar should be read as meaning in Gibraltar or the United Kingdom. We are not saying that this is more onerous or that we are doing more than we need to do, which were two considerations that I raised initially on the original principles in respect of all the Bills. What we are saying is that in voting for something which is the accurate transposition of the Directive into the national law of Gibraltar, we feel that part of the obligation that we have in doing our job in this House is to check ourselves and be satisfied that we are doing the thing properly. If we feel that we are not doing the thing properly, then to point out our reservations because that is part of what we are getting paid to do, nor more than that. We are not suggesting that something is being done that should not be done or suggesting that the drafting has not been done on the premise that is the correct drafting. It is just that what we have read, in the time available to us, the Directive and the Ordinance, there are things that did not seem to make sense to us that is why we are raising it.

HON J L BALDACHINO:

I understand that we have the safeguard on the question of age limits because the Directive actually permits us not to allow anybody below the age of 18 to drive in Gibraltar if that is what our law says. I would ask for clarification following what the Chief Minister said that if our licence equals the UK licence and in UK a licence is issued at 17, will that mean that somebody who has a UK licence and is 17 years old will be able to drive in Gibraltar, whilst a Gibraltarian must be 18? Could we have clarification on that, and will the Government also confirm that they will not be permitting anybody from other EEC countries who have a licence below 18 years to drive on our roads?

HON E M BRITTO:

I will deal specifically with the last point raised by the hon Opposition Member as the previous one has been dealt with by my hon Colleague. He has in fact answered his own question in the first half of his contribution. The minimum age for driving cars in Gibraltar continues to be 18 and therefore a UK licence holder coming into Gibraltar and driving under the age of 18 leaves himself

open to prosecution under local law. There is obviously some sort of anomaly there which the Government may wish to consider at some future stage. The Directive as it is worded at the moment places no onus or requirement on the Government to make any changes on the existing legislation. I have nothing further to add.

HON J L BALDACHINO:

Would the hon Member give way. Does that mean that the age limit, including Gibraltarians and other EEC nationals would be 18 on motor-cycles and cars, is that correct?

HON E M BRITTO:

Yes, the Directive does not require any changes in existing regulations on that aspect of driving and there has been no change made. So the minimum age for driving remains 18 in Gibraltar.

Question put. Agreed to.

HON E M BRITTO:

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

Question put. Agreed to.

THE TOWN PLANNING (AMENDMENT) ORDINANCE 1997

HON K AZOPARDI:

I have the honour to move that a Bill for an Ordinance to amend the Town Planning Ordinance as regards the composition of the Development and Planning Commission be read a first time.

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill is now read a second time. This is a short Bill that I bring to the House in conjunction with my Colleague the Minister for Trade and Industry. Members will recall that when responsibilities were Gazetted in accordance with the Constitution, town planning was specifically assigned to the Minister for the Environment and Health and so we see a distinction in what is the supervision of the planning process which is directly linked to matters of heritage

and what is the commercial drive that my Colleague in Trade and Industry is supervising. The purpose of this Bill is quite clearly set out in the Explanatory Memorandum. I would add, though, that whilst the Bill will amend the Town Planning Ordinance to allow a Minister other than the Minister charged with Economic Development to be appointed, it will also allow that particular Minister to chair the Development and Planning Commission. Government see that there is an intrinsic link between what is heritage, town planning and the supervision of that process. The effect of this will be to amend the Schedule and to enable the Gazetting of a change in the chairmanship of the Development and Planning Commission so that I can chair the Commission itself. If this draft Bill had not been brought to the House the Minister for Trade and Industry would have to be absent for there to be a change in the chairmanship, this will allow him to be present and for the change of chairmanship to take place. That, in effect, is the purpose of the Bill. I do not know if my Colleague in Trade and Industry wants to add anything to that. I will allow him to do so if he wants to on the general principles.

I commend the Bill to the House.

HON J J BOSSANO:

Our position is that the Government have the right to put whoever it wants to chair the Commission and we have no objection to the Bill being changed to allow the Minister for the Environment or indeed to allow any Minister to be the chairman of the Planning Commission if that is what Government wants.

HON J L BALDACHINO:

Am I to understand that the chairman might be the Minister for Development and at times it might be the Minister for the Environment? Does this depend on what is being discussed or what issue is being discussed, whether it is on a matter of heritage or whether it is on a matter of industry. When will the decision be taken that one will chair and the other one will be present as a member?

HON K AZOPARDI:

The intention of the Government is that because town planning was specifically assigned to the Minister for the Environment that it should be the Minister for the Environment that should chair the Commission on a permanent basis. The amendment to the Schedule of the Ordinance will allow greater flexibility where there was

none before and so if indeed the Minister for the Environment is absent, of course the Minister with responsibility for Economic Development will be the primary person to whom we shall look if a chairman needs to be found but it will allow that flexibility to be built in to the framework. That deals with the hon Mr Baldachino's point. I just want to say, generally, that I am grateful for the Leader of the Opposition's intervention and the fact that they will support the Bill.

Question put. Agreed to.

HON K AZOPARDI:

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

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the following Bills, clause by clause:

1. The Traffic (Amendment) (No. 2) Bill, 1996;
2. The Insurance (Motor Vehicles) (Third Party Risks) Ordinance, 1986 (Amendment) Bill, 1996;
3. The Factories (Amendment) Bill, 1996;
4. The Public Health (Amendment) Bill, 1996;
5. The Public Health (Amendment) (No. 2) Bill, 1996;
6. The Traffic Ordinance (Amendment) (EEA Driving Licences) Bill, 1997;
7. The Town Planning (Amendment) Bill, 1997.

THE TRAFFIC (AMENDMENT) (No 2) BILL, 1996

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

Clause 3

HON E M BRITTO:

I propose the following amendment, for the reference in (iii), in paragraph (c) of Clause 3, in both instances where the reference occurs, there shall be substituted the reference (ii).

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

Clauses 4 to 6 were agreed to and stood part of the Bill.

Schedule 2

HON E M BRITTO:

I beg to move that in paragraph 7 of Schedule 2 after the reference "7" there shall be inserted the reference (1). After paragraph 7(1) of Schedule 2 there shall be inserted the following paragraph:-

"(2) In this Schedule, and unless the context otherwise provides, references to the Minister shall be construed as reference to the Minister charged with responsibility for traffic".

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

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

THE INSURANCE (MOTOR VEHICLES) (THIRD PARTY RISKS) ORDINANCE, 1986 (AMENDMENT) BILL, 1996

HON E M BRITTO:

Mr Speaker, can I crave your indulgence and request that this Bill be dealt with as the last Bill in the Order of the Day?

Agreed to.

THE FACTORIES (AMENDMENT) BILL, 1996

Clause 1

HON J J NETTO:

I would like to amend the figures "1996" by "1997".

Clause 1, as amended, stood part of the Bill.

Clause 2

HON J J NETTO:

I would like to amend the word "environment" in paragraph (c) of Clause 2(1) to be substituted by the word "employment".

HON J L BALDACHINO:

Mr Speaker, originally why was the Minister for the Environment responsible and not the Minister for Employment? Could we have clarification on that?

HON J J NETTO:

No, as far as I recollect the Minister for the Environment has not been responsible for the Factories Ordinance. It was just that on drafting I spotted that the Minister responsible for the Factories Ordinance is the Minister for Employment.

HON J L BALDACHINO:

I understand that, but what I am asking is, originally why did the Government consider that the responsibility should be charged to the Minister for the Environment rather than to the Minister for Employment?

HON K AZOPARDI:

It is because there was an overlapping responsibility between Environment and Employment that Government, having considered the Directive and the terms of the transposition thought that it would be better for the Employment Minister, who has overall responsibility for the Factories Ordinance, to have responsibility for this matter even though it has an environmental nature to the aspects of that Directive also.

HON J L BALDACHINO:

Am I right in assuming that the consideration was given a few minutes back?

HON K AZOPARDI:

No, on that point of clarification, the answer is no. It slipped in, it was considered some time ago. It slipped in to the legislation as produced but this matter was considered some time ago and indeed my hon Colleague in Employment had already assumed responsibility for driving the transposition of this particular Directive.

Clause 2, as amended, stood part of the Bill.

Clause 3

HON J J NETTO:

I would like to amend the semi-colon and the word "or" at the end of the new section 94A of Clause 3, be substituted by the following words, "outside the harbour as defined in section 6(1) of the Factories Ordinance or".

HON J J BOSSANO:

The effect of the amendment is that there is now a responsibility on the master or the owner of a sea going ship in respect of crew members who have nothing to do with Gibraltar, that is what the amendment will do, is that the intention? We then become responsible for monitoring the decibels on all the ships that tie-up inside our harbour?

HON J J NETTO:

What we have felt necessary, and this I have been advised accordingly, is that the work which at times is required to be done within the definition of what is the harbour, within the confined space of the Crown waters, that to cover those particular areas it was necessary to include this particular amendment for those particular works carried out in those particular ships. I have also been advised that in the past there have been at times a grey area which has existed in terms of making sure that certain works carried out in the ship building industry conformed to these particular standards. Obviously, we have provisions within the Directive to tighten-up, if we feel further, the provisions of the Directive and we felt that it is necessary to ensure that any work which is carried out within the definition of the harbour, workers are also protected from the noise, excessive noise levels at work.

HON J J BOSSANO:

That is not the point I am making. Just looking at the amendment now, my immediate reaction to it is, that if the clause says, "the part shall not extend to the master or the crew," we are not talking about people going on board the ship to carry out repairs, we are talking about the crew of the ship. It seems to me that if we amend that to say, "Outside the harbour", it means that if the ship is inside the harbour it applies to the crew.

MR CHAIRMAN:

That is the intention apparently.

HON J J BOSSANO:

That is apparently the hon Member's intention and what I am saying is that that seems to me to be doing something which goes beyond what the purpose of this is, which is to protect people from noise at work in relation to work that is being conducted within the jurisdiction of Gibraltar, where what you have got is a ship, whether it is in the harbour or outside the harbour. If you have got a ship that comes here to be repaired, then the standards of safety of the repair work must be the one that we require under our law, that to me seems a normal thing, but in fact what is being amended refers to the crew and the master of the ship, not to anybody else and it would be as if we said in the case of the aircraft the crew of the aircraft is covered if it is on the tarmac. That would be the parallel situation. By amending this we are not doing anything in relation to workers that go on board to repair because those workers are already covered because the section as it stands exempts the crew. My only concern is, that if we have not thought fully of the consequences of this, it might have an adverse effect on the people who use the harbour in normal ships. We have four thousand ships a year that come to Gibraltar, a number of which tie-up alongside. Are we now going to say we measure the decibels on the ship as part of the laws of Gibraltar for people who are not working in Gibraltar, not insured in Gibraltar, not registered in Gibraltar, frankly, about whose safety we may not have a legal responsibility or right to interfere? Having dealt with crews of ships many years myself I can tell the House that the legal position has always been that the crew of the ship is covered by the law of the flag of the ship not by the law of the port in which the ship ties-up, and it is the crew that we are talking about.

HON J J NETTO:

The intention behind this amendment is to avoid repetition of incidents which have passed in the past. My memory fails me exactly when but it must have been a couple of years' back when we had a situation of a Polish ship carrying out works not docked, but actually working within the harbour and we found the situation where the Factory Inspectorate could not operate fully to ensure that not only the crew, as the Leader of the Opposition is saying, but also local workers which went aboard to do some other work, apart from the work that the crew from ships were doing themselves. This amendment, so I am advised, ensures that any work which is carried out within the definition of the harbour either by the crew or by a combination of the crew and local labour, ensures

that if there is an excessive level of noise then that should be restricted and that this legislation should apply.

HON J J BOSSANO:

I do not know what advice the Minister has got. We are basing ourselves on reading what is in front of us, and what is in front of us is a Bill that says, "it shall not extend to the crew". Therefore, if what is exempted at the moment is the crew, then without an amendment the workers are covered already. So the amendment does not alter the position of the workers. At present our law, presumably in accordance with the Directive, is intended to say, "the crew of the ship is not covered", and that is because the Directive says, "the crew of the ship is not covered". We are now doing something by bringing in this amendment, which brings the crew of a ship that enters our harbour under the jurisdiction of our law, which is not what the Directive provides. It seems to me that we may not be doing what the Minister has been advised is the intention because part of his explanation is in fact not consistent with the text we have in front of us. The text we have in front of us already protects workers who go on board a ship irrespective of whether the ship is inside the harbour or outside the harbour. The exemption is limited to the crew and I think the reason why under Community law there is an exemption for the crew is because under Maritime Law the crew of a ship works in the country that the ship has a flag of. Part of the argument in the past, when I have dealt with vessels in our harbour, has been that if one has a ship which is flying the Panama flag, technically the crew is on Panama territory, on Panama contract, under Panama law. If a Panama ship arrives in the harbour then it is covered by Community Law. If that is the standard that the Community applies in all the ports in the Community then that is fine, we do what the Community does but it seems to me that the fact that the Community exempts the crew of a foreign vessel in a Community port must have something to do with this. If the Government wants to go ahead with the amendment, that is fine, we will abstain on this one because we are not sure they know what they are doing frankly.

HON CHIEF MINISTER:

It is not the Government's intention by implication to disapply the exemption from ships inside the harbour. I think the point that the Leader of the Opposition is making is that by limiting the exemption to ships which are outside the harbour we are, by implication, saying that ships that are inside the harbour are not exempted. That is not the intention of the proposed amendment and

therefore because we cannot properly re-draft it we will withdraw it until it can be re-drafted to reflect the intention of the amendment, which is not the point that he has identified.

MR CHAIRMAN:

So the amendment is withdrawn? All right.

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

Schedule 1A and The Long Title were agreed to and stood part of the Bill.

THE PUBLIC HEALTH (AMENDMENT) BILL, 1996

Clause 1

HON K AZOPARDI:

Mr Chairman, I beg to move a very slight amendment to Clause 1 by the deletion of "6" and substitution thereof of "7",

Clause 1, as amended, stood part of the Bill.

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

Schedule 11A and The Long Title were agreed to and stood part of the Bill.

THE PUBLIC HEALTH (AMENDMENT) (No 2) BILL, 1996

Clause 1

HON K AZOPARDI:

I would like to propose an amendment to that Clause, delete "6" and substitute for "7".

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

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

Schedules 5A to 5G and The Long Title were agreed to and stood part of the Bill.

THE TRAFFIC ORDINANCE (AMENDMENT) (EEA DRIVING LICENCES) BILL, 1997

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

Clause 2

HON E M BRITTO:

I would like to propose a very minor amendment for the ease of Opposition Members. At the bottom of page 144 to clause 2(g) for the entry relating to "category E", after the words "sub-category C1" insert the words "or D1".

HON A J ISOLA:

Might I just ask going back to page 142 at letter (C) the new definition of motor-cycle, just really for clarification, does that new definition cover motor-cycles of less than 50cc?

HON E M BRITTO:

No, Mr Chairman.

HON A J ISOLA:

Is it the intention then that for less than a 50CC motor-cycle you do not require a licence? Or is there a new category which will cover less than 50cc?

HON E M BRITTO:

Category K at the bottom of page 146, which applies to mopeds and which is defined on the first page of the Bill under Clause 2(b), "mopeds" are defined, as Members will see, as a vehicle that cannot exceed 45km/h and has a weight not exceeding 250kg and with a cubic capacity of not more than 50cc.

HON J J BOSSANO:

Mr Chairman, I raised before on the general principles the definition of "residence" and we were told that in fact the definition was related to the exchange of licences. I would like to ask, is it correct that the amendment that is being introduced to Section 16C(1) at the top of page 143 is in fact introducing the same provision that is applied in Section 46 to the recognition of EEA driving licences and to the exchange of licences for the application of licences? Unfortunately, the copy we have in the House does not show what there is now in 16C(1) but since 16 is Licensing of Drivers, am I correct in my reading that by virtue of the amendment which is being inserted in the new paragraph in 16C(1) which is new paragraph (c) where it says, "his normal residence (within the meaning of section 46) is in Gibraltar or he has been attending a school or other educational institution throughout a period of six months," is applying the provisions of

Section 46 to the application for driving licences and the taking of driving tests which is the point I made earlier where I was told that this was not the case because Section 46 was limited to the recognition or the exchange of licences from another EEA State.

HON E M BRITTO:

We are establishing Clause 16C(1) from the legislation.

HON CHIEF MINISTER:

Mr Chairman, in introducing a requirement which is already existing in respect of driving tests, I do not know if the hon Member says he does not have section 16C in front of him. Section 16C reads, "No driving licence shall be granted to any person unless:

(a) he has passed the appropriate driving test; or

(b) he was the holder of a driving licence issued under this Ordinance which expired not more than five years previously.",

and now there is added a (c), adding the normal residence requirement, normal residence being defined as in the Directive. There is a third requirement now for the issue or for the grant of a driving licence to any person, that includes Gibraltarians, any person, his normal residence, within the meaning of Section 46 is in Gibraltar or he has been attending, in other words, if he has been away studying in the UK or elsewhere, he is not deemed to have lost his residence if he is away from Gibraltar studying.

HON J J BOSSANO:

That is precisely the point I was making when I was referring previously to the definitions of residence in Section 46. I was told quite categorically that this did not apply to people applying for new licences, this was in the context of the heading of that section which says, "Recognition of EEA State driving licences". All the points that I made at the Second Reading were on the premise that I was talking about criteria in new Section 46(1) which applied to applications for licences as well as recognition of licences. I was told that this was not the case and that in fact when we were talking about determining a person's normal residence in Gibraltar and account being taken that that was not for the application for the licence, this was a German living in the UK who counted his period of residence in the UK for the recognition of his German licence in Gibraltar, that is the information I was given before. It seems to me that

the confirmation we have just had that the amendment to section 16C by the introduction of a new clause on a residence requirement and the fact that the new clause says, "the residence requirement has the meaning given to it in section 46", means that all the matters that I raised earlier apply to applicants for driving licences in Gibraltar and we were told before that this is not the case, now which of the two is it?

HON CHIEF MINISTER:

No, section 46 which is what was being addressed during the Second Reading speech does not apply to the grant of new licences, it applies to the recognition of EEA licences and to their exchange. What this section does is that it imports for the purposes of our existing law, in other words section 16C(1), it adds a new (c) to existing sections A and B of Section 16C(1) importing the definition of normal residence. So whereas hitherto the law of Gibraltar has been or certainly the practice, I am not sure that it has been law, but the practice of Gibraltar has been that you needed to show that you were resident here for six months before you could sit your driving test, as indeed one of the things that is asked for in the questionnaire when you apply to take a driving test is, "Have you lived in Gibraltar for six months?" That definition of resident, "Have you lived in Gibraltar for six months?", is being replaced by the definition of residence in effect in the Directive, in other words it is the 185 days. The definition of residency for the purposes of taking a driving test in Gibraltar is that provided in the first paragraph of Article 9. Of course, all Gibraltarians have lived in Gibraltar for 185 days and have either occupational and/or personal ties. So it certainly does not exclude anybody who is presently entitled by virtue of the connection with Gibraltar to sit his driving test in Gibraltar but certainly it excludes people who cannot comply with the 185 day residency rule. Such people are not presently complying with the 185 day rule, so the position is, that whereas section 46 does not deal with the grant of new licences, this Bill does, presumably the hon Member had seen the provisions in the Bill in clause 2E before we got to Committee Stage. He must have been aware of its existence at the time that we were debating.....

HON J J BOSSANO:

Mr Chairman, not only was I aware of it, I made that particular point and I was told that I was wrong and we had a ten minute recess and in the ten minute recess the Member came back and said that clauses 7, 8, 9 and 10 to which I was referring did not have anything to do with the granting of new licences, those were his words, that

they had to be understood in the context of the heading of that paragraph which was the recognition of EEA State driving licences. I thought they had to do with the granting of new licences and I take it that he is now confirming that they do have to do with the granting of new licences. Therefore the point that I raised before which I did not pursue any further because of the explanation that I was given but which I am raising again, is in the context of the granting of new licences. The explanation that we have here in determining if a person's normal residence is in Gibraltar account shall be taken of any period during which that person has lived in the United Kingdom, because of the time mentioned in sub-section 7, the answer he gave me of the example of the German living in the UK is totally irrelevant to somebody who is applying for a licence in Gibraltar. It has to do with what the Directive says about normal residence. The Directive says in Article 9 that the normal residence of a person is the residence in the Member State and that residence has to be for at least 185 days, and it then goes on to say in the rest of that Article, it is not just the first bit that applies, it is the whole of Article 9 that applies, that where we are talking about people living in one Member State and working in another or having residence partly in one and partly in the other, the question of personal ties is what determines which one is the one that counts depending on whether the person returns there regularly. It then goes on to say, "this last condition need not be met where the person living in a Member State is there in order to carry out a task of definite duration and attendance at a university or school, shall not imply transfer of normal residence". I questioned whether this was being adequately transposed initially and the reason that I was given why it was being adequately transposed was because I had mistakenly assumed it applied to applicants for new licences. I have just been told that I had not mistakenly assumed that, that I should have known it, well I did know it that is why I raised it and that is why we had a recess and I accepted the explanation that I was given except that I have now, looking at the clause, it seems that the explanation does not fit the clause, so I have to say the original reservations which I have raised simply because we feel if we notice something we should bring it up so that it is looked at again. If it is being done properly that is fine but it does seem to us that the explanation that was given in the context of this only applied to people who come here and want to exchange their licence. That does not answer the points that were made if in fact, as has now been confirmed, it is also true of somebody that comes here to apply for a licence. If we have a situation where residence in the United Kingdom counts as residence in Gibraltar, does that mean that residence in

Gibraltar counts as residence in the United Kingdom in their legislation, if one of us got over there? Or does it not? After all, the Directive clearly says that what we are doing here is issuing national licences of the Member State UK and provided we live in the territory of that Member State, and that is an important issue which has impact on quite a number of Directives, we would like to be sure that the way that it is being reflected in our national law is consistent with the interpretation of residence that is there in other laws.

HON CHIEF MINISTER:

I take the point in the first part of the hon Member's address in relation to the relationship between section 16C(1) that we are now discussing and the point he was making in relation to section 46. The requirement for the section that we are now looking at, (c) at the top of page 143, itself derives from the Directive and it derives, I am advised, from article 7, I do not know if the hon Member has the Directive? "Driving licences shall moreover be issued only to those applicants who have:

- a. passed the test, which is already in our law, and
- b. who have their normal residence in the territory of the Member State issuing the licence,

or can produce evidence that they have been studying there for at least six months."

Mr Chairman, the Directive requires that the issue of licences be limited to people who have been resident in your territory for six months. The definition of residence is their normal residence, as defined in the Directive, article 9 of the Directive. In including the definition of residence in Article 9 of the Directive, special provision has been made in (x) for people that have been living in the United Kingdom. People that have been living in the United Kingdom are in the same position as if they had been living in Gibraltar. I do not know where in that structure the hon Member feels that he wants to be certain that things are being done right. It is not quite certain to me what potential problem area or what doubt he has in his mind about whether that is the correct thing to have done, perhaps he would just like to explain. Let us agree on what the position is. The position is that one cannot take a driving test in Gibraltar unless one has been resident here for six months. Residence means normal residency as defined in the Directive and we have added that residency in Gibraltar for the purposes of calculating the 185 days, you get credit for any days that you have been

living in the United Kingdom. That is what the Bill achieves. We can continue the discussion if the hon Member will just clarify to me what is his area of concern in relation to that scenario?

HON J J BOSSANO:

Mr Chairman, can I just point out that the transposition of Article 7 of the Directive which is what is reproduced in new sub-section (c) was something that I also mentioned earlier which is that here it says, "normal residence", has the meaning given to it in section 46 or means that he has been attending school or another educational institution for a period of six months before he takes the driving test. We then go back to the definition in 9 and we say, "a person shall not be considered as having an occupational tie to a place if he is residing at that place to attend a school or university". I asked what does that mean? We do not have any university. We are saying that people who go from Gibraltar to the United Kingdom to go to University do not lose their residence in Gibraltar during that 185 days and is that what it is there for, because people come here not having a right of residence because they are studying here. We have already said previously in new sub-section (c) that an alternative to normal residence is studying in Gibraltar for six months.

HON CHIEF MINISTER:

It seems clear to me that students are treated differently. In fact, they are treated oppositely depending on whether they are seeking the issue of a new licence or whether they are seeking to exchange an existing Community licence. When we talk about Article 7 we are talking about (e) on page 143 of the Bill. Article 7 says, "that driving licences shall be issued only to the following people", in effect, and let us go straight to (b):

"(b) people who have their normal residence in a Member State issuing the licence or people who can produce evidence that they have been studying there for at least six months".

Therefore anybody that has been studying in Gibraltar for six months is within Article 7 and we can issue a licence and because residence in Gibraltar is deemed to include residence in the UK, similarly anybody that has been studying in the UK, for six months, can get a licence in Gibraltar. So if you are a student in Gibraltar or in the UK for six months that is deemed to be your residence period in Gibraltar but the position appears to be very different when you go to the amendments to section 46

relating to recognition and to exchange of licences which appear to say the opposite, which is, that if you are a student, if you are attending a school or university you are not considered as having an occupational tie to the place. If you are in Gibraltar only as a student having no personal ties you are not deemed to be having an occupational presence in Gibraltar. So if we set up our university here and people came here to study, a Chinese man came here to study, having obviously therefore no personal ties in Gibraltar, the fact that he is a student means that he is deemed to have no occupational tie and therefore he cannot be entitled in the first place, but if you take a German, for example, can come into our university, he could not exchange his German licence for a Gibraltar licence but he could obtain a new licence doing a new test under the new amendment to section 16. So Section 46 says, "that if you are a student you have no occupational ties in Gibraltar and therefore you cannot exchange your Community licence for a Gibraltar licence", but section 16(c) says, "that you can take a new test, you can get a new licence issued in Gibraltar", and that is the distinction and it is true that students are treated differently therefor for both purposes.

HON J J BOSSANO:

Mr Chairman, I do not think the Directive says that and we are supposed to be transposing the Directive and we were told that, we are not doing something different deliberately. Article 9 if where the distinction is being extracted from, Article 7 of the Directive has the exact wording. What we have is a photocopy of Article 7. Article 7 says, "who have their normal residence in the territory of a Member State issuing the licence or can produce evidence that they have been studying there for at least six months". That is what we are putting for applicants for licences, exactly the same, except that "normal residence" in our law is followed by brackets within the meaning of Section 46 and therefore we are applying in Section 16 the meaning in Section 46 and in Section 46 we say, "a student does not have an occupational tie in Gibraltar". Article 9 of the Directive does not say that and that is the only apparent source of that qualification. We say in our law, "a person shall not be considered as having an occupational tie to a place", and I questioned whether this was referring to other places and not to Gibraltar because if we mean Gibraltar why do we say to "a place"? So, the reading of that appears to be that we are not considering their occupational ties if they come to study in the university, that does not exist, but we are considering their occupational ties in a place where there does exist a university. That is how I read it because it says, "a person shall not be considered as having an occupational

tie to a place if he is residing at that place in order to go to university". This is not Gibraltar we are talking about. Mr Chairman, the hon Member has just told us that what we are doing with this law is that if a Chinaman comes to the university, that does not exist, to apply for a licence he can do it but if he comes to the university, that does not exist, with an existing licence to exchange it, he may not do it, that is how I have understood his explanation. The law does not say, "that if he comes to Gibraltar". The law says, "if he goes to a place to attend a university". That suggests that what we are talking about is people here who are somehow either applying for licences or applying for recognition of licences on the basis that in another EEA State they have been attending a place of higher education. The only reference that I have found in the Directive, is in Article 9, where it says, "for the purpose of this Directive". The point that I made earlier was that this is not just for the purpose of Article 7 which is, Application for New Licences, but for the purpose of the whole Directive, there is one definition of normal residence. Normal residence means, "where a person usually lives for 185 days" and then it goes on to say, "however, normal residence of the person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different parts of two member states or more.....". That is to say, we can have somebody who may have an occupational tie in Gibraltar and may live in Gibraltar while he is doing the job and then he has got a personal tie in his country of origin because he goes back at the end of doing that job. It then goes on to say, "this last condition does not apply where the person is for a definite duration or where attendance at a university or school which shall not imply transfer of normal residence". My reading of that was that this was qualifying what preceded it. It seems to me we have inverted that and made it a condition here and applying it to both even though in another bit of the law we are saying that if you are studying in Gibraltar for six months then you are treated as a normal resident. Quite apart from whether we are doing things which are detrimental or not, on the basis that we want to produce good legislation, it seems that if we have difficulty in establishing exactly what it is that people are entitled or not entitled to do under the new law, it cannot be such a good way of expressing what they are supposed to be doing. Frankly, I am not sure that the Chief Minister is any more clear what it is they are supposed to be doing than I am from the fact that he has given me slightly different explanations on each occasion.

HON CHIEF MINISTER:

Mr Chairman, the answer is that I do not agree with the hon Member's interpretation. I do not think that there is an inconsistency between the treatment given to Article 7 in the new section 16C(1)(c) and the definition of "residence" and the treatment given to students by the amendment to Section 46. I agree or I would agree with the hon Member if the amendment to Article 16C(1) on page 143 simply read, "his normal residence, within the meaning of Section 46, is in Gibraltar". In other words if the definition of "residence" introduced into 16C(1)(c), the new one, the one that attempts to apply Article 7, were simply to import the definition of residence from Article 9, the one that is set out in Section 46, then there would be the anomaly but the fact is that it does not. It is a, "neither or" situation in (c). Section (c) says, "that in order to get a driving licence in Gibraltar you must have your normal residence in Gibraltar and that normal residence must be as defined in Section 46". So far the hon Member would be right but that is not where it ends. It says "or...", it is about to say something different, otherwise there would be no need for the "or". It says, "or he has been attending a school or other educational institution throughout a period of six months". In other words, for the purposes of the issue of the licence, either you must have been resident in Gibraltar for six months as defined in article 9, in our case Section 46, or you must have been attending a school or other educational institution throughout a period of six months. Therefore there is no inconsistency but it is true, that students are treated differently for the purposes of their entitlement to sit a new driving licence test in Gibraltar than they are for the purposes of their ability to exchange an existing EEA licence for a Gibraltar licence. That is true, but that is not an inconsistency. It appears, do not ask me why the European Union has that as a policy, but certainly that is what the Directive appears to say and because that is what the Directive appears to say, that is what our law says. It is not so much an inconsistency as a rather peculiar policy objective of the Directive but I do not think there is anything wrong in the methodology of the transposition.

HON J J BOSSANO:

Where in the Directive does it say what the hon Member has just said?

HON CHIEF MINISTER:

Mr Chairman, what the hon Member has just said is an analysis of what the Directive says but if he wants me to

give him a chapter and verse of the source of my analysis I am very happy to do that as well. If he goes to Article 7 of the Directive which is the source of the new 16C(1)(c) it says, "driving licences shall moreover be issued only to those applicants who have their normal residence....." a defined term "who have their normal residence in the territory of the member state issuing the licence or can produce evidence that they have been studying there for at least six months". So if you fit into one of those two categories you can take a test in Gibraltar, "normal residence or student for six months", and that is what 16C(1)(c) which relates to the issue of new licences says. If you then go to Section 46 that derives substantially from Article 8, and Article 9 defines normal residence for the purposes of the Directive and it sets it out there in basically the 185 days and the other five lines in that paragraph. It then goes on to say that this last condition need not be met where the person is living in a Member State in order to carry out a task of definite duration. Attendance at a university or school shall not imply transfer of normal residence, in other words, for the purposes of Article 9 if you are a student at a university or college you are not deemed to have transferred your normal residence to that place and that is what it says, we say it in (ix)(b). Section (ix)(b) says, "A person shall not be considered as having an occupational tie to a place if he is residing at that place, to attend a school or university".

HON J J BOSSANO:

The hon Member has just read it out and we say, "the person shall not be considered as having an occupational tie to a place if he is residing in that place". There is nothing in Article 9 that talks about his not having an occupational tie. We are doing that. What we are talking about is people who have got occupational ties in different places and we then go on to say, "attendance at a university or school shall not imply transfer of normal residence", it does not say, "shall not imply that he does not have an occupational tie". I cannot see the relationship between the occupational tie and the normal residence in the first place and that is not what Article 9 says, and secondly, the wording of Article 9 is, "that a person shall not be considered as having an occupational tie to a place.". I have said, "why are we drafting our law in such a way unless that anybody reading the law would understand it to mean a place other than Gibraltar?" If we said a person shall not be considered as having an occupational tie in Gibraltar if he was residing here in order to carry out a task of definite duration or to attend a school or university, we would know we were talking about Gibraltar. It seems to

me that the way that we are talking about, "here", is with reference to somebody going through a school or university other than in Gibraltar and if he does that we then say in our law we do not think he has got an occupational tie to the place where the university is. So what has that got to do with him exchanging his licence in Gibraltar or continuing to use it or with Article 9?

HON CHIEF MINISTER:

With respect that is a non point. If there is somebody studying away from Gibraltar, his entitlement to exchange a licence does not arise in Gibraltar, it arises in the place where he is studying, I just do not see what the hon Member is saying there. We are talking about people that are in Gibraltar as students in Gibraltar.

HON J J BOSSANO:

No, we are not.

HON CHIEF MINISTER:

Of course we are and the reason why the normal residence in our Bill and in Article 9 is expressed in terms of occupational ties is because that is the way that normal residence is defined in the Directive. Normal residence is not defined just as a place where you have lived for the last 185 days. For the purpose of this Directive normal residence means a place where a person usually lives, that is for at least 185 days in a calendar year and then it goes on to say, "because of a personal and occupational tie", or in the case of a person with no job, "because of personal ties". Our Article 9 defines the normal residence in exactly the same language. It says, "that a person shall not be considered as having an occupational tie to a place if he is residing there", and then it says "people, of definite duration, task and students", because that is how it becomes relevant to the definition of normal residence. In other words, if you are a student attending school in Gibraltar with no personal ties to Gibraltar you are not deemed to have an occupation and if you are not deemed to have an occupation you cannot avail yourself of the provisions of this law because you are not deemed to be a normal resident here, that is what it says, that is how normal residence is defined in the Directive and that is what we are obliged to transpose. I just do not see the point that the hon Member is making.

MR CHAIRMAN:

You will never agree and this is not a court of law.

HON J J BOSSANO:

I am sorry I have not been able to make the hon Member understand the point I am making because I have explained it, I think, in a lot of detail and many, many times and he keeps on answering something different. Obviously, let the law go as they want it.

HON CHIEF MINISTER:

No, that is not true to the extent that I have understood his points. I have told him that I do not agree with them. There is no inconsistency. It seems to me that the complaint that he has left is, that he thinks that the Commission in Brussels have a very peculiar way of defining normal residence, that may or may not be true.

HON J J BOSSANO:

I am not concerned with what the Commission may have done in Brussels. I am concerned with what we are doing today in this House which is passing laws in Gibraltar. Having raised questions about the law that we are about to pass means, as the Hansard will show, I have been given different explanations of what it means at different stages. That makes me think that the Government is not sure what the law means because they give me different explanations of what it means within a matter of half an hour. I have said initially, if we have got here, "a person shall not be considered as having an occupational tie to a place if he is residing at that place", that seems to be suggesting that we are talking about a place which is not Gibraltar. The hon Member says, "no, this means Gibraltar", he loses his occupational ties to Gibraltar if he just happens to be studying here. Well, Article 9 in the Directive does not say, "Member States shall sever the occupational links of the people who are studying in their territory." It does not say that, our law says that.

MR CHAIRMAN:

I have got to put a stop to this because you do not understand, he does not understand. You are both right so I will call on the mover.

HON E M BRITTO:

I think we are at the stage, if you are closing that section of the debate Mr Chairman that I was about forty-five minutes ago, to propose a minor amendment to what would appear to be a typographical error at the bottom of page 46, and asking for the inverted commas and the semi-

colon which appear at the end of Category J, after the figure 750kg, to be deleted and to be inserted after "mopeds" in Category K. In other words, at the end of that particular text. It is the removing of the colon and inverted commas.

Question put. The House voted.

For the Ayes:

The Hon K Azopardi
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon P C Montegriffo
The Hon J J Netto
The Hon Miss K Dawson
The Hon T J Bristow

Abstained:

The Hon J L Baldachino
The Hon J J Bossano
The Hon J Gabay
The Hon A Isola
The Hon R Mor

Absent:

The Hon Dr B A Linares
The Hon Miss M I Montegriffo
The Hon J C Perez

Clause 2, as amended, stood part of the Bill.

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

THE TOWN PLANNING (AMENDMENT) BILL, 1997

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

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

THE TRAFFIC (AMENDMENT) (No 2) BILL, 1996

Clause 1

HON E M BRITTO:

Mr Chairman, I think we may have to go back to the first Bill. There is never two without three and already there have been two New Year amendments during the course of

the morning, so let there be a third one and can we amend 1996 to 1997 in Clause 1.

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

THE INSURANCE (MOTOR VEHICLES) (THIRD PARTY RISKS) ORDINANCE, 1986 (AMENDMENT) BILL, 1996

Clause 1

HON E M BRITTO:

I wish to amend "1996" to "1997".

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

HON CHIEF MINISTER:

Mr Chairman, I would like to move an amendment that Article 2(a)(iii) of the Bill be deleted. It is the section that we were talking about before, it is the amendment to the definition of "roads". I agree it is entirely unnecessary and it means practically nothing, it can be deleted.

HON E M BRITTO:

In Clause 2H(i), on page 86, in line with the suggestions made by the Opposition, I would like to propose that the word "constable" where it appears, be deleted and substituted by the words "police officers" both in the singular and in the plural. It appears in the singular three times and once in the plural. It appears twice in (c) and once in (b).

HON A J ISOLA:

If I can refer the hon Member to section 2(c). After the words "the use of the vehicle" I think the words "on a road in Gibraltar", are missing. Unless it has been amended in my absence.

HON CHIEF MINISTER:

Certainly the words "on a road in Gibraltar" appear in the section that is being amended. I would agree with that amendment Mr Chairman, it does not actually affect the amendment, it is just telling us where the new words are going to be inserted. The seven words immediately preceding the spot have been mis-resited. In other words, "the use of the vehicle in Gibraltar" should read

"the use of the vehicle on a road in Gibraltar", in fact the amendment is the one that is there.

HON A J ISOLA:

There is a similar amendment in letter J, on page 87. The Ordinance actually says, "an accident occurs", in section 9 sub-section (1) should be amended by inserting after the words "an accident" the word "occurs".

Clause 2, 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:

I have the honour to report that:

(1) The Traffic (Amendment)(No 2) Bill 1996, with amendment;

(2) The Insurance (Motor Vehicles)(Third Party Risks) Ordinance 1986 (Amendment) Bill 1996, with amendment;

(3) The Factories (Amendment) Bill 1996, with amendment;

(4) The Public Health (Amendment) Bill 1996, with amendment;

(5) The Public Health (Amendment)(No 2) Bill 1996, with amendment;

(6) The Town Planning (Amendment) Bill 1997, without amendment;

have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Question put. The Bills were agreed to and passed.

(7) The Traffic Ordinance (Amendment)(EEA Driving Licences) Bill 1997.

For the Ayes:

The Hon K Azopardi
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon P C Montegriffo

The Hon J J Netto
The Hon Miss K Dawson
The Hon T J Bristow

Abstained:

The Hon J L Baldachino
The Hon J J Bossano
The Hon J Gabay
The Hon A Isola
The Hon R Mor

Absent:

The Hon Dr B Linares
The Hon Miss M I Montegriffo
The Hon J C Perez

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

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

Question proposed.

HON J J BOSSANO:

Mr Speaker, I gave notice of a matter that I wished to raise on the final adjournment of the House which is in fact to seek clarification of the policy of the Government in respect of the transposition into the national law of Gibraltar of the Working Time Directive, Directive 93/194/EEC. This is one of the Directives on the pending list for transposition but perhaps the only one that the UK was keen that we should not transpose. The fact that the United Kingdom opted out of the Social Chapter meant that the challenge to the non-transposition of this Directive was not something that they wanted us to be proceeding with until that matter had been cleared. In fact, it has since, after a period of discussion with the United Kingdom where the provisions of the Directive were considerably watered down to give flexibility and allow optional implementation, nevertheless they were voted against by the United Kingdom and they were then brought in under the Treaty provision on Health and Safety. The UK has challenged that and lost. The latest information we have, the Government may have more up-to-date information, was that in fact, notwithstanding that they had lost it, the Government of the United Kingdom

was seeking to still block the application of this to the United Kingdom through negotiations in the inter-government conference. Certainly in the United Kingdom, the TUC has taken the view that since the courts have ruled against the UK position, individual employees have now got rights which they can pursue irrespective of whether transposition has taken place or not. I think it is important to know what the position of the Government is in respect of transposition in Gibraltar where they were going to wait to see what the UK finally does before we move or whether they were likely to be moving on this. This happens to be one of the few Directives that actually could have a significant impact on a lot of policy decisions, since in Gibraltar limitations on working time has never been something that has ever featured in our legislation, it exists in quite a number of Member States already. We have tended always to follow the UK and leave that for the employer and the employee to sort out and not lay down any limitations by the State, but virtually all the other Member States place ceilings. Given the fact that in the context of this coming year we are talking about changes in the MOD facilities which are going to start having an impact on the employment situation, then clearly a consideration of whether we are likely to be seeing a scenario where the amount of hours that people work in a year is going to be limited or not, will have an important element to be taken into consideration in the context of the operation of the labour market. Our own view, I have to say was, that we could understand why the UK did not want Gibraltar to be doing something that went against them. In fact, given the flexibility in the Directive, that is not as rigid as it started off with, there is really very little reason why the UK itself should not be implementing it any more and that it creates a framework which gives people protection where they are being forced to work longer hours than they want to. For that reason alone I would welcome an indication of policy from the Government.

MR SPEAKER:

As I understand, the procedure is you raise the matter, it is entirely up to the Minister whether he wishes to answer or not but once he answers that is the end of the matter. There is no question of debate.

HON J J BOSSANO:

There is no question of debate but the total time allotted is forty minutes.

MR SPEAKER:

No, no, it is twenty minutes, because if you are very long the Minister has got to stop after the twenty minutes, that is the end of the matter.

HON J J BOSSANO:

It is twenty minutes for all of us?

MR SPEAKER:

Yes.

HON J J BOSSANO:

So therefore if somebody takes up the twenty minutes the Minister cannot answer whether he likes it or not and of course there is nothing to stop any other Member intervening within the time limit?

MR SPEAKER:

Other Members cannot intervene on the debate. They can ask him to give way, yes certainly but they do not form part of the procedure under this Rule.

HON J J BOSSANO:

From my experience in the House, I have intervened for example in the House in debates on the adjournment which were not initiated by me but were initiated by another Member but of course there is no vote and there is no decision and the debate does not lead anywhere because it is primarily raised on an issue to obtain information.

MR SPEAKER:

That is right.

HON CHIEF MINISTER:

Mr Speaker, the position was that the Government of Gibraltar, this one as I suspect the previous one, was not expecting to have to transpose this Directive because of the UK's position in relation to the Social Chapter generally. Following the ECJ's decision in the case brought by the United Kingdom challenging the Commission's right to introduce these provisions in effect, not on the Social Chapter provision but on the health and safety provision, and that was the issue that the UK sought to challenge in the Court and lost. The position now is that the Working Time Directive is valid. It is not a Social Chapter Directive, it is a Health and

Safety Directive. That is what the ECJ has now decided and therefore both Gibraltar and the UK are now obliged to transpose it and of course, in accordance with its principle of abiding by its obligations under EU law, the Government of Gibraltar will indeed transpose the Directive or at least it will prepare to transpose the Directive. To that end already some consultancy work has taken place within Government initially to see how the Directive would affect the public service and heads of department are beginning now to express views on that. The Government is now to prepare a consultation document as to how the Directive, given the importance generally, both to trade unions and to business and therefore to the economy at large, will prepare a consultation paper about how this Directive should be transposed in Gibraltar. We may wait to see how the United Kingdom transposes. They are now going through their consultation process as well and as the hon Member has correctly intimated the United Kingdom, whilst accepting that the Directive is valid and binding and as things presently stand, must be transposed, is seeking to renegotiate with its member partners in the European Union, at the next inter-Government conference, the possibility of renegotiating the Directive altogether.

In other words, it is going to try and persuade its partners in the Union to drop this Directive or to change it and of course it may well be that the Government of Gibraltar will, if the UK is successful in that, review its position depending on what the UK is able to achieve at the inter-governmental conference or not. As matters stand now the Government is taking preparatory steps towards an implementation. There will be a consultation process both within the public sector and outside the public sector, which has begun. Government will await to see the results of the UK consultation process to see how the UK transposes the Directive and the Government will then do so. It is theoretically possible for Gibraltar to transpose before the UK but it seems to me that we would then have to start from scratch with a clean sheet of paper and have absolutely no guidance and deprive ourselves of the benefits of the UK's own consultation process if we were to do that. So certainly the Government's preference is not to go faster than the UK but the Directive will have to be transposed if the United Kingdom is not able to renegotiate its existence. The Government have not yet made policy decisions, as you would expect, in advance of the consultation paper as to how the Directive should be transposed. If the hon Member's interest in this issue is to ask two things - first of all, whether we are committed to transposing it and what Gibraltar's position now is, given that the UK has lost in Court - then the answer to both these issues are as I have said, that the Government have many policy

issues that arise in relation to the transposition upon which the Government have not yet made policy decisions and upon which the Government intend to consult.

I have a list in front of me, there are such issues to decide as, what body are we going to establish to adjudicate on disputes, what the definition should be of workers and of working time, all these things are not specified in the Directive. Which of the permitted exclusions and derogations we wish to avail ourselves of, some of them are actually irrelevant to Gibraltar. This is not a Directive like some of the ones we have been dealing with this morning where the Directive can simply be copied out in the form of legislation. There needs to be consultation. We need to see what UK does. We need to see what the Unions and the industry in Gibraltar thinks and then the Government will bring a Bill which will be circulated widely and in advance. This is not going to be a Bill that is debated one week, two weeks or even three or four weeks after publication. We expect to give ample notice of the publication of this Bill prior to its debate and consideration in this House and beyond that, I am not sure that I can assist the hon Member further by what the Government's present position is.

MR SPEAKER:

I think we can give another opportunity to the Leader of the Opposition. We still have time in case he wants to find out anything more.

HON J J BOSSANO:

Mr Speaker, the response of the Member is consistent with the opening remarks that I made of what the position was until very recently when the UK lost it. There are two points that I raised and one is, in the United Kingdom the view has been taken certainly by the TUC that people may challenge already their employers in respect of that Directive notwithstanding the fact that the Directive has not been transposed. That, presumably, means that if that view is correct and is true of the United Kingdom it must be true also of Gibraltar and that is a situation where people.....

HON CHIEF MINISTER:

Would the hon Member give way? I forgot to address that point, I beg your pardon. The point of that is of course that this Directive is no different to any other. There is, as the hon Member knows, a case..... I never remember the name of it, but it relates to an Italian carpenter that establishes what the right of citizens are who are deprived of the benefits of the Directive because

the state has not transposed them into national law. Whatever the legal position is, just as workers in Gibraltar have had rights in respect of the fact that we had not until this morning transposed the noise at work Directive, there is nothing particular about this Directive that gives special rights to workers because of its non-transposition. So, having said all that, my understanding of the case that I have just mentioned and I make this observation with trepidation, because I am not a European Law lawyer, is that the course of action does not lie against the employer but against the state for having failed to transpose the Directive. In other words, the employee cannot proceed as if the Directive was already the law and use his employer accordingly. I think that in the case that we have just mentioned, the Frankovitch case, I think establishes that the course of action is against the state not against some other private party, but the answer to the hon Member is yes, whatever rights people have, they have and in relation to this Directive as well.

Question put on the adjournment. Agreed to.

The adjournment of the House sine die was taken at 1.55pm on Tuesday 7th January 1997.