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 Gibraltarian 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 Gibraltarian 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 were 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 slugges, 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 A 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.