GIBRALTAR

HOUSE OF ASSEMBLY

HANSARD

4TH SEPTEMBER, 1996

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

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

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

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

IN ATTENDANCE:

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

PRAYER

Mr Speaker recited the prayer.

OATH OF ALLEGIANCE

The Hon Ernest George Montado took the oath of allegiance.

CONFIRMATION OF MINUTES

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

DOCUMENTS LAID

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

(1) The Air Traffic Survey 1995.

(2) The Tourist Survey 1995.

(3) The Hotel Occupancy 1995.

Ordered to lie.

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

Ordered to lie.

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

(1) The Income Tax (Allowances, Deductions and Exemptions) (Amendments) Rules 1996 - Legal Notice No. 81 of 1996.

(2) The Accounts of the Government of Gibraltar for the year ended 31 March 1995 together with the report of the Principal Auditor thereon.

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 4.30 pm.

The House resumed at 4.50 pm.

Answers to Questions continued.

ADJOURNMENT

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

Question put. Agreed to.

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

TUESDAY 24TH SEPTEMBER 1996

The House resumed at 10.00 am.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

IN ATTENDANCE:

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

DOCUMENTS LAID

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

Question put. Agreed to.

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

(1) Statement of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (No. 1 of 1995/96).

(2) Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 14 and 15 of 1995/96).

(3) Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 1 to 3 of 1996/97).

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

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

HON H A CORBY:

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

Question put. Agreed to.

SECOND READING

HON H A CORBY:

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

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

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

HON R MOR:

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

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

Mr Speaker, I did say earlier on that I would be drawing attention to the implications and possible liabilities which this Bill could create. If I may draw your attention, first of all, to the interpretation of pensionable age. It says, "pensionable age means the age of 65 in the case of a man and 60 in the case of a woman". If we now move to page 27 as regards widower's pension, if one looks at sub-paragraph (a) it reads, "he is and has been permanently incapable of self-support for not less than 10 years and has been wholly or mainly maintained by her during this time". Well, if one looks at the section on widow's pension, pages 24 and 25, one will see that a widow does not have to be permanently incapable of self-support for not less than 10 years or anything of the kind. Another clause I would draw attention to is in section 11(3), page 28, referring to guardians' allowance which says, "in the case of a child who is a child of the family of a man and his wife, the wife only shall be entitled to a Guardians' Allowance". Again, a man would not be entitled, but the wife is. Perhaps it could be more understandable if we had a Bill which effectively allowed the continuation of the 1955 Ordinance as if this had continued without having been stopped at the end of 1993 because the situation that we have today is, that we are bringing an entirely new Bill to this House. The point I am raising is, whereas it may have been possible in 1955 to introduce discriminatory clauses in any legislation, since we have become members of the European Union and we are bound by EU Law and EU law prohibits, totally, any sex discrimination on any grounds, then I think what we are being asked to do today is totally contrary to European law, and clearly this Ordinance is not just a Bill to make the 1955 Ordinance to continue unchanged. It is a totally new Ordinance, with its own title and being brought in 1996 which I believe is a complete contravention of European law on sex discrimination and which could bring about liabilities on the fund which would again create many problems as regards our continuation of our pensions scheme. Mr Speaker, I am therefore reserving our position until we hear some clarification on the points which I have raised.

HON CHIEF MINISTER:

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

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

does not misquote the position in the future. I am, however, astonished at the suggestion, which I think I have understood correctly, of the Opposition Member who, having first welcomed the fact that we introduced the word "Minister" instead of "Governor" then goes on to lament the fact that the Bill should not have imposed responsibility on the Government. Let us be clear about this, what the hon Member is suggesting is that in respect of this defined domestic matter, namely, social security, it appears now to be the official policy of the GSLP Opposition that the Government should hand over constitutional responsibility for social insurance to Her Majesty's Government. Well, he shakes his head, but if he says things, he has got to take responsibility for the natural consequences of what he says. What the hon Member said was that what he wanted us to do was to bring a Bill to this House in a matter of social insurance which did not impose responsibilities on the Government of Gibraltar. Given that this is a defined domestic matter I do not see how that could be done. I take note that that is the policy of the Opposition. It is not the policy of the Government. If, of course, by responsibility he means financial burden as opposed to political and constitutional responsibility, then I suppose he remembers from the days when he was in Government, that the agreement of the United Kingdom Government is to pay all amounts due to the pre-1969 Spanish contributors, due under the Social Insurance Fund. So any financial burden, if that is what he meant by responsibility, which arises in favour of pre-1969 Spanish contributors from this Bill, the hon Member can rest assured will not be paid by the Government of Gibraltar but will be paid by Her Majesty's Government in the United Kingdom. The hon Member must also know that the scheme of the Ordinance, in other words, the agreement to restore the benefits and the scheme of benefits under the 1955 Ordinance was part of the so-called pensions agreement between the Government of Gibraltar and the United Kingdom Government, agreed to, not by us, but by them when they were in Government. I really find it odd in the extreme that the Opposition Member should, for example, suggest that this Bill is some sort of policy initiative by this Government when he knows full well that all we are doing is giving legislative implementation to the first part of the pensions agreement, in other words, the pre-1993 benefit scheme which they agreed to as part of Her Majesty's Government counter agreement to pay for it. The Opposition Member said and asked, and I think it was a fair question, why does it say "ordinarily resident in Gibraltar" given that we all know that "ordinarily resident in Gibraltar" has to be read in accordance with EU Law as if it read "ordinarily resident in Gibraltar or in any other member State of the European Union". The answer to that question, Mr Speaker, and it relates indeed not only to the question of residence but also, for example, to such things as aggregation which is not mentioned in the Bill either, and the reason for that is that the Bill is drafted and adopts the same approach to the European Union Law as is adopted in the United Kingdom legislation on social security, namely, that since Regulation 1408/71 of the European Union has direct effect in Gibraltar, it is already part of Gibraltar's law and indeed effect is now being given to it by paying the Spanish pensioners the same rate of pension as the Gibraltarians. There is nothing in the laws of Gibraltar that requires that, it has been done by the previous administration because there is a provision of European law in this regulation that I have just named, which requires it as if it were in Gibraltar law, and therefore, there is no need to reproduce it in the draft Bill itself, as I have just mentioned. It is also happening now because Regulation 1408/71 requires it. There is nothing in this Bill about it and there was nothing in the previous Ordinance about it and indeed there is nothing in the Transitional Fund Regulations about it, so certainly it could not come to the hon Member as a surprise that not everything that is required by European Union Law is in this Bill. I accept that it is not, it does not need to be and it is not in to the extent that EU law has direct application to Gibraltar which is the legislative technique which the Opposition members also used in this area and indeed which the United Kingdom Government also use in their own social security legislation back in the United Kingdom. Mr Speaker, the hon Member pointed out that the Bill preserves the existing differentials in pensionable age between men and women and indeed it does and it preserves other forms as he has pointed out. Indeed, it does preserve other forms of what one could very loosely call sex discrimination in the sense that it creates benefits in favour of one sex, and it is not creating favours, and of course, the most obvious example is, the unequal pensionable age, but there are others as he quite rightly says in respect of guardian's allowance.

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

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

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

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

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

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

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

Let me say, Mr Speaker, that we can see no difference notwithstanding the fact that the closed fund has got a different title from the opened fund, we can see no difference in the light of the argument that was put to us by the United Kingdom that we had no choice, but if we brought in a new Social Insurance Fund under Community law, the new one could not re-enact what was in an old one because the old one had been enacted at a time when there was no mandatory requirement under Community law on equalisation of treatment. So any new fund and any new legislation, and it is at the time when they were talking about a single fund which is called a "successor fund" and then they talked about two funds, and one of the primary reasons, if not the only reason, for them saying we had to draw a dividing line between the benefits obtained by a contribution record ending in December 1993 and the benefits earned by contributions post December 1993, was the fact that the first lot of benefits had to be frozen. The reason why it had to be closed was that it had to be closed to any possible increases and it was the view of the British Government that if there were any increases in pensions then it was the responsibility of the Government of Gibraltar to meet such pension increases in respect of pre-1969 Spanish pensioners. Indeed that is what led in 1988 to the five year frozen benefit bilateral agreement which was what was put by Her Majesty's Government as a condition for continuing to finance for five years the Spanish pensions. So really all they are saying is, "we will continue to finance the Spanish pensions for the next 25 years on the same terms as we have done it since 1988". Therefore, what is the purpose I ask of making a provision in the new legislation for the Minister to increase benefits? If we have an agreement which we did, which the new Government are honouring, which says, the scheme is being restored at the point at which it was stopped, suspended on the 1st January 1994 and the condition is that benefits may not be increased, why is the House being asked to legislate so that benefits may be increased by the Minister? The clause that has been replaced and this is 38(1) on page 43, says, "The Minister may by order amend the sum in Section 16 above and the sums specified in Schedule 1 below", and Schedule 1 below is the rate of old age pensions, widow's pensions and guardian's allowance. If the Minister may by order do that, then this legislation is in breach of the agreement with the United Kingdom which requires that the Minister may not do that. Mr Speaker, I have spent a lot of time on this business in the last eight years or so and therefore I can assure the Chief Minister that I am being helpful. It would seem to me, from my previous experience of dealing with this, that if we have the power to do this, the Minister does not have to do it obviously. But we are saying it is a possible thing to do and if it is a possible thing to do, from my understanding, if this had been accepted by the United Kingdom, the United Kingdom would have made the point that it is only possible for us to do if at some future date a Minister so decides to do. It may not be the Minister that is there now who picks up the bill for making the same payments to Spanish pensioners, because that has been one of the fundamental positions of the United Kingdom Government in respect of these payments from day one.

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

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

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

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

the United Kingdom generously bailing us out, we never accepted that version of history, we think it was avoidable, we have been on public record as long ago as 1980 in this House of Assembly saying it was avoidable. My hon Colleague has just pointed out how it was triggered by having a clause on residence as a qualifying condition as an alternative to contribution record and there is hardly anybody left now who is getting paid because of that clause. The clause does not apply anymore to any Gibraltarian, so by having it there was what gave us the trouble in the first instance, it was certainly avoidable. Since 1988 the different options that have been looked at, indeed the dissolution of the old fund, the suspension of the payments, the introduction of a closed fund and an open fund, all demonstrate, Mr Speaker, how many things could have been done other than simply paying out. But in 1985, at a meeting in December of the Brussels negotiating process, after perhaps one glass too many of "tinto", Sir Geoffrey Howe on the spot committed Gibraltar to pay pre-valued pensions from the beginning of January. At least that is the version of the people who were there who now includes the Director of Media and Public Relations. So the Chief Minister can get firsthand verification of what I am saying. We consider that the fact that the United Kingdom chose to proceed along this road having advised for many years the claim was resistible and defensible, is a purely political act by the United Kingdom Government based on their own domestic political problems with their Euro-sceptic wing. I have every reason to believe that in fact the technical advise was that the case could be won, but of course like any other case, might not be won. Rather than go into the position of maintaining what had originally been the official line and arguing with the European Commission that there was no obligation to reconstitute the suspended fund, which was the original position - let me say nothing that I have seen from the Commission actually contradicts the position of the United Kingdom Government, because all I have ever seen from the Commission did not tell the United Kingdom what they had to do. They always told the United Kingdom they could only do one thing, what they could not do is different things for different categories or beneficiaries based on residence or nationality, but they did not tell them what that had to be. So even though the Commission was less than happy when the United Kingdom was telling them, "we are going to pay 25 per cent of acquired rights", they never challenged that there was anything in Community law which actually prohibited that and certainly the information that was available to me was, that the political decision that was taken that the Treasury would fork out £150 million, was taken not on advice that this case was lost and that therefore to fight the case would be to throw good money after bad, but on the basis that to actually go into the arena would open a can of worms in lots of other areas that the United Kingdom preferred to avoid. Well, that is fine, all the more reason for arguing that this is not a Community obligation of Gibraltar. It is a Community obligation of the United Kingdom in the first instance anyway and the fact that the United Kingdom chooses to pay rather than fight as a political decision for unconnected, from their point of view perfectly legitimate political reasons, cannot create a liability on Gibraltar. Therefore we cannot accept that there is there a clause which is a repetition of what was there before. This is not the same act, this is a new act of this House of Assembly, a new Ordinance and we are there putting something with which we do not agree as a matter of principle. Let me say that it is doubly unfortunate that they have horned in on this particular point, I do not know to what degree if this is purely something lifted from the old Ordinance and put in here or to what degree there has been consideration of the implications of this but if we are having a situation where the liabilities are being accepted as direct, as creating a direct charge on the Consolidated Fund in the same way as public service pensions, the servicing of the interest on the national debt and other things of that nature, then we will not be able to do anything to be required to meet other liabilities. Of course the one on which the Government were reconsidering the position which is not totally unconnected with this because it is also based on conflicting advise over different periods of time, is the payment of the family allowances to Spanish pensioners. Is it now the case that the Government have accepted by inference from this, that this is now a direct charge under the Consolidated Fund which will have to be paid and it is not challengeable. When this was done in 1972, like many things that were done then and for many years after that it is obvious that what was being done was that things were being presented here as being the same as in the United Kingdom without anybody bothering to go back and find out whether we were being told the truth. All that we are doing here is, we are taking the United Kingdom Act and with the necessary modifications, because of different institutional structures, introducing the same provisions in the laws of Gibraltar. Well it is not true, we have now gone back and checked what the United Kingdom Act says and the United Kingdom Act does not say that. The United Kingdom Act does not create a liability on the Government of the United Kingdom to pay out of the Consolidated Fund, Community obligations. What it creates is a liability that there shall be charged and issued out of the Consolidated Fund, which are the same words as we have in Section 5 of our law. The amounts required to meet Community obligations to make payment to any of the Communities of member States, is the contribution of the United Kingdom to the Community, which is of course, a treaty

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

Mr Speaker, the Bill does not create new rights for new classes of beneficiaries, because one of the things that featured in the recent election was lobbying by people who were left out of the original scheme and it was said that when the new scheme came in, consideration would be given to how their position might be protected and they might be given the opportunity of being brought back into the system from which they were excluded at the time for reasons which, frankly, were never clearly understandable by any of those affected and by many others because of this peculiar business of people, who were so well off that they earned £500 a year, would never need to have provision for their old age. There has been no mention in the general principles of the Bill as to whether this is being done or whether in fact is not going to happen, but we have not been able to find anything here that indicates that something is being done about it here. It would seem to us that it would need to be done here, we cannot see that there is even an enabling power for it to be done by regulation in anything that was here other than this business of the Minister being able to alter the schedule or the benefits or anything else. In looking at the point that was made by my hon Colleague of the differential in the treatment, he mentioned the age differential, he mentioned the way that the widower is treated different from the widow in terms of having been supported by the spouse. Frankly our position has been that all these things that are to be found in the old Ordinance and some other antiquated things that are there we would have had to live with if we had simply said, "We are reactivating the unrepealed law." But we are not doing that, we are bringing new law, and therefore when one brings new law to this House it seems to me that it is not enough to say, "The reason why we are doing it is because that is what was done in the year dot". It is being done today and there are things of course which in the time that the legislation was introduced, which was a completely different world from today, these things might have had some rationale. There is a strange provision here and I am sure many of us in fact, if this was not being re-enacted, would not even have been conscious of the fact that it was there in some instances in the previous Ordinance. There is a provision here which says that a pensioner stops getting his pension if he is convicted and put in jail. I imagine that this happened because there is something like that in the civil service pensions and when this was done initially somebody transposed it from one to the other, but it is a nonsense to be doing that today because in any case if it were to happen, the only way we would get to know about it is if the jail that the pensioner was put into was Moorish Castle not if the guy was being put in jail in some other remote corner of the world. We have always, I think in the opening up of our labour market and in the fluidity on the free movement of labour which gives people rights here I think we have to be conscious that by legislating things that made sense when Gibraltar was isolated from the rest of the world or at least those who did it at the time felt it made sense, when we are no longer isolated from the rest of the world we are doing things which can only have an effect on our own and on nobody else because we would not know about the rest, we would not know whether they are OK or they are not OK. There are occasions when we not even know if they are alive and we keep on paying them. That is something which we are unhappy to see resurfacing here and at the end of the day we cannot simply vote on a Bill on the basis that all that this is doing is repeating things that were there in the old Ordinance because presumably the Government thought there was no alternative because the old Ordinance was now dead and buried. If that is the rationale of these things, we cannot go along with that. We think there is an alternative and we think the alternative is the fact that the Ordinance is still alive and kicking and that ways could be found to trigger what needed to be triggered without doing this and certainly if the Government had done it by doing it through subsidiary legislation they would not have had the benefit of getting our advice and shared wisdom. In any case they do not seem to appreciate it because when we try and do that, they condemn us for it. So what is the point of bringing the Bill to the House if we try and say to them, "Look these are the misgivings we have" and those misgivings are misinterpreted? We will look to the explanations in the general principles in deciding what the position is on this from the point of view of the way we cast our votes, Mr Speaker, but certainly there is one clause which we will be voting against clearly which is the one that I have mentioned and I have to say that with reference to the right of the

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

HON CHIEF MINISTER:

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

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

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

HON J J BOSSANO:

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

MR SPEAKER:

Mr Corby has the right of reply.

HON J J BOSSANO:

Mr Corby has the right of reply, that is right, and therefore Mr Corby would have said what the Chief Minister has just said. Let me say that the only reason why I made the observation that I made was precisely because of the way he reacted when he spoke earlier. He reacted to the points that we had made as if he thought we should not be making them and that we were making them for some ulterior motive. And I am glad, for example, that having gone into that long explanation of why this was required because the Bill had been repealed, I take it from his last observation that he has now discovered that the Bill was not repealed. Now, that makes me wonder how much work has been done on this, as to the different alternatives, and I do not accept the last point that he has made that restoring, not even restoring, the Bill is there in suspended animation. In fact even after passing this, the old Ordinance is still not repealed, because he has not repealed it. So we would finish up had we supported what the Government are asking this House to do, with two laws. One of them which says a lot of things that are already said in the other law. I have no knowledge of that ever having happened before. Normally if one comes in with a law that replaces an old one, one takes the old one out at the same time. What this in fact does is it stops the existence of the fund under Section 40 where it says, "A transitional interim payment fund regulations and the transitional interim fund establishment notice shall crease to have effect", which presumably is the equivalent of repealing them, and therefore since that is what was created that is what is being removed. What was still there continues to be there and will continue to be there after this. I am not sure how it sort of fits in structurally but that is the position that we are seeking to establish with this. It seems to me, and frankly in the time we have had to go through this, and I accept that that is the time that the rules of the House provide, we have tried to look at it objectively to see where we could see problems arising in the future because at the end of the day, if problems arise in the future, they are going to arise for all of us not just for the Government Members. So we have been looking at it in terms of taking effective avoiding action and pre-empting future problems which is always a much better philosophy than trying to cure things after the event, particularly in this area, as we have found when we had the responsibility of dealing with it. I accept the point that the hon Member made when I gave way, but of course the Minister does not have the power to make the agreement but he has the power to block the agreement which is almost as much power. That is to say, if there was an international agreement done by the United Kingdom and in order to give effect to that agreement there was a requirement to change the law, this law, then there is nothing here that can require the Minister to do it if he does not want to do it because it gives him enabling power, he may do it and therefore is not required to do it. This is in fact strange as it sits with the Constitution where there is indeed a particular reference when it comes to defining the ministerial portfolios and defined domestic matters, that a reservation is entered saying that, for the introduction in Gibraltar or the application in Gibraltar of international treaties, the Governor continues to have sole responsibility, that is what the Constitution says. So here we have a situation where the Governor under the Constitution has a sole responsibility, the international treaty cannot be done by us because that is clearly foreign affairs and yet the Minister may, depending in the mood he is in, either block the Governor or permit it. Fine we will vote for that. The bringing in of the payments under the pre-occupational pension fund at this stage appears on the surface a neat way of doing it, but I am not sure that it will work, Mr Speaker. It seems to me that this is a situation where they are saying in some clauses some things and in other clauses other things. So we have a situation where the pre-occupational pension payment in existence in September 1996 becomes an entitlement in October and yet we are also being told that this is being backdated to January 1994, and we are being told that anybody who is entitled to this payment is entitled to everything under the rules of the Ordinance. Frankly we have gone through this on a number of occasions and we are not sure we can see where it leads us at the end of the labyrinth. I can see what is being attempted and I can see the mechanism, that somebody has come up with saying, "Well, let us do this", but the fact that they have got one cut-off date for one thing and another one for the other one, what happens to the people who get

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

HON H CORBY:

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

Question put. The House voted:

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

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

The Bill was read a second time.

HON CHIEF MINISTER:

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

MR SPEAKER:

The House will now recess until 3.30 pm tomorrow.

The House recessed at 11.45 am.

WEDNESDAY 25TH SEPTEMBER 1996

The House resumed at 3.30 pm.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

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

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

Clause 1

HON J J BOSSANO:

Mr Chairman, I want to raise two points in relation to clause 1 of the Bill. The first is of course that as we indicated in the Second Reading, we do not see the necessity for the introduction of this Bill and having put our arguments and indeed having indicated to the Government how we thought there were unnecessary risks in so doing. I would now like to draw the attention of the House to the fact that this is a Social Security Bill to create an Ordinance which has a commencement date in 1996 and which is covered by the provisions of Community law which clearly place obligations on member States as to what they may do in respect of any newly created Social Security States Scheme which this is. When the legislation was brought to the House in December 1993, the view was put by the Government then in Opposition, that it would have been preferable, in their view, to bring legislation to the House to dissolve the Social Insurance Fund as opposed to bringing legislation to the House to create enabling powers to do so by regulation. The main reason given then was that this would have enabled a vote to be taken here proceeding with the dissolution of a fund which was unanimous. In fact the legislation that was brought to the House, which was Ordinance No. 20 of 1993, created a new Section 53 in the Ordinance as a result of which a number of amendments were subsequently introduced by regulation to the principal Ordinance which still stands today with those amendments in place. The amendments deleted part of sections and removed other sections in their entirety. Consequential on the need to remove an obligation in law to make payments from a fund that no longer existed. The reason for so doing was in fact specified in the Ordinance that created the enabling power and therefore, it seems to me appropriate to put on record something which the Government Members may not be entirely familiar with, but the Ordinance makes quite clear that the reason for creating those enabling powers and the reason for the dissolution of the fund and the creation of a temporary interim payment system was for the making of transitional arrangements in advance of the coming into operation of occupational pension arrangements in respect of employment in Gibraltar. Because at the time the United Kingdom Government were insisting on the opposite of what they are insisting today, which is that the successor arrangements should not be covered by Regulation 1408/71 and that there had to be occupational pension arrangements so that there was no question of Community directives applicable to State Social Security Schemes having to apply to those successor arrangements. Clearly the rationale for doing that has disappeared with the restoration of the SIF for all intents and purposes and we honestly believe that the regulations that were brought under the powers of this Ordinance would have given the Government a more effective and less risky way of restoring the fund, and indeed as we will point out in specific areas of the Bill as we come to look at it clause by clause, which is what we are doing now, we will point out why we can see that there are difficulties by bringing a Bill which would not otherwise exist.

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

HON CHIEF MINISTER:

Mr Chairman, during the debate on the Second Reading of this Bill I made a factual statement on the accuracy of which I was challenged by the Leader of the Opposition. I said that the provisions of the Social Security Insurance Ordinance had been repealed insofar as they related to the subject matter of this Bill, namely, old age pension, widow/widower's pensions and guardian's allowance. The Leader of the Opposition on three occasions, during his contribution on the Second Reading, asserted that I was wrong and asserted that the Bill had not been so repealed and that the fact that I was not aware that the Bill had not been repealed caused him at least to question the extent of the thoroughness of the Government's investigations and research into this matter. Because it is always better to be safe than sorry, I decided to recess the House, to look into and to double check the correctness or otherwise of the assertions made by the Leader of the Opposition. Not only was it the advice that I received departmentally but indeed the provisions of the Social Security Insurance Ordinance (Amendment) Regulations 1993, had the effect, and I am advised from within the Accountant General's Department, who are responsible for the payment of pensions, that the repeal remains extant. Indeed their version of the laws of the Ordinance is, which I have here, clearly marked to the effect as is provided by these regulations of the 30th December 1993, introduced by the Government then led by the Leader of the Opposition, repealed. Sections 13, 14, 14(a), 15, 16, 16(a), 17, 19, 20 and 24 of the Ordinance are repealed. Those are all the sections making provision in the then Social Security Insurance Ordinance for the payment of pensions and the other benefits with which this new Bill is concerned. The old Ordinance was left intact only in relation to maternity grant and death grant which are not benefits with which we are concerned in this Bill. It is therefore, the opinion of the Government, incorrect to assert that it is not necessary to bring legislation, that is to say, there is no provision in a presently valid law of Gibraltar which would authorise the Government to commence the payment of old age pensions. It is true, that if we wanted to, which we do not, we could have introduced the legislation by subsidiary legislation, that is to say, by regulations in the Gazette as opposed to by principal legislation in this House. But it is not true that the Ordinance had not been repealed in its relevant parts and it is not true that the statutory framework existed already providing for the payment of pensions etc, etc. The Government are furthermore satisfied that whatever the risks might be of implementing the agreement entered into by the Opposition Members with the British Government when they were in Government and the agreement was to establish a closed scheme, that is what they agreed with the British Government, that is what this Bill does, establish a closed scheme. Whatever risks might exist and we do not believe that they are substantial but whatever they might be of falling foul of European Union provisions as a result of establishing the scheme as they agreed, exists equally whether the scheme is established by principal legislation or by subsidiary legislation, because the European Union law does not say, a scheme is new if it is established by an Ordinance in the House of Assembly but is not new if it is established by regulations in the Gazette. What the European Union law says is, "If you establish a new scheme you have got to comply with certain things, but the scheme is new", whether we do it by regulation or whether we do it by principal Ordinance and it is new because it does not exist as we speak. As we speak now in Gibraltar there is no pension scheme in existence because the fund from which they were paid has been dissolved and the Ordinance, the sections in the Ordinance pursuant to which it was paid had been repealed, and therefore as a matter of trite law, there is no such law in operation. Insofar as the second point that the Leader of the Opposition has made, he is of course quite right, for the purposes of introducing the commencement date of legislation, we believe that "Governor" means "Government", on the advice of the Government. I do not know whether he changed that because he had any experience of a Bill that this House had legislated which any past Governor during his term of office refused to commence. Obviously that has not happened to us yet, we do not expect it to happen to us, and therefore I am not prepared to assume against this Governor that he would "abuse" a power which is clearly intended for him to exercise on the advice of the Government, however should that situation occur, the hon Member can be absolutely sure that we would have recourse to the same device to which he apparently had recourse during the last parliament.

HON J J BOSSANO:

We are in Committee Stage, Mr Chairman.

MR CHAIRMAN:

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

HON J J BOSSANO:

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

MR CHAIRMAN:

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

HON J J BOSSANO:

But not in the House of Assembly.

MR CHAIRMAN:

Well, in the Legislative Council which was better.

HON J J BOSSANO:

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

MR CHAIRMAN:

Provided you propose an amendment.

HON J J BOSSANO:

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

MR CHAIRMAN:

It would not be the rule of the House.

HON J J BOSSANO:

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

MR CHAIRMAN:

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

HON J J BOSSANO:

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

MR CHAIRMAN:

That is what the rule says.

HON J J BOSSANO:

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

MR CHAIRMAN:

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

MR CHAIRMAN:

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

HON J J BOSSANO:

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

MR CHAIRMAN:

Delete the fullstop after the order.

HON J J BOSSANO:

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

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

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

HON CHIEF MINISTER:

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

MR CHAIRMAN:

You are now infringing the Standing Rules.

HON J J BOSSANO:

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

MR CHAIRMAN:

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

HON J J BOSSANO:

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

Question put on Clauses 1 and 2.

For the Ayes:	The Hon K Azopardi
	The Hon Lt-Col E M Britto
	The Hon P R Caruana
	The Hon H Corby
	The Hon J J Holliday
	The Hon Dr B A Linares
	The Hon P C Montegriffo
	The Hon J J Netto
	The Hon Miss K Dawson
Abstained:	The Hon J L Baldachino
	The Hon J Bossano
	The Hon J J Gabay
	The Hon A Isola
	The Hon Miss M I Montegriffo
	The Hon R Mor
	The Hon J C Perez
Absent:	The Hon E G Montado

Clauses 1 and 2 stood part of the Bill.

Clause 3

HON H CORBY:

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

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

HON J J BOSSANO:

Mr Chairman, the fund that it is intended to establish, which is the Closed Long-Term Benefits Fund says that it is for the purpose of paying benefits to persons who were insured under the 1955 Ordinance and whose entitlement to benefit under that Ordinance derives from contributions paid under the 1955 Ordinance. The 1955 Ordinance therefore, presumably, is the one we have to go to to see who can benefit from this fund. In section 3(1) of the 1955 Ordinance, when it was originally introduced, it stated that subject to the provisions of the Ordinance, every person who after the 3rd October 1955 was under pensionable age and employed in insurable employment, should become insured under this Ordinance and thereafter continue throughout his life to be so insured. In 1974, by Ordinance No. 30 of 1974, an amendment was brought in which said that every person who on or after the 6th January 1975 was under pensionable age and either self-employed or in insurable employment under the Employment Injuries Ordinance should be insured under the Ordinance and continue therefore throughout his life to be so insured. The provision that was brought in meant that at one stage there had been a £500 limit on income and people were debarred and, subsequently social insurance contributions were made compulsory for everybody, irrespective of income and there was, as a result of representations to the Government on more than one occasion, an opportunity given to people to come in into the scheme. Therefore what I want to raise is, when we are talking about who is eligible to claim benefit from the Closed Long-Term Benefits Fund, we cannot tell from this Ordinance who is eligible without going back to the 1955 Ordinance. I want therefore clarification as to what the definition in section 3(1) of the principal Ordinance which refers to the 6th January 1975, has as to the criteria for eligibility. I also want to ask whether it is intended, by regulation, to make provision for allowing the people who were left out originally to be able to make up deficiency in their contribution record and benefit from the new payments. And I want to raise the question of the fact that in this particular clause it talks about the entitlement to benefit under the Ordinance being derived from contributions paid under the 1955 Ordinance and what concerns me is that this might somehow unintentionally create an obstacle in respect of the contributions that have been credited and not paid under the 1955 Ordinance which, in particular, was something that was brought in in 1988 in respect, especially, of the persons who were aged 60 and unemployed who previously had to make voluntary contributions between the ages of 60 and 65 and where arrangements were made for those people, if they were not in employment between the ages of 60 and 65, to be able to get credits for that particular five year period so that they would not finish up having to pay from perhaps an occupational pension, a voluntary contribution to the Social Insurance Scheme from a low income and would not, on the other hand, by not being able to make that payment, find themselves with a lower contribution record.

HON CHIEF MINISTER:

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

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

HON J J BOSSANO:

Mr Chairman, I am afraid the Chief Minister has not addressed the first of my questions as to eligibility. It is not a question of specifying anything as to which Ordinance we are talking about because, in fact, in clause 2, which is the one that provides the interpretation, it clearly states "the 1955 Ordinance" means the Social Security (Insurance) Ordinance 1955, so there is no need to spell it out anywhere, it has already been spelt out in the clause that has just been voted by their votes. All I am asking is, the definition in clause 3 is that the provisions of this Ordinance applies to persons who were insured under the 1955 Ordinance and, of course, the persons who were insured under the 1955 Ordinance logically, does not mean the persons who were insured when it started in 1955 but the persons who were insured right up to now but the fact that it says where, is symptomatic of the mistaken view that the Ordinance no longer exists. The Ordinance still exists and it exists, as amended, by the regulation that we have been told today is going to be repealed tomorrow. Of course, if what we have is that there will be a notice in the Gazette tomorrow, which is what we were told just now, repealing - I believe that is what the Chief Minister said - that tomorrow in the Gazette there will be a notice repealing the 1993 Regulations that amended the 1955 Ordinance.

HON CHIEF MINISTER:

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

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

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

MR CHAIRMAN:

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

HON J J BOSSANO:

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

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

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

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

HON CHIEF MINISTER:

Mr Chairman, I think it is instructional to review the history of this Bill. The Leader of the Opposition refers to its introduction in 1955 and then in 1972 by amendment to the 1955 Ordinance as if to say, "it was put there by people other than me and all I did was remove it". Well, it is true that it was put there in 1972 into the 1955 Bill. It is also true that when the Opposition Members in November 1988 introduced into this House an Ordinance to amend the Social Security (Insurance) Ordinance by virtue of the Social Security (Insurance) (Amendment) Ordinance 1988 which was legislated in this House and became law in November 1988, that is to say, seven or eight months into their first term of office, this provision was left there by them. Not only was it left there but having repealed the section in which it was previously to be found, they went to the trouble of including it in a new section then being introduced by them into the Ordinance. And it was not until December 1993, having lived with this terrible clause for six years, without any apparent disability of holding the British Government politically answerable for the cost of Spanish pensions because our argument that the British Government are responsible for the Spanish pensions is a political argument, not a legalistic argument, it is political because it is a mess that they got us into which they could have saved us from. But the fact that this was there for six years which he having put it back into the Ordinance did not prejudice him in his discussions with the British Government and it was only on the 30th December 1993 that this argument came to him, it is an argument, it came to him and he decided that he would repeal it but he did not repeal it, Mr Chairman, as a conscience act in order to deal specifically with this point, he dealt with it, he repealed it by necessary effect in a series of repeals which all went to the question of the repeals of the sections that I referred to earlier. So, Mr Chairman, the Government do not accept that legalistically the inclusion or exclusion necessary or not of this subclause in this Bill has the effect, certainly not directly and I do not think the hon Member argues that it has the direct effect of making pensions a charge on the Consolidated Fund, I think what he is arguing is that it is in argumentative terms a qualitative concession, that is to say, he says that we have recognised in this Bill by referring to section 5 in the context of pensions and saying that notwithstanding that somebody could say, "You see, you accept that pensions are a matter of Gibraltar obligation under section 5" and that would let in the Consolidated Fund. If his arguments were correct then that would be true mechanically but I do not concede that the reference to those lions with which he was able to live comfortably for six years has the effect of weakening Gibraltar's arguments or altering the position of Gibraltar legalistically and to the extent that arguments are political, they will be advanced as he has done, successfully in terms of persuading the British Government to pay for the Spanish pensions, whether or not this is a legalistic obligation on the part of Gibraltar. But whilst we are on the subject of legalistic obligations on the part of Gibraltar, the Leader of the

Opposition referred to the reasoned opinion of the European Court. He got his copy of it confidentially and therefore did not want to use it. As far as I am concerned, this document is on the Government file, it has been made available to me by the Administrative Secretary and he has not told me that I cannot use it. So here it is, this is not a translation, this is in its genuine and pristine and original form, I am reading, for the record, from paragraph 5.2, paragraph 5 is generally entitled "The responsibility of the United Kingdom", paragraph 5.2 reads, "However, the United Kingdom is the Member State responsible for Gibraltar under Article 227/4 of the European Community. As a result of its status as a dominion of the British Crown and thus is responsible for all matters relating to the free movement of workers and the co-ordination of social security relating to Gibraltar." Paragraph 5.3 says, "In this context the Commission would recall that the Court of Justice has consistently maintained that each Member State is responsible with regard to Article 169 of the European Community, whatever the agency of the State whose action or inaction is the cause of the failure to fulfil its obligations even in the case of a constitutionally independent institution." Paragraph 5.4 reads, "In this respect the Commission would observe that the division of powers between the United Kingdom and the Gibraltar authorities is an internal institutional problem, a situation under the British legal system which cannot be used to justify the non-observance of Community law". In other words, that as far as the European Community is concerned there is only one Member State and it is the United Kingdom. And if any part of the Member State/United Kingdom which includes Gibraltar is not in compliance with its European Community obligations, the Commission looks only to the Member State which is the Government of the United Kingdom. The Government of the United Kingdom may wish to peep across Europe and say, "Hey, Gibraltar why haven't you complied with your obligations because I am being harassed from Brussels as the Member State responsible?" That is what the Commission is saying. This is an internal matter. What the Commission is saying here is that all of Gibraltar's Community obligations are as far as the European Community is concerned, the responsibility of the British Government and the European Commission does not look to the Gibraltar Government for compliance and does not sue the Gibraltar Government in infraction proceedings if we have not complied, it looks to the United Kingdom Government. I think the logical effect of what the Opposition Member said when he referred in the loose Spanish translation to this provision is that the Community has said that pensions is a United Kingdom responsibility and as it is a United Kingdom responsibility let us not do anything that suggests that it is our responsibility. This is not just about pensions, this is about everything and I am sure the Opposition Member is not recommending to this House that I should say to the British Government, in respect of everything remotely connected with the European Union, I recognise that it is your business and not mine and therefore you are responsible. Because that is what the hon Member has, with our support, been cogently arguing against for the last four or five years and therefore I do not accept that for reason of these views expressed in this reasoned opinion, it is politically prudent for Gibraltar to assert in connection with pensions that pensions are a United Kingdom legalistic responsibility. We have already said that whatever the legalistic responsibility it is certainly their political responsibility for having allowed it in the first place but certainly this Government are not going to argue that on the basis of what the Commission have said, Spanish pensions liability are the legalistic responsibility in a domestic context of the British Government. Therefore I disagree with the general tenor of the hon Member's point. But if I am wrong and he is right, I do not agree that the effect of having this here is to expose the Consolidated Fund any more than it is already constitutionally exposed to the payment of pensions in the sense that he is fearing.

HON J J BOSSANO:

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

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

HON CHIEF MINISTER:

Mr Chairman, I agree with the Leader of the Opposition in everything that he has said except to the point of stating that this makes it a Community obligation. If it is in law a Community obligation of Gibraltar, section 5 of the European Communities Ordinance applies to make it a charge on the Consolidated Fund. If it is not, and I support his argument in support of the contention that it is not, this does not make it a charge on the Consolidated Fund and therefore this does not make a charge on the Consolidated Fund anything which presently is not. That is what I am saying to the hon Member and to make this point I only need to disagree with the last paragraph of everything that he has just said.

MR CHAIRMAN:

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

HON J J BOSSANO:

Yes, Mr Chairman, I am happy with that.

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

For the Ayes:	The Hon K Azopardi
	The Hon Lt-Col E M Britto
	The Hon P R Caruana
	The Hon H Corby
	The Hon J J Holliday
	The Hon Dr B A Linares
	The Hon P C Montegriffo
	The Hon J J Netto
	The Hon Miss K Dawson
Abstained:	The Hon J L Baldachino
	The Hon J Bossano
	The Hon J J Gabay
	The Hon A Isola
	The Hon Miss M I Montegriffo
	The Hon R Mor
	The Hon J C Perez
Absent:	The Hon E G Montado

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

MR CHAIRMAN:

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

Clause 4

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

Question put.

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

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

Absent: The Hon E G Montado

Clause 4 stood part of the Bill.

Clause 5

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

The answer to that is yes.

HON J J BOSSANO:

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

HON CHIEF MINISTER:

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

Question put.

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

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

Absent: The Hon E G Montado

Clause 5 stood part of the Bill.

Clause 6

HON J J BOSSANO:

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

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

HON CHIEF MINISTER:

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

HON J J BOSSANO:

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

HON CHIEF MINISTER:

No, how much is to be calculated under this Ordinance, that is the rest of it. There are many provisions in this Ordinance and regulations made under it to work out how much. This section identifies people and it identifies people by reference to those who were receiving and the reason, I am sure the Leader of the Opposition knows why it says 30th September 1996 is because that is the last day that the transitional rules are going to be in place. If one was receiving a payment under the transitional rules because one had become a pensioner by the 30th September 1996, then one will continue to receive a pension. In what amount under this Ordinance? In the amounts established by the benefits entitlement calculation provisions established by this Ordinance and they will be the ones that the Leader of the Opposition is already familiar with, the weekly averages, etc. So that regime has not changed. I understand the point that he is making but I do not think the words have the effect that he has attributed.

HON J J BOSSANO:

What do the words "at the same rate" mean? If one says somebody is going to be paid at the same rate, how does that identify the person and not the amount? This is what the House is voting on, that they will be paid at the same rate which it was payable on that date and that date can only mean the date in the preceding sentence which is the 30th

September 1996. To me, I think what this says is that if somebody was getting £x in September the transitional provisions guarantees that he will get the same amount in October. I am pointing out to the Chief Minister.....

HON CHIEF MINISTER:

And he will. He will get part of it under this Bill and the other part of it under the Pre-occupational Pension Fund Regulations insofar as they remain relevant to him.

HON J J BOSSANO:

But it says, "he shall be entitled to a payment of the same description, at the same rate under this Ordinance ".

HON CHIEF MINISTER:

There is no point in the hon Member repeating. I hear what he says, that is not the effect of this as far as the draftsman is concerned but, of course, if anybody mounts a challenge on the basis of the argument that the Leader of the Opposition is saying we will have to deal with it. But I am advised that this definition is actually one of the essential clauses of this Bill has been carefully studied by our people and by Mrs Asprey and I am assured that every word in this is essential to include in this scheme everybody who needs to be included in the scheme.

HON J J BOSSANO:

I have no doubt that lots of people have studied it. All I am pointing out to the Chief Minister is that the letter of the law, which is what will create the right, does not appear to confirm the intention that he is saying and, of course, this is one area where having used the opportunity that he had to go through the regulations, this conflict would have been avoided because I need to point out to him that, in fact, the Pre-Occupational Pensions Payments Regulations are not going to be repealed. So it seems to me, what happens in October? Do people in October cease to get payments of pre-occupational payments and get this instead?

HON CHIEF MINISTER:

In respect of their entitlements arising from their contributions up to and including the 30th September 1993 absolutely so, yes. They will continue to collect under the Pre-occupational Pensions Funds Regulations; they will stop collecting under the Transitional Interim Payment Fund Regulations in respect of their pre-December 1993 contributions and when we have the new open scheme in place, they will also cease to collect in respect of post-1993 contributions under the Pre-occupational Pensions Payments Fund Regulations.

Question put.

For the Ayes:	The Hon K Azopardi
	The Hon Lt-Col E M Britto
	The Hon P R Caruana
	The Hon H Corby
	The Hon J J Holliday
	The Hon Dr B A Linares
	The Hon P C Montegriffo
	The Hon J J Netto
	The Hon Miss K Dawson
Abstained:	The Hon J L Baldachino
	The Hon J Bossano
	The Hon J J Gabay
	The Hon A Isola
	The Hon Miss M I Montegriffo
	The Hon R Mor
	The Hon J C Perez
Absent:	The Hon E G Montado

Clause 6 stood part of the Bill.

The House recessed at 5.10 pm.

The House resumed at 5.30 pm.

Clause 7

HON J J BOSSANO:

Can I make the point again. We have, Mr Chairman, the fact that in some areas of the Ordinance it talks about contributions paid or credited under the 1955 Ordinance. Here again we have got a reference to the transitional provision and the extension of the time limit and there there is no reference to a claim for the payment under this Ordinance being on the basis of contributions credited, it is limited to contributions paid. It is a point that we have made before and we are making it again. In some areas the reference to the benefits covers both contingencies, in others it does not. Here is one case where it says the transitional provision which, by and large, I would imagine apply to the former Spanish pensioners who are the only ones likely not to have claimed. But, of course, because we are opening it up to every previous insured person under the 1955 Ordinance it does mean that if anybody missed the boat before, if they become aware of this they will have an opportunity. There have been, not many, the odd case where a person has made the claim after the six months, maybe overrunning by one or two months and has lost one or two months, presumably this provision will allow people in that category to be able to claim the benefit all the way back to July 1993. But it does say that it is a claim for benefit of payment under this Ordinance on the basis of contributions paid under the 1955 Ordinance. Frankly we are not clear why it appears to restrict it to contributions paid in some sections and yet in other sections of the Ordinance there is a reference to both.

HON CHIEF MINISTER:

There is no point in my getting up every time the point is made. The Government intend to pass the Bill on the basis that it was drafted and we will certainly refer the matter and if it should need amendment it will, of course, be amended if the Leader of the Opposition turns out to be correct. But this Bill, as I said before, has been carefully studied and drafted by technicians. But if the hon Member turns out to be right the necessary amendments will be introduced in due course.

HON A ISOLA:

Mr Chairman, there is only one thing the technicians might like to consider and that is that the heading "claiming" seems to be misspelled, perhaps that could be corrected.

HON CHIEF MINISTER:

I am glad to see that even the Opposition Member is a technician.

Question put.

For the Ayes:	The Hon K Azopardi
	The Hon Lt-Col E M Britto
	The Hon P R Caruana
	The Hon H Corby
	The Hon J J Holliday
	The Hon Dr B A Linares
	The Hon P C Montegriffo
	The Hon J J Netto
	The Hon Miss K Dawson
Abstained:	The Hon J L Baldachino
	The Hon J Bossano
	The Hon J J Gabay
	The Hon A Isola
	The Hon Miss M I Montegriffo
	The Hon R Mor
	The Hon J C Perez
Absent:	The Hon E G Montado

Clause 7 stood part of the Bill.

Clauses 8 to 21

Question put.

For the Ayes:	The Hon K Azopardi
	The Hon Lt-Col E M Britto
	The Hon P R Caruana
	The Hon H Corby
	The Hon J J Holliday
	The Hon Dr B A Linares
	The Hon P C Montegriffo
	The Hon J J Netto
	The Hon Miss K Dawson
Abstained:	The Hon J L Baldachino
	The Hon J Bossano
	The Hon J J Gabay
	The Hon A Isola
	The Hon Miss M I Montegriffo
	The Hon R Mor
	The Hon J C Perez
Absent:	The Hon E G Montado

Clauses 8 to 21 stood part of the Bill.

Clause 22

HON J J BOSSANO:

Mr Chairman, in clause 22 we have got a provision that says, "Every assignment of, or charge on, benefit and every agreement to assign or charge benefit shall be void". Are the Government aware that there was a decision taken by the United Kingdom, given the fact that it was intended to make lump sum distributions, that for a period of time they were paying these lump sums to the estate and what is the effect of this section on claims related to persons where we have got a situation where in some cases lump sum payments have been made to the estate?

HON CHIEF MINISTER:

Yes, Mr Chairman, the view is that benefits of a deceased pensioner to which an estate becomes entitled is not the subject matter of an assignment, there is no change in legal title. The point is that the estate becomes. by operation of law, entitled and stands in the shoes of the deceased, there is no assignment. There is a point that arises in section 22 but the Leader of the Opposition has not made it and that is that, of course, this section as it stands, and we are not proposing an amendment at this stage, would be an obstacle to the reimbursement even with the consent of the pensioners to the Junta de Andalucia of any moneys that they may have advanced. The Opposition Members are probably aware that there is a suggestion that moneys should be paid to the Junta instead of to the pensioners themselves. We have said that under the law of Gibraltar the person entitled to come and collect the pension is the pensioner and it would only be if the pensioner were to so direct that any part of his lump sum could be made over on his behalf and in his name to the Junta. Even if that happened, it would require an amendment, in other words, even if the pensioner requested us to pay his lump sum or some part of his lump sum to the Junta, it would require an amendment to this section because this section would make any such charge or assignment of the lump sum by the Spanish pensioner to the Junta void and the Government are not going to pay any lump sum to the Junta unless we are getting a proper discharge in respect of that lump sum from the pensioner. So if there is any administrative arrangement in that respect, it would require an amendment to this section but it is not required for the purposes of the case that the hon Member has raised.

HON J J BOSSANO:

Mr Chairman, as the Chief Minister has said this is not the point that I am making and it is not the point that he was answering either. The point that I am making is that, in fact, payments have been made not in respect of retrospective lump sums due while the pensioner was alive but the value of the unexpired lump sum which the pensioner would have got had he lived. There were payments being made which were payments which the United Kingdom authorised and happened for a period before we discovered that they were happening and when we discovered it we pointed it out to the United Kingdom that this was something that they were doing which was creating discriminatory treatment between Spanish

pensioners and Gibraltarian pensioners. *[Interruption]* Given the fact that that has happened I am asking what is the effect of this. We have had a situation already created in a number of cases where a pensioner has died and the United Kingdom decided that if the pensioner had not died he would have continued getting the pension for x period of years and that therefore the next of kin was able to claim the unexpired period of the future pension and got it paid. Presumably this does not allow that to happen anymore.

HON CHIEF MINISTER:

I do not think that that is the effect of this clause. In the circumstances that the Leader of the Opposition is describing, and the discrimination point aside, does not give rise to an assignment or a charge nor does it constitute an agreement by the pensioner to assign or charge his pension entitlement which is the only circumstances with which this section is concerned.

Question put.

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

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

Absent: The Hon E G Montado

Clause 22 stood part of the Bill.

Clauses 23 to 36

Question put.

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

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

Absent: The Hon E G Montado

Clauses 23 to 36 stood part of the Bill.

Clause 37

HON J J BOSSANO:

Mr Chairman, as we indicated in the general principles, this is the only clause we are voting in favour of.

Clause 37 was agreed to and stood part of the Bill.

Clause 38

HON J J BOSSANO:

In clause 38, in the general principles, we asked for an explanation, other than the fact that it is in the old Ordinance, for this clause being here given the fact that we have been told throughout that the purpose of this is to give effect to the bilateral agreement with the United Kingdom and the nature of that bilateral agreement with the United Kingdom is that the United Kingdom would fund 100 per cent of the cost of the benefits to the pre-1969 pensioners at the rate at which such benefits existed in December 1993, that is the nature of the agreement. Therefore if we are introducing in the new closed scheme the possibility of not being closed because the Minister may by order increase the sum in section 16 which is the addition for the spouse subject to an earnings limit of £23.90 and the sums in Schedule 1, which are the rates of benefits, then we still cannot understand, given that there has been no response to that point, why it is we are introducing in an Ordinance that gives effect to an agreement that says that this may not happen, the enabling power to do what may not be done.

HON CHIEF MINISTER:

The fact that the agreement relates only to pensions that are frozen rate, does not mean that it cannot be increased. This provision is here to enable the Government, if we decided to do so, to increase the level of pensions. Of course, Opposition Members understand that since the Government of Gibraltar will not pay Spanish pensions either at the present rate or in respect of any increased rates, any agreement to increase pensions under this could only be following an agreement from the United Kingdom to pay, for example, any increased rates to Spaniards. So it is true that the pensions agreement does not require this but there is much here that the pensions agreement does not require, this is a permissive power. In other words, it allows the Government, if they wished to, to raise the rates of these pensions but hon Members will know that it cannot be done without the approval of this House in a resolution. So if we are ever proposing to do that the Opposition Members would have an opportunity to contribute to the debate as to whether it was right or wrong to do so. But, yes, the Leader of the Opposition is entirely right, the pensions agreement with the United Kingdom does not require this, does not require many things, the pensions agreement does not require that there should be an appeals procedure and does not require that there should be penalties and does not require that there should be a review and does not require that there should be an appeals board or fees or that there should be provisions for overlapping benefits; there are many things in this Bill that the pensions agreement with the United Kingdom does not require. That does not mean that it cannot be in the Bill.

HON J J BOSSANO:

Given the fact that the Chief Minister, when he introduced the Bill, spent a lot of time telling us that all that this Bill was doing was giving effect to the agreement with the United Kingdom and nothing else, if there are lots of things that are discretionary then, frankly, the whole trend of the discussion of this Bill both in Committee Stage and in the general principles have been totally misguided because there are things that we can do or things that we need not do then. They are there not because it is a requirement of any agreement that was done with the United Kingdom to restore the benefits under the old Ordinance. In fact, most if not all of what is here, is what was there in the 1955 Ordinance up to December 1993 except that even in December 1993 the condition on not raising benefits was already there. It seems to me that by putting that clause there what we are saying in this House is that there is a possibility that these rates will be increased or could be increased if the Minister so decides and the House approves it and that possibility, as the Chief Minister has said, can only come about by two ways; either by the United Kingdom agreeing to pay or the Government of Gibraltar agreeing to pay, both of which seems to me to be highly unlikely sets of circumstances.

HON CHIEF MINISTER:

I may be as successful as the Leader of the Opposition in negotiating with the United Kingdom.

Question put.

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

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

Absent: The Hon E G Montado

Clause 38 stood part of the Bill.

Clause 39

Question put.

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

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

Absent: The Hon E G Montado

Clause 39 stood part of the Bill.

Clause 40

HON J J BOSSANO:

Mr Chairman, the way that this is being done is, in fact, to say, "The Transitional Interim Payment Fund Regulations cease to have effect" and the Establishment Notices cease to have effect and therefore once this Bill is passed and approved and becomes law, the fund which was established in 1993 no longer exists and we have got a provision that the balance of the money in that fund is to be credited to the newly created..... *[Interruption]* No, it says, "there shall be credited", it is mandatory under the provisions of clause 3(2). In the (Amendment) Regulations 1993 in the Social Insurance Ordinance which are not being amended or repealed, we were told, there is a provision saying that the money is to be paid into the fund that will cease to exist. Is it not necessary to go back and amend that regulation which we were told earlier it was not the intention to amend?

HON CHIEF MINISTER:

I am not sure that I have understood the hon Member's point. These two regulations, that are revoked, are the ones that establish the Transitional Interim Fund and the one that regulates it. Those funds will be obsolete once this Ordinance is passed and the moneys are transferred because there will be no further transitional interim payments. Legal Notice No. 191 of 1993 which are the regulations called the Social Security (Insurance) (Amendment) Ordinance 1993 which are the ones that I said were not going to be repealed. Certainly Part II deals with the Transitional Interim Payment Fund but they will be redundant whether as a matter of legislative practice it is necessary to formally revoke them or whether they simply fall away by virtue of being redundant. This is a technical point which I suspect the Attorney-General will, when she gets round to it, advise, but they are empty of all meaning and effect.

HON J J BOSSANO:

The point that I am making is to draw the attention of the Government to the fact that we have got a clause here which says, "The arrears will now be paid to the new fund instead of the Transitional Interim Payment Fund which shall cease to exist" and we have got in the existing law, unrepealed, a requirement that the arrears will be paid to the Transitional Interim Payment Fund. I would have thought if we are now placing a law on the statute book that says, "The arrears shall be paid to the Closed Long-Term Benefits Fund" then we need and we ought to, repeal the provision in the law that says that they should be paid to the Transitional Interim Payment Fund. It is something that may have been overlooked and I am drawing it to the attention of the Government.

HON CHIEF MINISTER:

And we will look into it, given that this is primary legislation. Of course, if there were a conflict which I cannot consider on my feet in the middle of a debate, but if there were a conflict between the provisions of this subsidiary legislation and this primary legislation which we are now considering, then needless to say, the provisions of the primary legislation will take precedence and therefore there is no question of there being any unresoluble conflict between the two because if there is a conflict between the two it is this Bill when it becomes primary legislation that will supersede the regulations.

HON J J BOSSANO:

The amendment made by the regulations, Mr Chairman, actually incorporated that provision in the 1955 Ordinance which still continues to exist.

HON CHIEF MINISTER:

Yes, but it was put there by subsidiary legislation and therefore if we now by primary legislation do anything which is in conflict to what has previously been done by subsidiary legislation this, in my opinion, takes precedence but it is a very technical point. I am obliged to the hon Member for pointing it out. No doubt the Attorney-General and her law draftsman will want to consider the point and if they think it necessary to tidy up these regulations in this way then I am sure that she will give me the necessary brief or advice.

Question put.

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

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

Absent: The Hon E G Montado

Clause 40 stood part of the Bill.

Clause 3(3)

Question put.

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

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

Absent: The Hon E G Montado

Clause 3(3) stood part of the Bill.

Schedules 1 to 3 and the Long Title

Question put.

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

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

Absent: The Hon E G Montado

Schedules 1 to 3 and the Long Title stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Social Security (Closed Long-Term Benefits and Scheme) Bill 1996, has been considered in Committee and agreed to, with amendments, and I now move that it be read a third time and passed.

Question put.

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

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

Absent: The Hon E G Montado

The Bill, as amended, was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Monday 14th October 1996 at 2.30 pm.

Question proposed.

MR SPEAKER:

I have received a notice from the Leader of the Opposition that he wanted to raise two matters on the adjournment. One is in relation to the Police and the other in relation to the meeting in London on the 27th of this month. I do not consider the Police matter as urgent and of public interest so I will not allow the matter to be raised. On the second one, I consider the matter has public interest.

HON J J BOSSANO:

Am I to understand, Mr Speaker, that the other matter I will be able to raise on the final adjournment or not at all?

MR SPEAKER:

Not unless you put a motion with proper notice and everything.

HON J J BOSSANO:

I see. Mr Speaker, the forthcoming meeting in London is one around which there has been a certain amount of controversy. We have taken the view that before we proclaim our opposition or support of this meeting, we should give the Government an opportunity to clarify precisely what is taking place in London in the light of the conflicting statements that have been made. I would draw the attention of the House to the fact that when this was originally announced in 1994 following a meeting between Douglas Hurd and Senor Solana, in the course of an interview with GBC on 20th December the Foreign Secretary made clear that the proposed mechanism would not be going ahead unless the Government of Gibraltar chose to participate and that they were free to do so or not. He then used, for the first time, in expanding when asked by GBC about the tripartite nature of those discussions in that forum which were to improve co-operation to combat drug trafficking in the area around Gibraltar, he then described them as what is sometimes called 'two flags three voices'. The GSLP Government at the time when invited to participate given that in the joint statement it said that early in the new year in 1995 the nature of the mechanism would be developed, took the view that we would await further communication from London as to what was in the mind of those that had discussed the creation of this mechanism and since nothing further materialised, we issued a press release at the time saying we were taking the initiative because this was a very important area where we wanted to participate to avoid any possible charge that there was any reluctance on the part of the Government to join in the international fight against drug trafficking. And we proposed, from Gibraltar, what should be the composition, that there should be three delegations, that it should be kept apolitical, that it should involve people who were technically involved in the fight against drugs from the United Kingdom, from Gibraltar and from Spain. When in fact the Spanish Government decided that their delegation would be headed by the Civil Governor of Cadiz we pointed out to the United Kingdom that we thought that it would be preferable that it should be customs officers, police officers and legal experts given the fact that we were looking at the legislation in the three jurisdictions and at the resources in the three jurisdictions. And it was on that basis that they started and it was on that basis that they continued and it was on that basis that the last meeting would have been held in Seville if it had not been for the fact that 48 hours before they were due to take place, the Civil Governor of Cadiz, chose to issue a press release in Cadiz saying that they were bilateral meetings with the presence of the representatives of the local authority in Gibraltar. Frankly, that was not what we had agreed to in January 1995 and it seemed to us that there was an attempt to bounce us into something different which had nothing to do with the efficacy of the mechanism in combating drugs but an attempt to score a political advantage in a situation which should not be the subject of manipulation of this kind. And the Gibraltar delegation went with a brief, which we recently made public, which clearly stressed our desire to continue with the co-operation in this field but the need to be sure that we were not being downgraded, a position that the United Kingdom fully supported because clearly the United Kingdom has argued that as a British dependent territory we may not be a sovereign state but we are a separate jurisdiction. If there is a need to amend any law in Gibraltar, it is not the United Kingdom Parliament that has to do it but this House, and therefore if we are looking at the respective laws to see if there are problems of co-operation created by the fact that the laws are different here, not just from those of Spain but also from those of the United Kingdom, even though they may be similar to the United Kingdom ones, then the logic of that is that the responsibility of the delegation can only be to go as far as the elected Government have provided them with the brief as to how far they may go. If all that was happening was that there was local representation from Gibraltar as part of the United

Kingdom delegation and local representation from the Campo as part of the Spanish delegation then obviously the major decisions on policy and on legislation and on co-operation would be taken by the two parties in a bilateral forum and the local authorities in the area would, at the end of the day, do what they were told to do by the Sovereign power. The statements that have been made in the last 24 hours which are very pertinent to this, suggest that the Spanish Government are not simply going back to the position which many of us initially thought was an initiative of the Civil Governor of Cadiz at the time but, in fact, to be claiming that what happened in the first two meetings was not what was agreed originally on the 20th December and that something different was agreed on the 20th December. We feel it is important that that mechanism should continue but we feel it is even more important than the support that there is in Gibraltar for the fight against drugs should not be taken advantage of by Spain to seek to obtain a lead in the position on other issues in relation to discussions over Gibraltar which run contrary to what all of us in Gibraltar are prepared to accept. Therefore before we go down the route of saying we do not support the participation of Gibraltar, we wish to give the Government an opportunity in the House on the record to reaffirm, if that is indeed the case, that the view that we took when regrettably, and we said that we regretted it, the meeting that was scheduled in 1995 never took place because the Spanish delegation would not agree to accepting the fact that the Gibraltar delegation was there in its own right, which we at the time made public and which was supported by the Government from the Opposition and other political parties, that that continues to be the Gibraltar position, that it had the backing of the United Kingdom Government then, that it continues to have the backing of the United Kingdom today and that if anybody is in the wrong in this one it is Spain and that much as the continuation of international co-operation against drug trafficking is a commitment which every responsible Government has to have, we should not allow our commitment in that direction to be taken advantage of by Spain to downgrade the position of the Gibraltarian contingent in that tripartite forum. I hope that in replying the Government will be able to reaffirm in unambiguous terms that that continues to be the position and that they will continue to pursue that line on which they will find that they have our support. Clearly if it is felt that the position of Gibraltar is one which ought to be sacrificed because it is more important that the talks should take place, then that is something we cannot support and we do not agree with.

HON CHIEF MINISTER:

The Government agree with everything that the Leader of the Opposition has said. The position of the Government on dialogue with Spain whether within or without the Brussels Agreement is that it has to be at the very least on the basis of two flags three voices. The Gibraltar Government have issued a press release asserting that these talks are on the basis of two flags three voices. The United Kingdom have assured us, as hosts, that they are on the basis of two flags three voices. I have asked for those assurances in writing. It is being confirmed to me orally that such assurance will be forthcoming. The Gibraltar delegation has left for London on this lunch time flight on the clear understanding which I have communicated to the Foreign Office through the Convent, that they will not participate in the talks unless before the talks begin I have received written assurances from the British Government that these talks are on the basis of two flags three voices which is what they have repeatedly said to me orally. The Spanish Government have not denied, following our assertion that they are two flags three voices, that they are on that basis. Should the Spanish Government deny that they are on that basis, the Gibraltar delegation will not join the talks and should they deny it during the talks the Gibraltar delegation will withdraw. What the Spanish Government have done this morning is that they have reissued the press release that they issued on the 20th December 1994 which, for the sake of the record, I will read out. It was the Ministerial Joint Statement and it reads, "The following is the text of the joint statement by Douglas Hurd, Secretary of State for Foreign and Commonwealth Affairs and Javier Solana, Foreign Minister of Spain, issued after their meeting in London today. The British Foreign Secretary, Douglas Hurd, and the Spanish Foreign Minister, Javier Solana, met in London on the 20th December 1994 under the terms of the Brussels Agreement of 1984. They reaffirm their commitment to the Brussels process. They agreed on the importance of Gibraltar developing a sustainable economy. They recognise that there was a problem of illegal trafficking in particular drugs in the Gibraltar area and agreed on the need to establish an effective mechanism which should include the competent local authorities to improve consultation and co-operation. On the basis of normal and regular movement between Gibraltar and the neighbouring territory and in a spirit of co-operation, they will review progress towards agreeing on such a mechanism in the new year." Madrid has this morning, according to information given to me by the British Embassy in Madrid, Madrid has reissued that joint communiqué. It is the

communiqué establishing the parameters under which the first Gibraltar delegation participated in the first round of talks at Seville. So what the Spaniards are saying is that the position is what it was in December 1994 just before Mr Bossano sent his delegation to Madrid. In addition, we have now had added a new condition and that is that not only should it be on the basis that the Government of Gibraltar first attended but that it should comply with our policy on all forms of dialogue with Spain, namely that they should be on the basis of two flags three voices in addition to this. We have asserted that they are, and the Spaniards have not sought to deny it, we have the assurances of the United Kingdom that as far as the United Kingdom is concerned, they are. We are expecting written confirmation of that assurance. If either that written confirmation is not forthcoming or Spain should before or during deny in terms that these talks are on the basis of two flags three voices which has been agreed to them before, then the talks would not meet the conditions of the Government for dialogue with Spain whether at Seville or otherwise and Gibraltar will not take part. That is the position of the Government of Gibraltar and the United Kingdom Government are intimately familiar with that decision.

Question put on the adjournment. Agreed to.

The adjournment of the House was taken at 6.05 pm on Wednesday 25th September 1996.

MONDAY 14TH OCTOBER 1996

The House resumed at 2.30 pm.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

IN ATTENDANCE:

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

MR SPEAKER:

I have an announcement to make. Before the last sitting I received notice from the Hon the Leader of the Opposition of his intention to raise two matters on the adjournment. It was not clear in his notice whether he was relying on Standing Order 24A or 24B. 24A deals with urgent matters of public interest. The nature of the two matters led me to believe that both were intended to be urgent; the London meeting and the civilianisation of police posts.

I ruled that the one concerning the London meeting was urgent but not the matter relating to the Police and I so ruled.

The Hon the Leader of the Opposition has written to me and we have had a talk. It is now clear to me that neither of the matters were urgent and that the intention was to speak on both of them at the conclusion of the meeting, that is, the final adjournment.

He has persuaded me for the time being that I have no say on whether to allow him to raise the matters as I would have under Standing Order 24A. He is sure he is right, I am not so sure. I will allow him to proceed without thereby creating a binding precedent.

DOCUMENTS LAID

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

Question put. Agreed to.

The Hon the Financial and Development Secretary laid on the table Amendment No. 1 of 1996 to the Integrated Tariffs notified by the Sixth Supplement to the Gibraltar Gazette published on 22 August 1996.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

HON K AZOPARDI:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the First and Second Readings of a Bill.

Question put. Agreed to.

THE IMPORTS AND EXPORTS (AMENDMENT) ORDINANCE 1996

HON K AZOPARDI:

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

Question put. Agreed to.

SECOND READING

HON K AZOPARDI:

I have the honour to move that the Bill be now read a second time. About a month prior to the general election the previous administration, by Legal Notice 54 of 1996, introduced the Imports and Exports (Control) (Amendment) Regulations 1996. There were several potential criticisms of that measure, the first that it required, in that form, to be placed in primary legislation before the House, given that it was controversial as to whether the so-called empowering sections under which it had been made did indeed give power for those amendments to be put by Regulation. The second, was that perhaps, those Regulations needed to include recourse via an appeal mechanism for a court to review decisions taken by the Collector of Customs under those Regulations. The effect of this Bill before the House now is to provide, firstly, for the crux of those Regulations to be put into place in primary legislation. It will revoke the Regulations, it will provide for an appeal mechanism and it will also achieve further purposes in the amendments that I seek to introduce and present, when we get to the Committee Stage of the Bill. I

mention, out of courtesy to the House, that I do indeed mean to put amendments to the Bill when we get to the Committee Stage. I think that hon Members should have been copied into the correspondence on the amendments which I placed before Mr Speaker, but certainly the purpose of the amendments and the effect of the same together with the introduction of this Bill will be to place it all in primary legislation and to streamline the effectiveness of the legislation to provide for compensation and to clarify the workings of this particular measure. The Bill, in short, will allow the Collector of Customs to continue in the assessment that he was empowered to make by virtue of the Regulations put in place by the previous administration. He will be allowed to continue to assess the situation and if satisfied that the vessel is, has been or is likely to have been used to import or export drugs, then the vessel can be forfeited, whether or not a person is charged. Similar provisions already exist whether or not a person is charged in relation to the importation of goods. This measure will attack the vehicle in which that importation or exportation is to take place. Our view is that the effect of this Bill is another measure which will strengthen our laws in our continuing campaign to combat drug trafficking and I commend the Bill to the House.

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

HON J J BOSSANO:

It is difficult for me to speak on the general principles and merits of the Bill in the knowledge that notwithstanding what the mover has said the amendments that he has given us notice, and I am grateful to him for circulating those amendments because in fact they are substantial amendments which go to the root of the Bill. Therefore, given that I want to go by the Standing Orders and that I do not want to say in the general principles what I should be saying in the Committee Stage or in the Committee Stage what I should be saying in the general principles, I thought I needed to preface my remarks by explaining the need that I have perhaps to make some reference to amendments that have not yet been moved. I do not see how I can deal with this in any other way.

MR SPEAKER:

Perfectly entitled.

HON J J BOSSANO:

Thank you, Mr Speaker. The Bill does not have an explanatory memorandum and therefore we do not know what the purpose of the Bill is other than the explanation that we have been given. Let me say that the Regulations that were brought in in April this year, according to the Minister, had given rise to criticism because there was no recourse to appeal and no mechanism for appeal from the decisions of the Collector. That is not true, that is to say, I am not aware that there were any criticisms, certainly not in public and it is certainly not true that there was no mechanism in the law already. There was a mechanism and it is still there, so if the reason for bringing the Bill is a misconception as to what the appeal mechanism is, then what the Bill is doing is certainly not in fact strengthening our laws as the Minister claims to be doing but if anything weakening our laws. I find it odd that the Government should have decided that they needed to give an owner of a vessel suspected of having been involved in carrying drugs three months to appeal and we would certainly not have supported those three months. In fact, we have been told a week ago that it is now going to be one month instead of three but I find it odd that they should have decided to do three in the first instance, given the fact that these are policy decisions and one would have expected an explanation on the general principles of the Bill why it was thought necessary, first of all to give people three months and why it is now thought necessary not to give them three months but to give them one. We believe that there is no need in fact to give them three months or to give them one month because there is already provision in Schedule 3 of the Imports and Exports Ordinance, as it stands at the moment, and has always been there, that is to say, it is not true that somebody whose boat was forfeited did not have recourse to go to court. The provisions in Schedule 3 of the Ordinance, for any offence, whether it is drugs or anything else, is that where the Collector exercises the power that he has to forfeit a vessel, he informs the owner of that vessel and the owner of that vessel has a month in which to go back to the Collector and say, "I do not agree with you" and if he does that, then the Collector cannot proceed without going to the Magistrates' Court and getting an Order. So that is the mechanism, the mechanism is that if the person in that one month does not in fact raise any objection as to the legitimacy of the action then after the one month it is too late. I am sure the Government must know that there have been instances of boats that were taken into custody by the Customs where somebody then turned up

after the expiration of the one month and they were told, "Look, whatever strength of argument you may feel you have, the law is very clear, you have got a month in which to do it and if you come back one day too late after the month, there is nothing you can do". The law is clear, "You have a month in which you can claim". That is a way in which the aggrieved person has an opportunity because the Collector then has to convince the Magistrates' Court to confirm, as it were, his original judgement that he had the power in law to do what he was doing. Therefore, the provisions as to forfeiture that were introduced in the regulations in April which then went on to treat a confiscated vessel as one which was to be taken into custody using the same procedure as is used for a prohibited import, triggers off this chain of events. In terms of what the general principles of the Bill are, we have to say we have not been given a satisfactory explanation why we need to make special arrangements in the case of boats suspected of carrying drugs, which were certainly more generous than in anybody else's case when it was three months and which even now do not indicate to us what it is we are doing to strengthen the law or be tougher or be more draconian. The indications we have had in the press is that what the Government were doing was working on legislation which would build on what was already done in April, not in fact dilute what had been done in April. I can confirm that the view of the Foreign Office was that it was preferable to bring in primary legislation at an early opportunity and to do what had been done by Regulation in April by primary legislation when the opportunity arose and on that basis we would support the transposition, as it were, of what is in the Regulation into primary legislation because, if the Foreign Office felt that it was less open to challenge that way, then we would want to put it in the way that was least open to challenge. We were committed to doing that and we would have supported it on that basis. However, the amendments that are going to be made in clause 2 of the Ordinance, to new Section 119A, raise new issues of principle which are not reflected in the original Ordinance but which are reflected in the amendment, and this has nothing to do with strengthening the legislation or with the need to replace what is in the Regulation now. Again I find it extraordinary, Mr Speaker, that in August, the Government were happy to keep the wording of the Regulation that was done in April and in September, they apparently consider it to be unsatisfactory, presumably, no explanation has been given and they substitute it with something that changes fundamentally the concept that weakens the position that makes it more difficult for them to act to stop boats using Gibraltar, because it requires that the boat within our jurisdiction should actually do something that constitutes a way of inducing the commission in another place. That is what the new provision is, none of that was required under the existing Regulation and none of that is required under the Bill before the House. If we look at clause 2 of the Ordinance one will see that in new Section 119A(1)(b) is reproduced the provisions that are contained in the Legal Notice 54 of 1996 of the 17th April which is the Imports and Exports (Amendment) Regulations which brought Regulation 2A into effect. Regulation 2A(1)(b) says, "If they do not occur in Gibraltar, would constitute such an offence if they had occurred in Gibraltar" and 119(1)(b) says, "if they do not occur in Gibraltar, would constitute such an offence if they had occurred in Gibraltar" so this is identical and this is clearly what the Minister said when he spoke. What we are doing here is putting what was in the Regulation into the Ordinance and we agree with that and we would vote in favour of that but we will not support the deletion of that, which is what is proposed now, and the substitution of that, by words which alter fundamentally the concept, because what do we have? We have a situation where what they are saying is, "a vessel may commit an offence in being engaged in drug running outside Gibraltar", and if the Collector is satisfied that if the action that was taken with that vessel in another jurisdiction would have been illegal if it had been done in our jurisdiction, that is enough. It does not have to do anything here. The moment it enters our territorial waters in the knowledge that it has been up to something or may intend to be up to something, the net is drawn very widely, but of course this affects every single type of vessel and this does not just affect a rigid inflatable boat, this can be a cargo vessel. This can be a cargo vessel that is known to have dropped a container of cocaine somewhere and with the original wording we can actually act against it the moment it arrives here. But not with the proposed new wording, because with the proposed new wording, it is necessary that the boat should be used in Gibraltar in a manner such that it would assist in or induce the commission in any place outside Gibraltar of an offence. The fact that it requires that it would assist, would indicate that whatever happens in Gibraltar has to happen in Gibraltar before it happens in the other place. It cannot be something that happens in Gibraltar afterwards, but in any case it seems to me that to be able to demonstrate all that, makes it much more difficult for the enforcement agencies to be able to defend themselves against the challenge. And why are we making it more difficult for the Customs to defend themselves against the challenge by owners of vessels that are believed to have been involved in the transportation of drugs? Why? When we are supposed to be making the legislation tougher. I do not understand it.

Mr Speaker, in the opening remarks of the Minister he said that the new legislation will not alter what the Regulation does because the Collector of Customs will continue to be able to use these powers if he is satisfied in his assessment of the situation that there is justification for proceeding to forfeiture. Well, I am afraid that if that is what he wants to do, he should not be removing the word "satisfied" and replacing those words by "has reasonable grounds for believing". I am sure I do not need to tell the Minister, who is a lawyer, that if he had a client to defend he would find it easier to defend a client if the Collector had to act reasonably than if the Collector had to be satisfied. He has told us that the Collector will still be able to do it if he is satisfied but in fact we are removing the very words that were put there deliberately so that if he was satisfied it was enough. He now has to have reasonable grounds and I would imagine that the reasonableness of the grounds is subject to challenge. So this is not something that makes it tougher, it does not even keep it as tough as it was, it is something that makes it easier for somebody to challenge that decision.

There is nothing in the Bill before the House about compensation but the Minister has mentioned it in his opening remarks as something that will be put in the amending clauses. We cannot understand why since the 23rd August, when the Bill was published, the Government felt that there was a need to require the courts to give compensation to the owner of a boat that has been forfeited and it is certainly not clear from the way it is worded what this compensation is supposed to be about. I am not sure from the wording that has been circulated, whether that means, that the person does not get the vessel back but can only get £5,000 irrespective of whether it is a rowing boat or a cruise liner that we found with drugs or whether the person gets the vessel back and for the disruption that has been caused he gets compensation. I am not familiar with provisions in our law that make it mandatory for the courts to award compensation and also provide a ceiling. It is not something I am familiar with in the time that I have been here in terms of the legislation we have brought to the House. I do not know where this has come from and I do not know why the Government feel that they need to make such a provision. Obviously, it is wrong. The Constitution provides protection for people not to be deprived of their property without compensation when they are going about their legitimate business, but of course we also know that sometimes people might not get convicted and therefore they are not guilty of committing any offence simply because there is insufficient evidence, but one would expect that in the normal run of events the enforcement agencies, the people who are professionals, who are dealing with this all the time know when they act and when they do not act and who they are acting against and who they are not acting against. It is not very likely that they are going to get it wrong very often. If they get it badly wrong I would say probably £5,000 for somebody who is an innocent party enjoying the pleasure of his property may be an insignificant and insufficient amount. If they have got it right but it is not possible with all the protection that is being given to make sure that possible drug traffickers do not have their human rights invaded, with all that protection, it may be that somebody can convince the Supreme Court that there is no evidence that the vessel was being used in any way in Gibraltar to support or induce the commission of an offence somewhere else. But if we all know in our hearts of hearts that the vessel has been up to no good, do we really want to require the Supreme Court to give compensation nonetheless? I would suggest, Mr Speaker, that the Government should not proceed with the Committee Stage and should give the matter more thought, unless they have got concern that the Regulations that have been there since April and have been used since April and to my knowledge have not been challenged so far, are on the point of being challenged. If it is the case that somebody is going to get away with it, as it were and we need to deal with it urgently, fair enough but I have to say that other than the business of the one month instead of three, we are decidedly less happy with the amended version than with the original version. If we had to choose between the two then we would have supported the Bill that has been published with the one month instead of three even though we believe that the provisions already in Schedule 3 are enough. All that we are doing here is making special machinery for people who are thought to have vessels that are believed to have been involved in drugs. The machinery that exists for people who have vessels that may be engaged in breaking the law somewhere else but not with drugs we are not making special provisions for, we are not giving compensation to. Why do we want to be nicer to the people that it is intended to attack with this legislation than to other people who are in breach of the Imports and Exports Ordinance? The whole thrust of the legislation is supposed to be to send a very clear message that we want Gibraltar to have nothing to do with drug trafficking and we want people who have something to do with drug trafficking to have nothing to do with Gibraltar. Therefore, the tougher, the more draconian, the more intransigent we are in that area the likelier

we are to protect ourselves because people will choose a less harsh environment from which to operate than ours and that is what we all want to achieve. I do not believe this legislation, as it is intended that it should be amended, does anything at all in that direction and, if anything, it does the contrary.

HON CHIEF MINISTER:

Mr Speaker, if the Leader of the Opposition thinks that the Government have gone to the trouble of having this Bill drafted and bring it to this House in order to be nicer to drug smugglers than it is to other criminals, then either the Leader of the Opposition has no clue as to what this Bill is trying to achieve or he is simply trying to mislead this House and others who may be listening to believing that this Government are somehow soft or softer on drug smugglers than those who drafted the Regulations. He may be decidedly less happy with this than he was with the Regulations. Those lawyers that are advising the Government are not decidedly less happy, they are decidedly more happy. It is regrettable that the Leader of the Opposition should put arguments in this House which, in reply, may strengthen the hands of those who in future will seek to challenge the previous legislation. I must therefore choose my words very carefully to ensure that in participating in this debate we make no concessions that will prejudice such law enforcement effort as has already occurred in this regard, that certainly curtails the clarity and strength with which I can make certain points in reply to those made by the Leader of the Opposition. The view has been expressed by more than one person, it is not a view that the Government share but the view has been expressed, that the Regulations of April this year suffer from a number of defects which open them and action taken by the law enforcement under them to challenge. Indeed, the view has been expressed, which the Government do not agree with, that some of those defects cannot be corrected and that this Bill certainly does not correct them. Therefore if the exponents of those views are correct, which we say they are not, this Bill, at best, closes the door on two or three but not on all of the possible grounds for challenge of the Regulations and the Government thought it better to close some of the doors rather than to close none of the doors to argument. The hon Member may be decidedly less happy now but the view is being put on behalf of aggrieved citizens who say that the Government had no power under the Ordinance to introduce the Regulations in April of this year and that therefore they are ultra vires, the Government, and that therefore all the actions that have been taken by the Customs and the Police under them, are illegal. Of course the Government will be defending ourselves against such allegations and seeking to uphold the legality of the administrative act made by the Opposition Members when they took that step but certainly we have thought it prudent to close that particular argument whether or not it is capable of being put successfully. We have thought it better to close that door as soon as possible.

HON J J BOSSANO:

The Chief Minister seems not to have grasped what I have said. I have said the Bill as it stands before the House we will support, which is the Bill that is supposed to be ensuring that that loophole is closed by replacing the Regulation by an Ordinance. What I have said is I am decidedly less happy with the proposed amended version than with the unamended version, that is what I am saying. I am not saying I am less happy with this than with the Regulations.

HON CHIEF MINISTER:

I thought we had agreed that the Leader of the Opposition was speaking to the Bill with the amendments that he knew are coming. I thought that was the clarification that he had made. Mr Speaker, this question of the right of appeal, the Hon Mr Azopardi, the mover of this Bill, will go into a little bit more detail on that issue but what is given, it is argued, what is given in Schedule 3 is not a right of appeal, it is a right within 30 days if one discovers that one's boat has been forfeited. It is the right to give notice of objection. The Government have received advise that it is arguable, no more than arguable, that that does not constitute an adequate right of appeal in an administrative provision of this harsh characteristic. And therefore we have taken advice in order to render the legal measure more effective and less open to legal challenge. These are not, as the Leader of the Opposition said in his contribution, matters of policy. The only policy here is the desire that this should be an effective tool in the fight against drug smuggling and anything which exposes the legislation to challenge, and therefore the act of the law enforcement agencies under it, is not a matter of policy, it is a matter of technical, legal and professional advice which is what the Government are acting under. This is not a matter of policy. The hon Member has spoken about the extra territoriality of the offences in question. Well, again, Mr Speaker, it has been put to the Government, the Government

make no concession to that argument, but it has been put to the Government that as drafted the section may be unconstitutional in the sense that it penalises in Gibraltar the consequences of acts which take place outside of the jurisdiction and it is a matter of trite law that constitutional legislators cannot legislate with extra territorial effect. Again the proposed amendment is an attempt to perfect, to protect the legislation against that possible argument and it does so by reference to a formula which the Government feel is less open to challenge, that is, that the acts have to be done in Gibraltar thereby making it not extra territorial in effect and those acts are acts preparatory to the commission of an offence abroad. We are advised that that measure, that that amendment, makes the Ordinance less open to challenge whilst at the same time leaving intact the ability of the law enforcement agencies to deal with it. The same comment applies to the amendment in relation to compensation. It is not that the Government wish to be nice or nicer to drug smugglers. It is really that only drug smugglers face what has been described as the draconian measure of confiscation by administrative acts and before legal process. The Government have received advise that it might be open to challenge under the Constitution, that such arguably confiscatory measures, of course, the Government do not accept that this is confiscatory under the Constitution, but the Government have been advised that it might be so argued and that one way of protecting the Bill from any successful deployment of that argument would be to include compensationary measures in it. Therefore, Mr Speaker, the suggestion I think, implicit in the contribution of the Leader of the Opposition that this amendment weakens the legislation, is not one that the Government share. It is a carefully considered set of amendments to do all that the Government can to protect the legislation from argument that it is invalid and exposing consequentially the taxpayers to claims for compensation as well as preventing the police from using it in the future. It is an attempt to make the legislation as effective as possible without leaving it open to unnecessary legal challenge. This has not been done by the Government as a matter of political policy decision. It has been done exclusively on the advice of lawyers and of other professionals engaged in the operation of this piece of legislation. Therefore, on that basis, the Government will not avail themselves of the Leader of the Opposition's suggestion that we do not proceed. The Government are aware exactly of what these amendments bring about. They have been considered. We are aware of what it achieves and what it does not necessarily achieve but we hope it achieves, and the Government are satisfied that this is the best that can be done in the circumstances.

HON K AZOPARDI:

I am grateful indeed for the Chief Minister outlining the general intention and purpose of the Bill before the House. It will allow me to be shorter in my reply and to deal with specific points made by the Leader of the Opposition. Let me say that we do not accept that the amendments and the Bill act in a different way. The Government are quite satisfied that the amendments that will be sought to be made to the Bill, together with the original form, all complement each other. The Bill intends to achieve forfeiture of vessels. The Bill, as amended, will achieve forfeiture of vessels. It will only be complemented by an appeal mechanism and by compensation procedure but it will certainly not alter the effect and the purpose of the Bill which is to achieve forfeiture of vessels where the Collector of Customs has grounds to believe that those issues arise. The explanatory note was omitted because these Regulations were indeed introduced by the previous administration, so we thought they needed no note to explain it to themselves for that purpose. I think I mentioned in my original contribution that this was a matter of potential criticisms. I did not say, "I do not think", I said it and certainly I did not intend to lead the House to believe that these were criticisms that had been voiced publicly. I said in my contribution that these were potential criticisms of the original Regulations, potential criticisms that have been outlined in more detail by the Chief Minister so I do not think it is helpful for me to go into those criticisms once again. I do not accept the point or the suggestion, let me say.....

HON J L BALDACHINO:

Would the Minister give way for a moment. He just mentioned that there is no explanatory memorandum on the Bill because this Opposition, at the time, were in Government and therefore they thought that we did not need any explanation on the Bill before the House. Is he aware that this Bill is also made public and there are other people who at the time were not in Government, would they not need an explanation?

HON K AZOPARDI:

I am certainly aware of that decision and the hon Member will recall that at the time the Regulations were introduced there were several press releases from what then was the Government of the day, explaining it to the public so I did not see the need of further doing so. Now that this Bill is before the House and this debate is indeed public also, this is being aired on GBC, so it is public as well. I am returning to what I was saying, that a clarification of the Bill is a weakening, rather I think it consolidates and strengthens the Bill to have amendments made to it at this stage which will then minimise the risk of challenge being put to the Ordinance once it is on the statute book. It is I think rather narrow-minded to think that just because one amends the Bill or clarify it, that then is a dilution. Amendment or clarification which is what the amendments seek to make, will merely in our view, it is the Government's position, it will strengthen the legislation because it will minimise the risk of possible challenge that anyone else can put to the Supreme Court.

The hon Member mentions Schedule 3 and then questions whether it was necessary to inject an appeal procedure given that there was, he says, something already on the statute, Schedule 3 to the Ordinance. Let me say that the purpose is quite different in Schedule 3. Schedule 3 makes it mandatory on the Collector to give notice of forfeiture in almost every case but not all. In this particular Bill the difference is that there will be notice in all cases but that is not the biggest difference. The biggest difference is this; that the effect of Schedule 3 is to allow someone aggrieved to give notice within a month and then go to the Supreme Court to question whether the forfeiture should be made. In effect, what it is, Schedule 3, is a suspended forfeiture mechanism. The purpose of this Bill is not to suspend the forfeiture by appeal but rather that the forfeiture takes place but then if the Supreme Court is satisfied that on a balance of probabilities that there were no circumstances made out, a person will be paid compensation in lieu of the return. There will be no return of the launch. That is the intention of the Government when proceeding and I will explain it because the Leader of the Opposition made a reference to it as to whether we were going to pay compensation and then return the launch. That is certainly not the intention. The effect of this Bill is different in that Schedule 3 is a suspension of forfeiture appeal mechanism and we do not think that this amendment, that we seek to make, will have that effect.

HON A ISOLA:

Would the Minister give way. Mr Speaker, is my hon and learned Friend saying that in the event of a cargo vessel being seized under these new provisions coming in and the case is not made out, that in fact the cargo vessel will not be returned, just a maximum of £5,000?

HON K AZOPARDI:

I will come to that but our view is that yes, that analysis is correct. That is why we think this is a strengthening of the legislation and not a dilution. The purpose of the deletion of sub-paragraph (b) has already been gone into by the Chief Minister so I do not see the need of doing so once again. Let me say, that I do not consider that the substitution of reasonable grounds for satisfying, has any dilution. It is in my view almost synonymous in law and I do not think that it alters the fact. Rather, it is a commonly used expression in statutes of criminal law that there should be reasonable grounds and it is a concept that the courts are far more accustomed to determine and to interpret than the other expression. I certainly do not think that it alters the scope or the intent or the purpose or the effect of the Bill as presented in the House. I was going to deal with the effect of the compensation section when I presented the amendments at Committee Stage but they have been touched upon by the Leader of the Opposition so I briefly want to touch upon them as well. Certainly it is true that now the courts can have references to Hansard after the case of Pepper and Hart. They can have reference to Hansard when considering legislation, so it is important for the Government to place the intention of the legislature before the House so that the courts, if indeed they seek to interpret that particular piece of legislation and if indeed they seek to extract the intention from the speeches in the House, can have clear what the intention of the Assembly is. The Government's position is that in circumstances that the Collector holds in on, then there will have been a breach of the law and accordingly forfeiture will take place. What the amendments seek to do is instil an appeal mechanism by which the court can be asked to review the decision. If the court is satisfied on a balance of probabilities that the circumstances have not been made out, in other words, there has been no breach of the law, then the person aggrieved will be paid compensation, assessed by the court to a maximum of £5,000. There will not be a suspension of the forfeiture. The forfeiture will take place. The reason I say that, is that section 6 of the Constitution makes clear that if

someone has their property confiscated there needs to be in the public interest a compensation scheme but then it goes on to say in one of the sub-paragraphs of the Constitution, I think it is section 6(4) of the Constitution that the operation of section 6(1), in other words, the compensation scheme, if there is a breach of the law it is exempt from the provisions of section 6(1). In other words, we interpret that as meaning this: if circumstances have been made out that there is a breach of the law and no compensation scheme will take place, the forfeiture will go forward. If the circumstances have not been made out then for the property to be confiscated in the public interest, there needs to be a compensation scheme but the property can be acquired compulsorily, it can be confiscated in our interpretation of the Constitution, and that is why I said before the House that that is the Government's view and interpretation of what this amendment will seek to do in the light of the constitutional provisions which I think deal with the points made by the Leader of the Opposition. It is certainly the intention of the Government, that by injecting this compensation procedure in the terms that it has been injected, the constitutional provisions are protected and so is the public at large because the confiscation will still take place. But in the public interest compensation will be paid if the circumstances have not been made out. In other words, if there is no breach of the law. Because if there is a breach of the law the operation of section 6(1) is exempt, it is not contrary to provide for an acquisition of the property in those circumstances without compensation.

Mr Speaker, I have no further comments to make on the other matters. If there is need to clarify any other amendments that I seek to make when I put them at Committee Stage, I will.

Question put. Agreed to.

HON K AZOPARDI:

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

HON J J BOSSANO:

I have already suggested to the Government Members that they should leave it for another day but I am not going to use the technical rule to stop it, if they want to go ahead, we will not object.

MR SPEAKER:

It is not a question of objecting, it is agreeing, do you agree?

HON J J BOSSANO:

Yes.

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the Imports and Exports (Amendment) Bill 1996, clause by clause.

THE IMPORTS AND EXPORTS (AMENDMENT) BILL 1996

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

Clause 2

HON K AZOPARDI:

I have got several amendments to put to clause 2. Will Mr Chairman indicate to me whether I should put every amendment individually and will take a discussion on it?

MR CHAIRMAN:

Yes, I think so, that is best.

HON K AZOPARDI:

Mr Chairman, I hope that hon Members have the notes of the amendments before them because it will assist me in making the proposed amendments. I move the amendment in the heading of clause 2, of the deletion of the words and figures "Section 119 of", In clause 2

the deletion of the words and figures "Section 119 of the" at the beginning by the word "The". In other words, it would then read: "Amendment to the Imports and Exports Ordinance 1986", and then it would start, "2. The Imports and Exports Ordinance 1986 is.....". The purpose of that is, that strictly, this is an amendment to the Ordinance but not to the section.

HON J J BOSSANO:

We support that particular amendment since all it is doing is correcting not very good drafting, more than anything else.

MR CHAIRMAN:

Could I suggest that we vote on each particular amendment so in the end that will be easier.

HON K AZOPARDI:

On a further amendment to that clause I would move the amendment in sub-section 119A(1) the insertion of the words "attempt to use or allow the use of" after the word "use" in the first line of that sub-paragraph. The purpose of that is to extend the scope of the section.

HON J J BOSSANO:

I do not know whether the Minister feels he needs to give any explanation as to why that is being introduced there. It was not in the published Bill and of course the reference to attempting to use or allowing the use is consistent with, it seems to us, the part of the Ordinance which deals with the use outside Gibraltar but if that is being introduced in 119A(1)(a) where it says, "if they occur in Gibraltar, constitute an offence under sections 15 or 80" then it must follow that the attempting to use or allowing the use themselves must be offences against sections 15 and 80, does it not?

HON K AZOPARDI:

I am not sure that when the Leader of the Opposition makes the point, that he should only make it in relation to (a). Certainly the intention is for the scope to be extended by not only it targeting offences of use but rather attempting to use, in other words, when the court thinks that it is more than merely preparatory, they can target those particular circumstances also. Of course by inserting it at the point that we have, it will also be within the scope of the amended sub-paragraph (b) as the amendment is accepted by the House. I am not sure if I have dealt with the point, I am not quite sure if I see the point that the Leader of the Opposition is making.

HON J J BOSSANO:

The point I am making is, as the Bill stands unamended and as it stood in the Regulations, the drawing the net wide in respect of vessels outside Gibraltar was covered already in the Collector being satisfied in the other sub-section. It seems to me the difficulty here is if one is talking about something that is an offence and if one is saying that a person shall not attempt to use a vessel in circumstances which constitute an offence, then attempting to use the vessel must constitute an offence. Whereas, if the fact that they may be attempting to use it is already covered by the subsequent part where the Collector can actually act without an offence being committed, without a prosecution for any offence, on the premise that he is satisfied or what the Minister considers to be synonymous words, but we do not, "has reasonable grounds for believing that it is being used in circumstances which can be conducive to the committing of an offence".

HON K AZOPARDI:

The Leader of the Opposition will see as I go along that I am also suggesting an amendment further along of the deletion of the words "where it is likely to be used". In other words, the circumstances that the Collector will have to be satisfied are "that the circumstances have been, is likely to have been or has been used". That by deleting "is likely to have been" I think we are excluding matters such as attempt and we need to then put in the reference to attempt at that stage because if circumstances arise where a vessel is used or attempted to be used in the importation or exportation, then it will be caught by this amendment. Whereas if there has been no such circumstances then I cannot see how it can be caught unless we make a reference to attempting.

HON J J BOSSANO:

The point I am making is that those references are already coming in at the subsequent part of the Ordinance. It seems to me that if one introduces it in this introductory paragraph or sub-clause (a), my reading of it is, that what the law will be saying is, "no person shall use any vessel in circumstances which if they occur in Gibraltar constitute an offence under sections 15 or 80", and if we are saying, "he shall not attempt to use or allow the use of" in that first line, then what we are saying is, "no person shall use, attempt to use or allow the use in circumstances which constitute an offence under sections 15 or 80". Now, is attempting to use or allowing the use an offence under sections 15 or 80?

HON K AZOPARDI:

Sections 15 and 80 prohibit the importation and exportation of a prescribed drug, it does not talk about ships or vessels and what we are targeting there is the use or alleged use or attempt of the use of a vessel which is not described in 15 or 80, so now it is necessary to mention it at that stage.

HON J J BOSSANO:

No, I am sorry we are not, with all due respect to the Minister. The law says quite specifically, "that the person shall not use any ship as defined in this Ordinance or any vessel as defined in the Seaside Pleasure Boat Rules in circumstances which constitute an offence under sections 15 or 80". We also already have the proviso that anything remotely associated with attempting to use it allows the Collector to forfeit the vessel anyway. That is already taken care of and introducing the words in that section seems to me to be the reasonable thing to do. What I cannot understand is how we can introduce it in this part of the Ordinance and then go on to say, "attempt to use in circumstances which constitute an offence under sections 15 or 80?" Because it will only be an attempt to use as qualified by what follows.

HON K AZOPARDI:

I do take the point but I do not think that it adds to the debate. Section 15 relates to importation, section 80 to exportation. Sections 15 and 80 do not regulate the use of a ship but rather prohibit the importation or exportation of a drug and so in our view it is necessary to regulate and tighten the use of the vessel or ship by insertion of attempt at that stage. What the Leader of the Opposition is suggesting is that by including the offence under sections 15 or 80 it must therefore follow that there must be an attempt. There could be an attempt to use the vessel in those circumstances but we do not accept the fact can be the construction laid on that original version of the Bill.

HON A ISOLA:

I think the point is, what my hon Colleague is saying is, that if what is being included is already in the old 2, what is the point of putting it in at this stage? That is the only question.

HON K AZOPARDI:

I understand the point that the Leader of the Opposition is making, but let me reiterate. Government do not accept that that is the correct interpretation that can be put on this original version. We do not think it is included necessarily or there could be a grey area. In our view it is better to be safe than sorry and that is why we are putting it in.

HON J J BOSSANO:

I am sorry but I believe that at Committee Stage when we are actually drafting the legislation we need to be clear what it is we are doing and I am asking a very simple question. As I read the amendment the Minister is proposing, it will read, "no person shall use a vessel or attempt to use it in circumstances which constitutes an offence under sections 15 or 80". Then when I asked him "what does it mean to attempt to use a vessel in circumstances which constitute an offence under sections 15 or 80?" his reply is, "sections 15 or 80 has nothing to do with using vessels". I want

him to tell me when we have passed his amendment how will somebody be charged under this Ordinance "of attempting to use a vessel in a manner which constitutes an offence under sections 15 or 80?" Because that is what he is proposing should be legislated.

HON K AZOPARDI:

No, I am not proposing that someone should be charged under this section of attempting to use a vessel. Indeed, the section specifies that no charge needs to be brought. I am surprised that the Leader of the Opposition makes a reference that he does not understand the point that I am making in relation to the use or not. The original regulations that were drafted read in the same way. I am just extending the scope. It reads in the same way. The original regulations talk about "no person shall use any ship or vessel in circumstances which if they occur in Gibraltar constitutes an offence under sections 15 or 80" so presumably they were satisfied that there was such an offence to be committed and what I am telling the House is that there is an offence, the offence is importation and exportation. The prohibition under the sub-paragraph which precedes the offence is the use of the ship. In our view the extension to attempting to use the vessel adds to the scope of the Bill and it will help the law enforcement agencies to carry out the purpose of the forfeiture.

HON J J BOSSANO:

Can I just for the record say that my copy of the 17th April 1996 reads, "no person shall use any ship as defined in the Ordinance or any vessel as defined in the Seaside Pleasure Boat Rules made under the Public Health Ordinance in circumstances which if they occur in Gibraltar constitute an offence under sections 15 or 80" which is the same as the Bill that they have published and it is not the same as the amendment he is moving and I am talking about the amendment that he is moving.

HON K AZOPARDI:

Yes, I accept that but what I have said is, I present the analogy of the regulations to explain to the House that this is not such a savage amendment but rather an extension of the scope that was already existing by the regulations that they introduced.

HON J J BOSSANO:

I am not suggesting that it is savage, if anything the Minister will not find me complaining about it being savage. All I am saying is I can understand its introduction in the second part which has to do with forfeiture even without an offence having been committed. I want to be given a very simple answer to a very simple question. What is the nature of the offence under sections 15 or 80 that it is possible to commit by allowing the use of a vessel? Because that is what the law will read. The law will say, "nobody may allow the use of a vessel in circumstances which constitutes an offence". If it is not possible for it to constitute an offence then it is a nonsense provision because we are telling somebody "you must not do something in a way which constitutes an offence" but it cannot constitute an offence according to what he has just told me about sections 15 and 80 and therefore what I am saying to the Minister it seems to me after listening to his explanation and after reading the way it would be amended that the reason why it was not put there in the first place is because it does not belong there, it belongs in the subsequent sub-section where in fact it is already provided for by his amendment. It is already in the subsequent section.

HON K AZOPARDI:

Of course there will be circumstances in which the offence will arise. The offence that arises is either importation or exportation of drugs. But the use of a vessel is not regulated in those sections. The prohibition which precedes the reference to the offence creating sections 15 and 80, attempts to regulate the use of vessels. And if one only talks about use, one is not talking about attempting to use and that is why it is properly placed in the place that it has been placed and that is why we think that the amendment should go forth.

MR CHAIRMAN:

Now we go to the second amendment. I do not know whether you want to speak on this one?

HON K AZOPARDI:

I do not think I have put the amendment yet, Mr Chairman, I am not sure if I have but certainly I move the amendments and these are relative typographical errors. These amendments are merely to the deletion of the "s" after the word "section" in Section 119A(1)(a). The addition of the words "Imports and Exports Ordinance 1986" at the end of Section 119A(1)(a) and the deletion of "any" in the first line of paragraph (a) and the insertion of "an". It is to clarify the terms of the sections.

HON J J BOSSANO:

I can understand the "s", but I cannot understand the "Imports and Exports Ordinance". Why does the Minister feel we need to say, "under section 15 or 80 of the Imports and Exports Ordinance" when in fact we are in the Imports and Exports Ordinance? It is not as if we were referring to another Ordinance. It is of this Ordinance that we are talking about, so why does he feel there is a need here, which is a very unusual provision I must say, to say "of the Imports and Exports Ordinance 1986"?

HON K AZOPARDI:

Well, it is relatively simple, because in that sub-paragraph in the couple of lines which just precede that reference to section 15 or 80 there is a reference to the different Ordinance. I do not want people to think that we are referring to that particular Ordinance. In other words, when it says "or in the Seaside Pleasure Boat Rules 1989 made under the Public Health Ordinance in circumstances which - (a) if they occur in Gibraltar, constitute an offence under section 15 or 80" we leave it there, we have just made a reference to the Public Health Ordinance so I accept that it can only really refer to the Imports and Exports Ordinance but it is better to put it in because we have just made a reference to a different Ordinance.

HON J J BOSSANO:

No, we have not, we have made a reference to the Seaside Pleasure Boat Rules and therefore it is not an Ordinance and it does not have sections.

HON K AZOPARDI:

I have just read that part where I say "Seaside Pleasure Boat Rules made under the Public Health Ordinance" so that reference to the Public Health Ordinance is included, that is why I think it would be potentially contradictory and it is better to explain it.

HON J J BOSSANO:

I see, and the Minister has looked at sections 15 and 80 of the Public Health Ordinance to see whether there is any possibility of confusion, has he?

HON K AZOPARDI:

No, it does not matter, it just clarifies the interpretation and the job of the court if it has to construe legislation for it to clearly pinpoint the sections that we are talking about and we think it clarifies these terms.

HON J J BOSSANO:

Would it not have been more logical then by this explanation to have said "this Ordinance" like it says in the first line of that section rather than..... or not?

MR CHAIRMAN:

The amendment is agreed.

HON K AZOPARDI:

It is a more substantial amendment that I seek to propose. I am not going to read from the note that I prepared and circulated because I have made a change to the draft amendment that I sought to make but rather I will read, it is not very different but there is a slight change, so it would be helpful if I read the proposed amendment. It is the deletion of 119A(1)(b) and the insertion thereof of the words "that such use would assist in or induce in Gibraltar the commission in any place outside Gibraltar of an offence punishable under the provisions of a corresponding law in that place". And then it carries on ""Corresponding law" in this part has the meaning ascribed to the expression in section 3

of the Drugs (Misuse) Ordinance". I was just going to add that that provision is akin to an analogy to Section 16 of the Drugs (Misuse) Ordinance that already makes it an offence to in Gibraltar assist or induce in the commission of an offence outside Gibraltar and there is a reference already in section 3 to interpret and define that expression, so we think it is a useful addition.

HON J J BOSSANO:

We find it worsens the amendment instead of improving it because in fact it is adding a further qualification. We start off with the situation where we have the right in Gibraltar to confiscate a vessel that is engaged in drug trafficking anywhere in the world. That is what the law provided in April and that is what the Government Members were satisfied with on the 23rd August when the Bill was published and when notice was being brought to the House. I do not know how it is that they have had technical advice, and the Minister may say it is not a political issue, it is a question of technical advice, well, it requires a political decision irrespective of the technical nature of the advice and I can only imagine that they were not persuaded before the 23rd August notwithstanding the technical advice and they have been persuaded since the 23rd August to do something which whatever the Government Members may say about their intention, I am not questioning their intention, I am questioning the effect of what they are doing and we do not want to be a party to it because we think the effect of what they are doing is in fact that it will make it more difficult not easier and the only explanation we have been given is, that somebody thinks that if we actually confiscated boats which had committed an offence outside Gibraltar, that it would be challenged. What are we doing then? We are saying something must be done in Gibraltar that would assist in the commission of the offence in the other place but if nothing is done in Gibraltar then we cannot act.

HON CHIEF MINISTER:

Let us all be clear about it, that is exactly what the Government are saying and that is exactly the intention of this amendment because the Government accept that it is open to question about whether this House is competent to legislate on matters of extra territorial effect, absolutely right.

HON J J BOSSANO:

But of course the Government have become convinced since the 23rd August. They were convinced previously of the opposite because it published the Bill on the basis that we are defending, that is to say, until the 23rd August we both agreed it could be done, since the 23rd August they have changed their minds. I do not know with what arguments they have been presented to make them change their minds but I have not been presented with any to make me change mine. Therefore the point that I made in the Second Reading is that we would have supported the original printed provision in (b) and that we believe that to forfeit a vessel and have to demonstrate that something has been done in Gibraltar is something that is likely to be challenged. If there was going to be a challenge about the extra territoriality, well, there is going to be a challenge about the use that has been made in Gibraltar which will induce the commission of an offence in another place, that would be challenged and that would be more difficult in our judgement to demonstrate, if somebody comes being chased into our waters then one grabs the boat on the basis that they are being chased because they have committed an offence somewhere, not because they are on a pleasure cruise, but of course they need not have done anything in Gibraltar which can be demonstrated to induce that. In fact, the proposed last minute amendment, which I do not know whether that is technical advice that has somehow descended from some quarter and enabled the Government to make a decision to further amend that section? But why do we want to say "that nobody shall allow the use of a vessel in Gibraltar in a manner that such use would induce in Gibraltar the commission in any other place outside Gibraltar?" So now the inducement has to take place in Gibraltar as well, why? "It would assist in or induce in Gibraltar", why do we need to have that happening in Gibraltar. Why, if it happens in La Linea it is OK and we do not act?

HON CHIEF MINISTER:

For the very simple reason, and of course the hon Member says, that it might still be open to challenge even on the basis of the amendment. And indeed it might be but it is much less open to challenge on the basis that what is required to take place in Gibraltar is the assistance or the inducement. So I cannot tell the hon Member, that having amended this Bill in this section in this way, that it is now not open to challenge at all. Indeed, I said when I addressed the House in the Second Reading that

we were doing the best that could be done in the circumstances. The fact of the matter is that the view has been brought to this House, and if this House cannot do it, certainly the Government by Regulations cannot do it, cannot seek to allow forfeiture by administrative act, cannot do anything but certainly not that, in respect of offences allegedly committed outside of the jurisdiction of the court of Gibraltar. The hon Member may as a matter of political judgement wish to disagree with that well-established principle of law. It is a matter for him. If the hon Member thinks that it is perfectly OK for the laws of Gibraltar to penalise acts which occur outside of Gibraltar, that is a matter entirely for him. The Government believe that this amendment enables the legislation to be used in much the same way as it is presently being used whilst at the same time protecting it from that argument without having to adjudicate on whether the argument is right or wrong. What this section says is, "that your boat is held on forfeiture if in Gibraltar you do anything to assist in or to induce in the commission of an offence outside Gibraltar" and that is not extra territorial. Because the objectionable act is the act preparatory, and the act preparatory is carried out within the jurisdiction. As to the last point that he makes it is, I think Mr Chairman, a standard legal distinction between inducement and assisting. I am sure that the Leader of the Opposition will know that these are what are called inchoate offences and that inducing somebody to do something is a very different act from assisting somebody in doing something. What we are saying is "that it is an offence in Gibraltar to either assist somebody or induce somebody to commit an offence outside Gibraltar" and we think that this is as far as we can go to protect the section from challenge. But we certainly cannot guarantee that the attempt will necessarily succeed in avoiding such challenge.

HON J J BOSSANO:

I have not said that the challenge would be about the same issue that the Chief Minister says the present legislation is capable of being challenged. Therefore, the two things are unrelated. If the only reason for removing what was acceptable to them until the 23rd August, and I keep on saying that because I could understand it if the Government Members had brought this Bill originally.....

HON CHIEF MINISTER:

On the 17th May.

HON J J BOSSANO:

No, not on the 17th May, they certainly had the right to say so on the 17th May but if they had brought the Bill to the House with the intention of removing the provisions that allow us to act against people that are drug trafficking outside Gibraltar then..... and I think that is a policy decision, that is a policy decision because presumably the Chief Minister did not discover this on the 23rd August, he knew about the argument before and as a matter of policy they did not accept the argument and now they have accepted the argument. We have not heard why. We have not heard what has made the Government Members change their mind. They intended to keep the provisions and have now decided to discard it.

HON CHIEF MINISTER:

I am answering that point, the hon Member appears to be reducing the debate to an inordinate degree of pedantry. I have now realised that, it had not first dawned on me what the relevance of the date of 23rd August was. The relevance apparently he thinks, that we agreed with him until the 23rd August but not on the 24th was, that on the 23rd August the Bill was published. On that basis, since he presumably does not think that we came up with the idea, took the advice, drafted the Bill, sent it to the Chronicle for printing, published it in the Gazette, all on the 23rd August, presumably not even in his logic is the 23rd August the cut off date since he presumably has to accept that if we were in a position to publish this, printed on pretty green paper on the 23rd August we must at least have addressed our mind to it at some date before the 23rd August, because all these things cannot be done in one day. Having said that, Mr Chairman, the hon Member must remember not that long ago that he was in Government, he must remember that it takes time for people to make legislative proposals to the Government, for the Government to consider those legislative proposals, indeed for the Government to take advice about the legislative proposals and then approve any drafting. I do not see that the Opposition Member is entitled to assume that having been elected on the 16th May, because it has taken us until the 23rd August to bring this amendment to the House it necessarily assumes that

we have agreed with the contents of the Regulations because the 16th May, the date of our election, and the 23rd August any more that we do not agree with some of the other legislation that is on the statute book introduced by him and which we have not yet got round to repealing, which we will do. The suggestion that simply because we have delayed three months in doing this it necessarily means that somebody has changed our minds on the 22nd August about something about which on the 21st August we used to agree with him, it is absurd.

HON J J BOSSANO:

No, Mr Chairman, what is absurd is that he does not even seem to understand what he is doing. It is incredible the amount of rubbish he has just said. I have not told him that the amendment on the 23rd August was too late for him to change what was there in May. On the 23rd August he still defended what was there because he published a Bill not to amend it but to perpetuate it and therefore between the 16th May and the 23rd August all the technical advice, all the expertise, all the legal drafting, was in favour of keeping the regulations as they are and we support that and if they had continued with what they had published, we would not be debating this, we would be voting in favour. Since they published it they have produced with one week's notice, for which I am grateful, an amendment which alters the foundations of this section, which they have just further amended in the last five minutes, not after wide consultation with experts all over the place. In the last five minutes the mover has sought to amend it further by introducing the words "in Gibraltar" after the word "induce". This is not the result of detailed consideration of the arguments, this is the very opposite. It is instant legislation. This is not changing something that was there after giving the matter a great deal of thought. I assume that they did give the matter a great deal of thought and that they decided to keep it because that is what was published. Therefore I would not be putting this argument if they had published the amendments that they are moving today when they published the Bill and they had said "we do not agree with what was there, we do not think it is capable of being defended and therefore we are bringing a Bill to the House which does not simply move the regulations into an Ordinance", which was the first explanation we were given. The first thing we were told when the Bill was moved in the Second Reading was, "there are criticisms of the regulation that they may go beyond the empowering provisions of the Ordinance," and I said to the Chief Minister, "we are aware that that argument has been put and we would have brought the same," this green paper, and would have done it but it was not prepared when we were there, they have prepared it since. No explanation has been given why it is. Is it that before this went to the Chronicle they did not know about the arguments about 119A(1)(b)? Of course they knew. They must have been satisfied until that month to continue with this and we believe they should continue with this. We believe they should not be amending and we believe that amending it removes a very important plank and that what is being put in its place, will not enable them to do the same thing and is capable of being challenged not on the same grounds but on totally different grounds, because there are so many qualifications attached. The original provisions were more draconian because all that is required was that the Collector of Customs should be satisfied, end of story, that somebody had used a boat somewhere to move drugs. What is being put in place of that, in case that should be challenged and for no other reason, that we have been given, and because that presumably has convinced them in the last five weeks but not earlier than that, is something that will not give the same effectiveness to the Ordinance that it could have had if this amendment was not being moved and that is why we do not support the amendment. We do not support the amendment because they are amending what they brought to this House which, in our view, is stronger than what they are putting in its place.

HON CHIEF MINISTER:

Well, Mr Chairman, the Leader of the Opposition can support the amendment or not as he pleases. The fact of the matter remains, to deal with some of his points, is that it is not the introduction of the words "in Gibraltar" at the last minute. The words are already there. All we are doing is putting them in a different place in the sentence. He has noticed that, presumably. This is not the addition at the last minute of the words "in Gibraltar" as if it was..... I think the phrase he used was "last minute legislation". Presumably what he meant to tell the House was "on the spot drafting". I do not suppose that he has any intention to mislead anybody, God forbid it, presumably what he meant to have told the House was that they now move the words from line one to line two in order to make the thing read grammatically better. Very different is it not? From what he has just told the House we have done. But still, never mind. Secondly, Mr Chairman, this devise of amendment to

amendments is quite extraordinary. For a Government that used to do this regularly themselves, bring last minute amendments to their own legislation and incidentally not circulate it as we have circulated this, not only with a letter setting out the amendments but indeed with the Ordinance being printed with the amendments included and underlined so that the Opposition Members would understand exactly what we were doing, they did not use to do that, they used to throw them in at the last minute whilst we were already on our feet debating, so I really do not see how it lies in his lips to criticise the concept of bringing amendments to your own amendments. Mr Chairman, I realise that the concept of consultation in the legislative process is not one that the Opposition Members understand, because they have spent eight years not doing it but presumably the Leader of the Opposition has read enough about the techniques of parliamentary practice elsewhere, if not in Gibraltar during the last eight years, to know that the object of publishing a green paper is presumably to put in the public domain, by way of consultation, the necessary legislation and unlike the Leader of the Opposition, we do not put legislation on the rare occasion that he used to bring it to the House which was not frequently, we did not say seven days' notice only because that is the minimum that the law requires, the minimum notice, this had been in the public domain since the 23rd August 1996. Of course, what this means, which of course is the purpose of publishing legislation in a form of a green paper before it is considered by the House, that having published the Bill the House received further advice, it is not required that the advice arrived to the Government all in one envelope or on one sheet of paper. The Government are quite happy to consider advice that arrives in two parts and because the point was made that this aspect of the matter ought to be legislated on and corrected as well, the Government decided, having considered it, to do so, but let me put the hon Member's mind at rest if what he fears is that between the 23rd August 1996 and now I have received instructions from the Spanish Foreign Ministry to delete from the legislation of Gibraltar matters relating to the extra territorial jurisdiction of Gibraltar's law, let me put his mind at rest, I have received no such communication from Madrid or from any other suspicious source. It is advise tendered in good faith locally by people involved in the operation of this and the Government were very happy indeed to take it on board and very grateful that the advice tendered after the 23rd August.

HON J J BOSSANO:

We of course do not know either the source or the nature of that advice and I am not sure what it is that one has to understand by him having received advice from people involved in these operations, which is the word that he has just used. Certainly, I would imagine, that the Spanish Government would not want him to bring in legislation which deprives the Government of Gibraltar of taking into custody vessels that may commit an offence in their jurisdiction because that was a very important piece of legislation which we brought and which they supported and which they were still reflecting and which would be better to keep. And until and unless we know what is the nature of the argument that is new, which has not been made public or the source of the argument which has not been made public except that we know that it is lobbying from within Gibraltar after the 23rd August that has influenced the Government to alter this, well, we are not a party to the nature of the arguments. The arguments that have been put in this House were arguments that were known before this Bill was published, as long ago as the 16th May and therefore we will not support the amendment.

HON K AZOPARDI:

The next amendment is, that I propose the deletion of section 119A(2) and the replacement of that section as drafted with the following section 119A(2)(a) "Where in respect of any ship or any vessel referred to in subsection (1), the Collector has reasonable grounds for believing that the ship or vessel, as the case may be, has been, is likely to have been, or is used in circumstances falling within paragraph (a) or (b) of that subsection, the ship or vessel, as the case may be, shall be forfeit to the Crown whether or not any person is charged with any offence under section 15 or 80 of the Imports and Exports Ordinance 1986 or in connection with the use of the ship or vessel, as the case may be. The purpose of the amendment is to delete the phrase "or is likely to be used", it does not amend the concept of reasonable grounds but it does change it from the original version of the regulations and it deletes the reference to section 119(2) by which the Attorney-General, it would seem on the reading of that subsection, would have to proceed to the court to obtain a declaratory order. But given that we are injecting an appeal procedure and a notice procedure, it seems to be cleaner to focus all the venues towards that process of appeal if indeed the person aggrieved wishes to proceed to the court.

MR CHAIRMAN:

Could we take subsections (a) and (b) at the same time or do you want me to take them separately?

HON K AZOPARDI:

The proposed amendment in relation to ((b) is to add the following new paragraph: "(b) Where a ship or vessel is forfeit to the Crown in circumstances described in section 119A(1)(a) or (b) the Collector will by notice to the Owner communicate such forfeiture stating whether paragraph (a) or (b) of section 119A(1) is relied on and informing the Owner of his right to appeal under Section 119A(3)".

HON J J BOSSANO:

The provisions of Schedule 3 relating to forfeiture say "that any person claiming that anything seized as liable to forfeiture was not so liable, shall within one month of the date of notice of seizure, give notice of his claim in writing to the Collector". What is already in the law before this provision is that on being informed or where no such notice has been served on the actual seizure taking place the person may question the correctness of what has been done. If once that happens it triggers on a requirement for the Collector to take proceedings for the condemnation of the vessel in the Magistrates' Court and if the Court finds that it was liable to seizure, then that is confirmation of the action being taken. We can see nothing there that is inadequate or insufficient protection for people who have their vessels seized here and therefore we are being given an alternative to that procedure. I am not sure whether in fact by providing an alternative people are deprived of the other procedure and of course it was originally intended to give them three months and presumably the Government have had representations that three months is too much time to give people to appeal and that is why they are amending it to make it one month and not three, which we welcome that it should not be three. But the fact that the Collector..... it says here, "will by notice to the Owner communicate such forfeiture" and at the same time inform the owner of the right of appeal, seems to us to be making a provision to make sure that the owner of the forfeited vessel is, if anything, encouraged to appeal against the decision to forfeit his vessel. Given the fact that we have already removed the provision that they do not have to do anything in Gibraltar, one might argue that one needs to go and I think that was the kind of argument that was being used previously when these Regulations were being made, that if one were taking action which might involve vessels that were only coming into our territorial waters but were not based here, one needed to make sure that whoever was the owner of the vessel might have nothing to do in Gibraltar, was told what was going on so that he knew what was happening to his vessel within the 30 days provided for in the Ordinance as it stood in Schedule 3. Given that there is now a requirement that one can only act if there is something happening in Gibraltar we cannot see why they need to go down the route of making this special provision and not simply maintain what is there already in Schedule 3 which allows..... and as I said I am not clear, perhaps the Minister can clarify for me whether he believes that the provision of this deprives somebody of actually using Schedule 3 at the same time. Is there something here that says he cannot use Schedule 3 and therefore this is the only route, or if in fact if possible, to proceed down the two routes simultaneously within the 30 days?

HON K AZOPARDI:

I think I have explained the distinction in my earlier intervention some time ago. Certainly the intention is that the notice of procedure is incorporated into these amendments to make the distinction, to make larger the distinction between Schedule 3, the concept in Schedule 3 which is the concept of suspended forfeiture and the concept that we are trying to achieve in this amendment. The intention of the Government, and given that the intention can be referred to when the court interprets this legislation, the intention of the Government certainly is that this is the only avenue which can be pursued in relation to these matters, that is certainly the intention and the intention also, as I say, is to emphasise the distinction between the concept of suspended forfeiture which we do not want to create and we are certainly confident that we are not creating with these amendments.

HON J J BOSSANO:

Can I ask, Mr Chairman, is the deletion of the reference to 119(2) the way they think it will not be possible to use Schedule 3?

HON K AZOPARDI:

As I say, the court will have reference to the intention of the legislature. This is the expressed intention of the legislature so in interpreting the legislation we are confident that the court will rely on that.

HON J J BOSSANO:

Yes, I accept that but since I do not want to have to wait until the court does it I am asking him can he tell me now how he thinks he is doing it without my having to wait for the court to have to decide? Where, in this, I am asking him, what is it in this section that he thinks precludes the usef Schedule 3? I am asking him is it in fact the deletion of the reference to Section 119(2)?

HON K AZOPARDI:

Presumably the court will give reference to the intention expressed in this House as to when and how it interprets the legislation and I am telling the hon Member that is the intention expressed. Of course, I cannot say what the court will ultimately say and I do not control the judiciary but certainly the intention clearly is to create a funnel through which the cases will run and we are satisfied that this amendment as drafted creates such a funnel without making specific reference to it, without making specific reference answers the point that he raises. I cannot pinpoint where it says it because I am telling the hon Member that without making specific reference to it we are satisfied that it does so.

HON J J BOSSANO:

So the answer is he cannot tell me and I am asking him if it is the deletion of 119(2) and he cannot tell me yes or no?

HON CHIEF MINISTER:

Schedule 3 relates to forfeiture in the context of Section 127. Section 127 is not forfeiture by administrative act in the context of this legislation. Section 127 is headed "Stay and Compounding of Proceedings" and reads, "The Collector may, in his discretion, stay or compound any proceedings from offence or from condemnation of anything which has been forfeited under this Ordinance". It is a completely different area of acts by the Collector of Customs and Section 127 and the Schedule which relates only to Section 127, the third Schedule, does not create any avenue of appeal to forfeiture under this section in this Bill and therefore the answer to the hon Member is that of course a court may express a contrary view but the purpose with which the Government have proceeded is that it would not be open to somebody who has his boat forfeited under these provisions to pursue by way of Schedule 3.

HON J J BOSSANO:

Is the Chief Minister saying that that avenue was never there or that it was there and by virtue of the legislation that we are considering today will no longer be there? Which of the two is it?

HON CHIEF MINISTER:

It is not my job in this House to give gratuitous legal advice to the Leader of the Opposition. If he wants to know what the law was before today it is a matter for him. I am expressing the view of the Government which is not binding in any Court, the view of the Government is that Schedule 3 does not now and never did constitute an avenue of appeal for forfeiture along this channel. Now, of course, this is an expression of an opinion by the Government, it certainly would not bind the Court. I do not know if the Court will take that view or a different view or may subsequently disagree with the view but that is the basis upon which this legislation has been drafted, let me say, by specialist draftsmen in this area.

HON J J BOSSANO:

That, Mr Chairman, is what I am trying to find out. It is not that I want legal advice from the Chief Minister, he is well down on the list of the lawyers that I would consult if I wanted legal advice. What I wanted to know was whether in fact they were removing something which they thought needed removing or whether in their view there was no need to remove it because the avenue was not there in the first place and he has just given me the answer that it is the second, so therefore the deletion in the reference to Section 119(2) as the procedure to be followed for forfeiture has nothing to do with the triggering of Schedule 3, I take it?

HON K AZOPARDI:

Mr Chairman, I propose the amendment of the insertion of "(a)" after "(3)" but before the body of subsection 119A(3) and in new paragraph (a) of subsection 119A(3) the substitution of the words "three months" by the words "one month" in the fifth line thereof. The reason for that substitution is that we feel that one month is ample time.

MR CHAIRMAN:

Are you in favour?

HON J J BOSSANO:

If we are going to have it at all, then yes we prefer one month to three.

MR CHAIRMAN:

This amendment is then agreed.

HON K AZOPARDI:

Mr Chairman, the following amendment is proposed to subsection 119A(3) by the addition of sub-paragraph (b) which reads, "If on an appeal as described in section 119A(3)(a) the Supreme Court is not satisfied on a balance of probabilities that the circumstances in section 119A(2) have been made out then compensation shall be payable to such Owner in an amount to be assessed by the Supreme Court but in any event to a maximum level of £5,000". I had already explained in the Second Reading the intention, and by reference to the Constitution, of the compensation section and I do not think I need to reiterate the exposition I made earlier.

HON J J BOSSANO:

The Constitution says "that no property of any description shall be compulsorily taken possession of except where the following conditions are satisfied", that is to say, "the taking of possession is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, the development and utilisation of any property in such a manner as to promote the public benefit and there is reasonable justification for causing any hardship that may result to any person having an interest or right in the property and provision is made by law for the prompt payment of adequate compensation". In terms of compulsory purchase, my understanding of the Constitutional provision has always been, that in fact adequate compensation is not the compensation that is determined arbitrarily by the House but compensation that is arrived at by an independent valuation of the market value in terms of taking over private property for the public good in our Constitution, which is a normal thing in terms of compulsory purchase orders anywhere. When the Minister explained that this was not supposed to be in addition to returning the vessel but in substitution of, we raised that because it was not clear to us from the way that it is drafted. Should not therefore the section read that "the Supreme Court where it is not satisfied on the balance of probabilities that the circumstances have been made out should pay compensation but that the vessel should remain forfeited"? If the law does not say "that the vessel should remain forfeited", is it enough to say "it is the intention of the legislature that it should remain forfeited but we are not going to put it in the law"? But when the court come to decide and they cannot find it in the law they ask for Hansard and they find that it was our intention that they should not return the launch so they do not return it, should we not tell them that they cannot, if that is the intention? Then there can be no doubt. Certainly, we would be happier to see that. Given the way the original thing was drafted maybe it does not apply to the same degree today but as I explained earlier, the original provisions which dealt with vessels committing an offence anywhere in the world really enabled almost any vessel of any size to be taken into custody by the Collector simply because it had unloaded containers containing drugs at some other port and the Collector had knowledge that it had been made use of in that way. Now that the vessel has to have something being done in Gibraltar which induces its future use, that may no longer be the case so there may be an argument for having £5,000 compensation and the vessel remaining forfeited. I must say that I am not familiar with the use of this phraseology in terms of the balance of probabilities being judged by the Supreme Court, something you might have had to do in a previous incarnation Mr Chairman.

MR CHAIRMAN:

The balance of probability that we would finish today.

HON J J BOSSANO:

But does it really mean that the court would decide that the forfeiture had not been justified? Is that what it means? I can see a problem in this, in that if the court says the forfeiture is not justified, if that is what the words "balance of probability" mean in this context, and we are able notwithstanding that to say "the vessel shall still remain forfeited" and go and get £5,000 compensation, well, let us see if we are tougher and that will make sure that anybody who has got a vessel is particularly careful not to do anything that can be construed as inducing or assisting in the movement of drugs and I believe that is a good thing. Is it possible to do that? If it is possible to do that then I think what we need to do is spell it out so that there can be no doubt that that is the intention of the section.

HON K AZOPARDI:

If the Leader of the Opposition turns to his left perhaps his hon Colleague may be able to acquaint him with the concept of balance of probabilities. What it means is that it is more probable than not and it is up to the Court to determine the ambit of the concept when it construes any appeal brought before it as to the scope of that particular reference to balance of probabilities in that section. I do not think the House is well placed with a crystal ball to try to anticipate what the court will say on a balance of probabilities, it will be up to the Court.

HON J J BOSSANO:

That is not what I am asking. What I am asking is, does the use of this provision in this law mean that what we are doing is creating the possibility for the Supreme Court to rule that the Collector on the basis of circumstantial evidence did not have reasonable grounds for believing all the things that we have provided in the previous section and that therefore should not have collected, taken the boat in, is that what it leads to? That is my question. I am not asking him to tell me with a crystal ball what conclusion they will come to, I am asking what is the power that is being provided in the section for the Supreme Court? Is it, as I would understand it, that the court can look at the arguments that are being put by the appellant and then come to the conclusion that on the basis of that argument the Collector went over the top in believing that the ship was being used to induce or assist in the commission of an offence in another territory? And, if that is what it is being permitted to do, then if we are saying notwithstanding the fact that one believes that the Collector was over enthusiastic on the balance of probability the forfeiture stays and the most that he can do is award up to £5,000. That is, as I understood it, the intention of this section. We want to be clear that that intention is as I have explained and if that is the case then I think the section should say, "the vessel shall remain forfeited" because I would have thought that one would be able to put a very compelling argument of saying, "If the Court is not satisfied that the Collector has acted reasonably why should I not get my boat back?"

HON K AZOPARDI:

I have said what the intention of the Government is, it is now up to the Court to decide what the effect of the section is in line with the Constitution, I do not know what the Court will decide, I have said what the intention of the Government is.

HON J J BOSSANO:

But, Mr Chairman, since we are still in time, what is there to stop us adding the words "and the vessel shall remain forfeited" and then we know that that is the intention and that is what the law says? Is there anything that stops us doing that? Let me say that in our view that changes totally the section, because if we are saying "the boat and £5,000" is one thing and if we are saying "£5,000 and no boat", it is something else.

HON K AZOPARDI:

If the hon Member will formulate his amendment the Government can accept it in the form, if he repeats his proposed amendment.

HON J J BOSSANO:

I am suggesting that we delete the full stop after the £5,000 figures and replace it with a comma and say "and the vessel shall remain forfeited". Will that do?

HON CHIEF MINISTER:

Can I ask the Leader of the Opposition whether that is his recommendation in the sense that that is what he thinks the law should say or is he simply putting into words what he thinks the Government are trying to achieve, without necessarily agreeing with it?

HON J J BOSSANO:

No, no, I am putting into words what I think the Government are trying to achieve and I agree with it and in fact we will support the section if it is clear that that is the intention. We are not sure that the Government will achieve it if it is not spelt out and therefore we have reservations that it was originally drafted. If that is possible then we will support it.

HON K AZOPARDI:

The Government will accept the amendment.

HON J J BOSSANO:

Then I would move that the full stop after the word "£5,000" be deleted and should be replaced by a comma and the words "and the vessel shall remain forfeited".

HON K AZOPARDI:

I think we should say, "and the ship or vessel shall remain forfeited".

Question put on clause 2.

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

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

Clause 2, as amended, stood part of the Bill.

Clauses 3 and 4 were agreed to and stood part of the Bill.

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

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Imports and Exports (Amendment) Bill 1996, has been considered in Committee and agreed to, with amendments, and I now move that it be read a third time and passed.

Question put.

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

Abstained: The Hon J L Baldachino
The Hon J Bossano
The Hon J J Gabay
The Hon A Isola

The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez

The Bill was read a third time and passed.

HON CHIEF MINISTER:

Mr Speaker, on a point of order, if I may. The next item of business on the agenda, or rather the only remaining item of business in Government Business on the Agenda is the Immigration Control Ordinance. It is the intention of the Government not to proceed with that Bill at this meeting. The hon Member asked whether we were going to withdraw it, I do not think Standing Orders are clear. Certainly, Standing Order 34 reads, and it is very brief "if the consideration of a Bill in Committee is not completed it may on motion be adjourned until the next or a subsequent sitting of the Assembly". I do not know whether that implies that one cannot withdraw a Bill from the Agenda without motion, I doubt if that is what it means but.....

HON J C PEREZ:

From my experience in the House, one has to have the law in Committee Stage and therefore one adjourns to a subsequent date and the only thing one can do is come back and take the Committee Stage of that Bill. The First and Second Readings of the Bill have not been moved and therefore I do not think one can do anything other than withdraw it if one wants to proceed with the Agenda.

HON CHIEF MINISTER:

It is precisely because it has not yet been read a first time that I would say that I can just indicate to Mr Speaker that we do not intend to proceed with it. If we had ruled beyond First Reading then it would be formally before the House and I think the position would then be as the Opposition Member has explained but as it has not been read a first time, perhaps the hon Member has forgotten that we jumped over it, we have not read it a first time because we have jumped backwards and forwards during this meeting from the First and Second Readings to Committee Stage and back, but I am entirely in Mr Speaker's hands.

MR SPEAKER:

I am entirely in the hands of experienced Members.

HON CHIEF MINISTER:

Just for the purpose of information to the House, the reason why we are not taking it at this stage is that the Court of Appeal has reversed the ruling of the Court of First Instance which made this decision and therefore the Government now need to consider with greater care whether given that ruling of the Court of Appeal it is still a good idea to proceed with the Bill or whether there is now no need to do so, there seems no need now to rush into this legislation.

The House recessed at 4.50 pm.

The House resumed at 5.15 pm.

PRIVATE MEMBERS' MOTIONS

HON J J BOSSANO:

Mr Speaker, I beg to move, that:-

"This House:-

1. Notes that in answer to Question No. 120 the Government stated that any decision to temporarily second a UK Police Officer to implement such parts of the Grundy Report as may be accepted will be taken on the basis of technical advice as to the expertise required to manage the introduction of such changes

2. Notes that in a Convent Press Release dated 25th July it was stated that a decision had already been taken to second from the UK Police Service an officer to be the Project Officer of the RGP to carry forward the recommendations of the Grundy Report

3. Notes that in answer to supplementary questions to Question No. 120 the Government stated that the Convent Press Release of 25th July had the prior approval of the Government who fully approved of the secondment of a UK Police Officer as Project Officer on technical grounds equivalent to the expertise obtained for the tax office by having on contract a UK tax inspector

4. Notes that the Convent Press Release of 25th July stated that the UK Police Officer would at the same time serve as Deputy Commissioner answering to HE the Governor as well as the Commissioner of Police

5. Considers that no justification has been provided as to why the position of Deputy Commissioner has to be filled by a UK Officer seconded to the RGP to provide expertise as Project Officer

6. Considers that there is no precedent for the Deputy Commissioner post to be answerable to His Excellency as well as to the Commissioner of Police thus altering the established chain of command

7. Considers therefore that the Deputy Commissioner post should be filled on a temporary acting basis by a permanent officer of the RGP in accordance with established practice, and not by a temporary seconded Project Officer, providing expertise on implementing changes in the future structure of the force".

Mr Speaker, when we decided to bring the motion to the House it was on the basis of the information that had been provided at question time. It seems to us that the function of the UK Officer that was predicted would be in post in September, and as far as I am aware has not yet happened, on the basis of the answers that we got and on the basis of the press release of the 25th July, are distinct from the position of Deputy Commissioner. We have had officers within the RGP acting as Deputy Commissioner and indeed as Commissioner on occasions during the period in question since the 25th July. It is the practice to give officers within the RGP the opportunity of attending courses in the United Kingdom that are designed to provide the necessary management skills for police forces in the United Kingdom. Our officers attend the same course as officers from within the United Kingdom, receive the same training and there has been, as there is in other areas, a long tradition of our officers doing well on these courses and coming back with good results. We understand the sensitivity of that particular post being filled since it is a subject which gave rise to certain enquiries and the occupant being suspended from the post and therefore presumably until that goes through the course that it has to go through a final decision cannot be taken. But there is absolutely no reason why it cannot be filled as far as we can tell, on a temporary basis, and why the UK Project Officer needs to be doubling his role. Nor can we see that the rationale for one applies to the other, that is to say, if the argument is that the UK Officer will be able to provide assistance in the alterations that flow from the Grundy recommendations and on the basis of the summary published on the 25th July, we have already expressed our reservations about the technicalities in these recommendations which requires somebody from the United Kingdom. Certainly many of those recommendations clearly do not require somebody from UK, some of those recommendations were implemented almost simultaneously with the publication of the recommendations. The press release of the 25th July makes clear that it is not something that is going to happen overnight, but something that will be happening gradually and it may well be that the RGP will benefit from having somebody from the UK assisting them in implementing those changes but no argument whatsoever has been put as to why that person is better equipped to act as Deputy Commissioner, presumably to act as Commissioner, when the Commissioner is absent for any reason because he is the Deputy and certainly even less for this innovation that the Deputy, which does not happen in any department in the rest of the Government, should answer to His Excellency the Governor that has a role in relation to the Police similar to what would be the case with the Minister in a department. It would be as if we had a situation where we said there is a Director of Education and a deputy and the deputy answers to the Minister as well as to the Director, that would be a very unusual thing and one that we would have thought, from the point of view of the sound management of the day-to-day issues of the administration of a Department, carries with it risks of unnecessary friction if the second-in-command can go over the head of the first-in-command to the policy decider. On the basis of the information that is public and on the information that is available to us we believe that it is a mistake to go down this route. We believe that if the Government have been persuaded by the arguments in the Grundy Report which we were told in answer to Question No. 120, that notwithstanding the categorical

statement on the 25th July that the report will not be made public, and let me say that we are not asking for it to be made public because for all that we know the report may contain in it identification of some areas of police work which need strengthening and it may not be in the public interest that that area that is identified should be available to everybody who may want to take advantage of any weaknesses in the structure. So we can understand that there is a level of sensitivity in that police work is one which clearly we would not want any weaknesses in the structure to be identified publicly, if it is thought in the public interest it should not be. But the Government in any case have said they have not yet made up their minds finally on whether this is to be made public or not. It is, of course, a matter of disappointment that we should have been refused a copy of the report on a confidential basis, which of course we would have respected and it would have enabled us to make a better judgement on the basis of more information if there were arguments in that report which justified what is being done.

Mr Speaker, as I have made clear on a number of occasions when we bring things to the House, we do it because we take seriously our role in this House, from this side, in contributing to matters of public policy which is a right that we have and it is a reason why we are here and we can only do that based on the information that is available to us and if we are given information. We had a recent example in the question in the House on telecommunications where, if it is better for Gibraltar that something should not be debated here, then we would not do anything in this House that would make something that was good for Gibraltar more difficult to achieve and we would not do it in a sensitive area like the work of the police. But on the basis of the recommendations that have been published we will of course monitor the implementation of those recommendations when the UK Officer arrives and seek in future information as to where the expertise is being translated into doing things that otherwise would not have been done without the expertise. The answer to Question No. 120 in the supplementaries, as I mentioned in the text of the motion, was that the Government had approved the Convent press release prior to its publication. That Convent press release stated that the UK Officer would be the Deputy Commissioner and therefore we believe that if the Government are convinced that the UK Project Officer needs to be the Deputy Commissioner then there has to be very compelling reasons for having come to that conclusion. We do not even know whether in fact this was recommended by the Grundy Report, certainly on the basis of the summary of the recommendation there is no indication that that was recommended, there is not even an indication that he recommended the recruitment of a Project Officer, never mind one that would have a double role as Deputy Commissioner as well. It is bound, inevitably, to generate the impression that within the force we do not have capable people that can act in this post. There is no reason for that conclusion on the basis of experience today as far as I am aware, there have been many occasions when officers have acted as Deputy Commissioner and we have no reason to believe that the officers from within the force cannot continue to do so and therefore we would urge the Government, having decided on the basis of the knowledge that they have of the analysis made by Mr Grundy, which we do not have, that there should be a Project Officer, that they should desegregate the two roles, keep the Project Officer that they have decided to upset but maintain the integrity of the management structure of the Police Force as it is now until such time as it is decided to change it. But by changing it simultaneously with the recruitment of the UK temporary secondee it seems to us that we are pre-empting already what may or may not materialise as a result of the time that he spends with the force in bringing in other changes that there may be in the report and therefore we hope the Government will either give us an explanation which so far has not been given why they want to go down this route or in the light of the arguments that we are putting, reconsider the position and take the view that the two things can be and should be kept separate. I commend the motion to the House.

Question proposed.

HON CHIEF MINISTER:

Mr Speaker, the Grundy Report as hon Members know, was carried out by the Inspector General of Dependent Territories Police Forces and his Deputy back in February of this year, that is to say, during the term of office of the Opposition members. I am not aware whether Government approved of the conduct of this enquiry at the time or whether indeed they were consulted on it but certainly what we found when we arrived in office was that the report was produced to us. I remember speaking to this gentleman at the time in my capacity as Leader of the Opposition but we do not know in what circumstances this report was commissioned or whether the Government played or did not play any part or whether it was just His Excellency in exercise of his constitutional responsibilities that commissioned it. The Leader of the Opposition's disappointment at

not having had a copy of the Report in confidence is one with which I wholly sympathise because he will remember that when during 1994 the Principal Auditor commissioned Price Waterhouse to carry out a value-for-money study which related exclusively to those areas of responsibility for which the House has got responsibility, namely the cost of the Police, I was refused, as Leader of the Opposition, access to or sight of even that value-for-money report, let alone now one which relates not just to value-for-money but indeed to areas of the Constitution which are not the responsibility of this House. Certainly, I share his frustration at not having sight of this confidential document but it is a position and is a path well worn by previous Leaders of the Opposition before him, including myself as recently as 1994 in the case of the Price Waterhouse Report.

Mr Speaker, I think that it would be fair for me to say, and I am not at liberty at this stage to put contents of the Report into the public domain, but I think it is correct for me to say that the Grundy Report is entirely friendly to the Royal Gibraltar Police and furthermore it is entirely friendly to the concept of a Gibraltarian-led RGP. On the whole, what the Report seeks to do is no more than to bring about, I say no more - there is one area in which the Government have not yet agreed and are unlikely to agree, but on the whole, what the Report seeks to do is to give to the Royal Gibraltar Police the benefit of that process of modernisation, of those efficiency and efficacy-enhancing techniques which the United Kingdom Police Forces already benefit from. I can assure the House that that is the spirit in which the Report is written and that is the thrust of its recommendations and I have to say to the Opposition Members that the Government and the RGP itself wholly welcome those objectives.

Mr Speaker, the Grundy review team identified a number of management issues which need to be addressed to make the RGP a more efficient and open organisation. These included a development strategy, performance measurements, career development, training and communication. The Report also addresses matters related to budgetary management, cost control and resources management and I do not mind indicating to the Opposition Members that it is in the area of the Report's recommendations on matters of budgetary management that the Government have signalled that we have serious reservations about what the Report contains by way of recommendation and that certainly the Government have not accepted those recommendations. So, as I say, Mr Speaker, the Report addresses matters of budgetary management, cost control and also resources management. It makes a total of 28 recommendations with a view to increasing effectiveness both in operational and administrative matters. The review team claim to have found a considerable desire by middle-ranking and junior officers in the Police Force for a greater sense of direction and improved standards of policing. These sentiments, I believe, are also shared by Senior Officers who similarly recognise that policing in Gibraltar and the RGP itself will benefit from a modernisation of the Force and its management and operational techniques. Mr Speaker, the review team expressed the opinion that it would require outside police management expertise to effect the necessary changes, that is the advice contained in the Report. The review team concluded, that the management of change to the extent needed would require specific expertise, considerable experience and an awareness of modern police management principles. The review team's advice, is that whilst there is expertise within the Royal Gibraltar Police, they did not think that at this time there is the appropriate skill and experience to manage the changes within a reasonable period of time. The review team concluded that the Royal Gibraltar Police and by implication the community as a whole, would therefore benefit from having the skill and experience within the ranks of the Force itself of people who have had experience in implementing similar proposals in the United Kingdom.

Mr Speaker, the review team further advised and does advice in its Report that it is highly desirable for the Project Officer to be a senior-line-commander in order to put him in a position to effectively manage the introduction and implementation of the changes. In other words, what the Report is saying is, "you will not be able to deliver these changes within a reasonable period of time if the guy driving it is sitting in an office at the end of a corridor, advising on a consultancy basis and is not living the day-to-day experiences of the Police Force's work". This, they say, is the experience in the United Kingdom. For these recommendations to be taken on board and to be accepted by the Force and by the Officers in it in a way which is likely to enhance the cohesion, acceptability of the changes within the Force they have to be introduced by somebody who has their sleeves rolled up and is mucking in with the effort of the Royal Gibraltar Police. That is the advice that the Report gives and of course the Government have no reason to doubt, at a technical level, and no means of challenging that assessment and that advice.

Mr Speaker, contrary to the clear, and I accept that the impression given in the Convent press release is clear but unintended implication to the contrary in the Convent press release of the 25th July, the Deputy Commissioner would answer to the Commissioner and I say this by way of 'ex post facto' clarification because I accept that the Convent press release of the 25th July certainly implied clearly to the contrary, and of course, to the Governor but through the Commissioner as is the case now. The Deputy Commissioner would not answer directly to the Governor just as he does not do so now. The Convent has confirmed that that is the position and that the position is as I am now stating it in the House, that is to say, the established chain of command is in no way altered, that that is the unintended effect of the juxtaposition of words in that sentence, that has never been the intention of the Convent and it has certainly never been the intention of the Government and I can state in the House that that position has been confirmed to me by the Convent who have expressed happiness that I should make this clarification statement in the House. Paragraph (5) of the Leader of the Opposition's motion states, and I quote it, "Considers that no justification has been provided as to why the position of Deputy Commissioner has to be filled by a UK Officer seconded to the RGP to provide expertise as Project Officer". Actually, this is not correct. The Grundy Report does indeed provide justification why the Project Officer should be a UK Police Officer. It is true that because the Grundy Report has not been made available to the Opposition Members they are not privy to those arguments by way of justification but certainly the Grundy Report does make a cogent case why the Project Officer should be a temporarily-seconded UK Officer. Mr Speaker, obviously the Government are not in a position to judge whether this has to be a Deputy Commissioner of police level as opposed, for example, at Chief Superintendent level. Certainly it is the point that I have raised and had raised before the exchange between myself and the Leader of the Opposition at Question Time, why it was thought necessary that it should be at the number two spot instead of at the number three or number four spot. The view that was put to me in reply was that it was felt, that given the breadth of these changes affecting as they do right across the board of the police activities, that it required somebody who had line control all the way down and that the Chief Superintendent, for example, is not in such a position. I have to say that as far as the Government are concerned we retain a doubt based on our laymen's view of things as to whether this needs to be at Deputy Commissioner of Police level or at Chief Superintendent level but frankly, given that the Government have made it very clear to the Convent that this is a single purpose, namely for the implementation of these changes, a single purpose and very temporary secondment, we do not think that anything can, or anything of enduring importance terms on whether it is at level two or at level three within the Force. Frankly, the position of the Government is that where the expertise is available all the senior posts in the Police should be held by local persons and we do not distinguish in terms of acceptability or unacceptability between the position of Deputy Commissioner and Chief Superintendent. The principle of the Government defence is that all the senior ranks in the Police should be held by local persons and therefore whether this particular temporary task is justified to introduce somebody from the UK on temporary secondment at Deputy Commissioner of Police level or at Chief Superintendent level does not raise an issue as opposed to the other issue that I have just described, be it a long-term issue that this has got to be temporary and that these posts, where there is local expertise, have got to be held down by local people.

Mr Speaker, it is also worth commenting that the Government of Gibraltar, as the Leader of the Opposition knows, because he was in a very similar position I suspect in other areas, that the whole situation of the Police in relation to the Constitution of Gibraltar is an extremely difficult area. He knows very well that whereas we pay for it and therefore claim for that reason to have a say in its affairs, on the other hand it is clearly in the Constitution, it is clearly not the business of the Government and therefore the Government of Gibraltar and I am sure this was the case with the previous Government, I do not say this in any attempt to suggest that it was different before, but certainly this Government of Gibraltar do not interfere in the appointment of senior Police Officers and do not interfere in questions of promotions within the Police Force. We take the view that that is constitutional and obviously we expect to be consulted if there is going to be a departure from established practice. We expect to be kept informed and consulted about things that the Convent may want to do in the Police with money that this House votes and with local taxpayers' money. Indeed I am happy to report that the Governor does that but at the end of the day, if a United Kingdom report recommends that this needs to be done temporarily by a UK seconded Deputy Commissioner and the Governor expresses the view that that is his view and that view is put to the Government, as one with which others have expressed agreement, then given the constitutional position, the Government of Gibraltar have two choices, either one says to the Governor, "Yes, Your Excellency if that is what you want to do, given that it is your constitutional business and mine provided it is clear that this is temporary for this purpose only, go ahead" or we can say "this is the ground upon which I am going to fight the Constitution pitch battle with you because the Government of Gibraltar

are not willing to allow you to second temporarily a Deputy Commissioner of Police from England in order to within a period of 18 months, 24 at most, modernise the Gibraltar Police Force". Certainly we do not take the view that the issues raised by this matter are of that order and the Government are satisfied on the basis, firstly of the technical advice in the Grundy Report, secondly on the basis that it is clearly understood by everybody that this is a temporary secondment for this purpose and for this purpose only that on that basis the Government do not consider that there is any interest of Gibraltar that is under threat and that it had needed to have been protected by the Government taking another line. Therefore, Mr Speaker, I do not know whether the clarification that I have made of the Convent's position in relation to the question of line of answerability would be enough to persuade the Opposition Member that the motion is unnecessary or whether he takes the view that paragraphs (5) and (7) remain relevant to him notwithstanding that clarification. But in either case the Government, for the reasons that I have explained, will not be supporting the motion, we will not seek to amend it and introduce our own motion because we take the view it is a legitimate issue to air in the House and for every Member of the House and for both sides of the House to express their positions on it. But certainly the Government will be voting against the motion for the reasons that I have stated.

HON J J BOSSANO:

Mr Speaker, I think the reply of the Government clarifies point six of the motion and confirms that as we say in the motion, there is no precedent for the Deputy Commissioner post to be answerable to His Excellency as well as to the Commissioner of Police. Certainly, it was an impression created on the 25th July which would have continued to be the impression had we not brought it up on this occasion in this motion. I am satisfied with that answer on that particular point, and the fact that it is of course a matter of public record means that no doubt if in practice something other than what has been said here should begin to happen, there are avenues which people can pursue given the clear statement that has been made. But I do not think that the Government have made a compelling case why a post on the complement and on the establishment has to be occupied by a UK secondee. There is absolutely no reason why, irrespective of the level, he is at Deputy Commissioner level and not at the Superintendent level? I am saying, why is he going to be doing the job of Deputy Commissioner as well as the job of Project Officer? I would have thought the job of Deputy Commissioner was already a full-time job in itself which would not leave the man with the spare capacity to implement 28 recommendations. Now, I do not know what is the nature of the argument in the Grundy Report which suggested that it was, and I am not sure whether if the suggestion is that it was necessary or preferable, that it should be occupying a working position in the Police Force at the same time as being the Project Officer. But it is certainly not one of the 28 recommendations. Whatever the importance attached to this..... *[HON CHIEF MINISTER: Is the hon Member acceding that he is satisfied with the 28 recommendations?]* No, I am saying that they were summarised on the 25th July. *[Interruption]* Well, if there are not 28, they cover sufficient ground to suggest that everything that has been identified, and I would have thought for something as important as this, in the press release it would have been easy enough to say that the Project Officer should occupy the post of Deputy Commissioner given the fact that this was bound to be something that would get questioned. Having identified that the Accounts Department should be computerised, that the paper system for recording crimes should be modernised, that there should be biennial independent inspections, given all these things, it is not an unreasonable deduction that there was not a recommendation saying "we recommend that the man should be given the position of Deputy Commissioner" which presumably he would not have been given other than in the present circumstances because if that job had been filled normally already, then presumably we were not going to have the incumbent of the post temporarily removed so that it could be temporarily occupied by somebody from UK. It just happens to be an accident that at this point in time the position can only be phased on an acting basis. That does not justify that the Project Officer should occupy it because if in fact the argument that is used is that for the other recommendations to work it is necessary for the Project Officer to be both Project Officer and Deputy Commissioner it is obvious that that would have been a recommendation in its own right because it was a recommendation pivotal to the rest, if it was that important to do it. It has not been presented like that and therefore it could be argued and I do not dispute that, that an officer from the United Kingdom might think, on the basis of UK experience, that the person who is in the Force is in a better position to supervise the introduction of the changes but it is quite possible that that happens on the basis that the person is already in the Force in the United Kingdom and not that they would send somebody. I can tell the Chief Minister that certainly the initiative for carrying out the inspection came from the United Kingdom, via the Governor, and that the only input that we had in it was that we thought that it would be

useful, which does not appear to have been done, for somebody with a police background to take a second look at the Price Waterhouse recommendation on civilianisation. That is what we suggested to Mr Grundy, that he should look at that because in fact we were not convinced by the Price Waterhouse Report. We did not proceed with implementing the changes that they recommended, which were purely changes based on an accountant's view of whether it was better to have a Police Officer doubling as a typist or not, irrespective of the fact that if they have a typist in an emergency they cannot get that typist and put her on patrol but if they have a Police Officer they can. Therefore the argument that it gave a reserve to the Force was an argument that had been completely ignored by Price Waterhouse and we said to Mr Grundy, "If the Governor wants you to come and look at the Police Force in terms of its management and its structure, what we want you to do is to take a look at the issue of civilianisation from the point of view of looking at it not purely from an accounting perspective". I do not call the then Leader of the Opposition having been refused a copy on a confidential basis of the Price Waterhouse Report. I do remember him asking whether we were going to make it public and we said, "No because we do not intend to implement it". There are recommendations, we have studied them, we have discussed it with the Police Association and the answer is that having set up a committee to discuss the contents of the Report with the Police, the results of the work of that committee, which involved the Association, was that a decision was taken to limit it purely to immigration control at entry points, which in any case we knew was an area, where if and when, we managed to get the veto removed on the External Frontiers Convention, would lead to a removal of control on entry points from anybody coming from elsewhere in the European Union, so it was the only area that we felt we should move on. Certainly I can tell the Chief Minister that it seems inconsistent to be thinking of making it public and not being willing to make it available to us, but it is their prerogative and I accept it.

HON CHIEF MINISTER:

Would the hon Member give way? With this report, as in the case of the Price Waterhouse Report, it is not a Government report. The Grundy Report is not the Government's to make public just as the Price Waterhouse Report was not the Government's then to make public. Both are reports that were commissioned by and belong to the Governor and certainly if the Governor wishes to make this report public, certainly the Government would not stand in his way from doing so. I certainly would not want anyone to run away with the idea that we could make this public if we wanted to but have chosen not to. If the decision rested with us there are issues to take into account on both sides of publication. The Leader of the Opposition has identified one of the issues on the negative side of making it, there are others but that would be a judgement for us to make. Let me tell him that the Convent has made a copy of the report available to me on a confidential basis, that is to say, on the basis that I am not free to discuss it or to pass it to anybody else as I am sure that was the same basis upon which the hon Member got a copy of the Price Waterhouse Report when he was sitting in this chair.

HON J J BOSSANO:

I am grateful to the Chief Minister for that clarification. Let me say that we remain of the view, that notwithstanding the explanation on the reference to a direct reporting function to His Excellency the Governor which we welcome, having had that clarification from the Chief Minister, we still think that the position of Deputy Commissioner should be filled. In fact if we are talking about 18 to 24 months it seems to us even more reason why there should be a local appointment to that and that does not mean of course that the grading of the Project Officer will depend on the grading that he has in the United Kingdom when he is seconded here. So we do not see that he needs to come to Gibraltar to be either downgraded or promoted, he is coming out here to give advice and we believe that the giving of advise and the taking of advice should be in the hands of two different people.

HON CHIEF MINISTER:

Would the hon Member give way because otherwise I cannot participate further, I am grateful to him. My understanding of it on the basis upon which the decision has been taken is that this man is not coming just to give advice. The hon Member when he was speaking before about the Convent press release of July and went through the things that were being recommended identifying the things that needed doing is just part of the job, the other part of the job is actually implementing them which also requires expertise. I am advised that one does not need the expertise just to identify that something needs to be done. One also needs expertise in doing it and introducing the systems and putting in place the system and indeed training local officers into how the system

should continue to work after it has been implemented. Therefore, certainly, Mr Speaker, if I had thought that this chap was coming over just to give advice on a consultancy basis there would certainly have been no case for him to be in the line control at all. The whole point of Grundy is that it recommends and advises that for these recommendations to be implemented effectively it has to be done by a man who is actually in the thick of it, in the line-of-command. The Grundy Report suggests that it should be a Deputy Commissioner of Police level. I have to say that as a layman I share the hon Member's reservations about whether it had to be at Deputy Commissioner level as opposed to some other level. I am not competent to decide whether the Grundy Report can be better implemented by somebody who is a Deputy Commissioner of Police as opposed to by somebody who is something other than Deputy Commissioner of Police but certainly, let us be clear that the advice in the report is that and the Government either take the advice or rather the Government either say to the Governor, "We will not allow you to do this because we do not accept the advice" or we allow the Governor to take the advice on the basis that that is the advice.

HON J J BOSSANO:

Mr Speaker, I think if we keep on going we might find out what the rest of the report is bit by bit. I am not suggesting that the Government have only two choices which is to say to the Governor, "We will permit you to do it" or "We will block what you are trying to do and have a constitutional showdown". What I am saying is the Government have got two choices of saying, "We support what you are doing" or "We disagree with you but if that is what you want to do, it is your responsibility and we, politically, do not back it". That is certainly two options open to the Government and therefore it was on that basis that we asked Question No. 120 and it was on the basis of the answer, which I quote in my motion, that initially we got the impression that in fact the Government at that stage were still evaluating what was in the report and are still not decided what they could give support to politically and what they could not in the exercise of their judgement. Since in the supplementary we were told that this had been issued with the prior approval of the Government, then we are treating it, as I said we would, as a statement of the policy of the elected Government and not just of the policy of the Convent because otherwise it would not and should not have been issued with the prior approval of the Government of Gibraltar. In that recommendation that is not important enough to feature as one of the recommendations highlighted in the summary, the issue is not the level. The Chief Minister has just interrupted me, when I gave way, to repeat what he said at the beginning and I have already answered that point. I do not think any of us are qualified to say at what level the man who is doing the project management should be graded. The point is, if there is already a full-time job as Deputy Commissioner which needs doing, then the additional job of managing the implementation of 28 recommendations must be at the expense of something else. I would have thought operationally, we are not saying it should be on some God forsaken corner of Gibraltar out of touch with everybody else, there is nothing to stop him being based in the Central Police Station. But the point is that his appointment is to a post in the establishment of the Royal Gibraltar Police voted by this House and he is going to be appointed to be the Deputy Commissioner. It is not that he is the Project Officer and in his spare time he will be the Deputy Commissioner. He is going to be the Deputy Commissioner and that is going to be the substantive post and as Deputy Commissioner he will be implementing these recommendations. This suggests that we do not need a Project Officer if the man is the Deputy Commissioner. The way that it is being put is that he will have a dual role, one is the role of implementing the recommendations, another one is the role of doing the work that would be done by an officer of the Force, which has been done and is being done. At the moment there must be somebody acting there presumably and we send people to the United Kingdom and we have sent people to the United Kingdom recently to prepare them for doing it and presumably when the Commissioner is on leave the UK Project Officer, logically, since he is the Deputy Commissioner having been appointed, will be the acting Commissioner and the Project Officer. We do not see that that makes a lot of sense and the only reason that has been given is that it is better for him to roll up his sleeves. There is nothing to stop him rolling up his sleeves, he does not have to be occupying a position in the Force and therefore although we accept the explanation that has been given as to the line-of-command being through the Commissioner and not direct to His Excellency the Governor, we do not accept that there is anything at all in what has been said today in the House that precludes the selection of somebody from the United Kingdom to go through the 28 recommendations to sit down presumably with different areas of the Force. If the man is involved in managing the computerisation of the Accounts Department, when that is being done he will have to spend time in the Accounts Department, whatever the Deputy Commissioner does normally presumably will not get done while he is in the Accounts

Department doing that and then when he moves to another area he will have to get on with another part of the recommendations that have been made. We cannot see that this makes sense other than as a way of justifying having somebody from the United Kingdom taking the number two job in the Force. If that is the real reason then let us be told that that is the real reason and that is it. We may like it, we may not like it, but we have to live with it. I commend the motion to the House.

Question put. The House divided.

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

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

The motion was defeated.

ADJOURNMENT

HON CHIEF MINISTER:

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

Question proposed.

MR SPEAKER:

But before voting I received notice from the Hon J J Bossano on a matter he wants to raise on the final adjournment.

HON J J BOSSANO:

Mr Speaker, the question that I wish to raise on the adjournment is the announcement made by the Government in a press release on the 6th September where they said that there are going to be 12 posts of Police Officers in the Royal Gibraltar Police who will take on different duties because of the civilianisation of the police work. The question that we wish to raise therefore at this stage in order to obtain clarification from the Government is, what are those 12 positions in the Royal Gibraltar Police about which there is no public information? We had in Question No. 120 in the House where we raised the recommendations of the Grundy Report and of course one of the recommendations of the Grundy Report is that there should be an independent study made. In the press release of the Convent which the Government told us in Question No. 120 had met with their approval and which we understand they had accepted was that there should be an independent manpower review which would look at civilianising posts where possible. On the following day they announced that 12 posts, which have not been identified, had been civilianised or are to be civilianised. That is not the result of an independent review, because if the review had not been done the previous day when they answered the question and unless they stayed up all night to carry out the review, I do not see how they could issue a press release on the following morning announcing that decision. In terms of whether it is desirable to civilianise these 12 posts it is not possible to make a judgement without knowing what posts we are talking about. I must say that our own view, given what I have already told the House about the input that we had in the Grundy Report, was that we expected the Grundy study to look at the civilianisation exercise that had already been carried out and to give their views on it. It seems very strange that somebody should be carrying out a study of the Police Force, have already had in their possession a copy of the Price Waterhouse Report and come up with the recommendation that there should be an independent manpower review. I do not know whether Mr Grundy felt that the manpower review linked to identifying posts, where civilianisation was possible and that had already been conducted by Price Waterhouse, was not independent enough. So it is difficult to

understand why his recommendation should be that there should be a further review and not as we have expected that he should express a view from the point of view of the structure of the police, of the wisdom, of the advisability of the posts that had already been identified, which were 60-odd posts in the study commissioned on the initiative of the Principal Auditor. But certainly, if the recommendation was that there should be an independent manpower review before any civilianising took place and that independent review has not taken place and the Government did not tell us in the House at Question Time that they had already made up their minds to civilianise a number of posts, we find it very peculiar that they should issue a press release the following day announcing the decision. As I say, the purpose of raising it in the adjournment is because we are not expressing a view for or against until we know which posts we are talking about. In the Government press release that was issued, they said that the civilianised posts would be undertaken by other people within the Government service and from our recollection of what was in that Price Waterhouse study we are not very sure which these 12 could be, so we have not even really been able to make even an intelligent guess at where the 12 are. So essentially what I am asking by raising the matter on the adjournment is for further clarification on where these 12 posts are to be found in the structure of the Royal Gibraltar Police. The gradings of the people who are there at the moment doing that job and whether this means that the recommendation which is one of the 28 recommendations, I take it, that there should be an independent review carried out to identify what could be civilianised has been now rejected and there is not going to be an independent review to identify, or whether in fact apart from these 12 it is still intended as recommended in the Grundy Report to look at other posts that could be civilianised? I think based on that clarification and on the information that we get, we will decide what our position should be on this matter.

HON CHIEF MINISTER:

Mr Speaker, I do not consider that motions on the adjournment are for the purposes of enabling the Opposition to extend Question Time beyond the position that it occupies in the Order Paper. Certainly motions on the adjournment are not in order that the Government should satisfy the desire of the Opposition for information so that they can decide whether they are for or against a particular issue and certainly I doubt, although of course I have had absolutely no notice of Mr Speaker's ruling in this regard and therefore this matter takes me entirely by surprise, I frankly doubt whether the question whether what has been civilianised is the marine mechanic or the vehicle mechanic or the storekeeper or the record keeper in the Gibraltar Police Force, is a matter of public importance as it is required to be under Standing Orders for this to be an appropriate measure to raise on a motion on the adjournment. But since we are here and since I have every desire to satisfy the Opposition's thirst for information whenever I possibly can, I do not mind answering the question, which is an unusual thing to do in any motion, let alone one on the adjournment.

The answer is that this batch of recruitment has nothing to do with Grundy whatsoever. The fact of the matter is that independently of Grundy, as the Government that have a manifesto commitment to increase the resources available to the police, were satisfied that manpower levels had fallen beyond the point at which the police could reasonably be expected to discharge the duties that the community expects from them. Indeed, that is true and that has been demonstrated to the point that during the last month or two the police have had to move from a four shift system to a two shift system whereby the entire Police Force has been working 12 hours on and 12 hours off because there were simply insufficient manpower to put in the streets to man four shifts, or three shifts. The manpower shortage had risen to such crisis level that in the judgement of the Government we could not wait for a formal independent manpower review and therefore the Government took the decision, regardless of Grundy, to authorise the Commissioner of Police to not recruit 25 policemen but indeed to increase the complement of policemen that were fit to go out onto the streets in a shift by 25, and that whilst they were at it, we might as well kill another electoral bird with the same stone which was our commitment to the Gibraltar Services Police that those of their members to be made redundant who were suitable for recruitment into the Royal Gibraltar Police Force and who met the RGP's recruitment criteria would have a certain number of jobs reserved to them. Therefore from the 25 men that we want the police to have for active street duty, 12 were to come from civilianisation of existing police posts, which of course would result in additional clerical jobs and others depending on which were chosen for civilianisation from within the Force, 10 would be filled from recruits from the RGP and three could be recruited by the police from the general public in accordance with their ordinary recruitment procedures. The answer to the hon Member's question as to which officers, which 12

posts from within the RGP have actually been chosen for civilianisation is not a decision in which the Government have participated. That is to say, I invited the Commissioner of Police to make that decision internally, in other words, Price Waterhouse says that there are up to 80, I do not remember whether it was 80, 70, 60, anyway many more than 12 posts that were available for civilianisation. It is not my business as the Government of the day to say, "You have got to civilianise that one, that one and that one", that is an operational decision of the Force, who decide from amongst those 80 which 12 senior officers think ought to be civilianised. The Commissioner of Police wrote to me as a matter of courtesy, probably, on the 2nd September 1996 informing me that having enquired into this matter with his senior officers to evaluate those posts within the service which may be civilianised within a short time frame, he has identified 12 posts. The hon Member's gesticulations suggest to me that they expect me now to tell them which the 12 posts are. These posts, I do not mind advancing to the Opposition Members, because of course they will become clear as soon as those posts are themselves advertised for recruitment, but I have to enter this caveat, that I do not consider that the Commissioner of Police is bound by this list and therefore if before the recruitment process takes place the police management wishes to change its view about which posts should be selected for civilianisation, then as far as I am concerned and the Government are concerned, they are free to civilianise whichever 12 they please. There are three officers who are presently in an administrative role in the Immigration Department. There is one officer who is presently discharging an administrative role in the Records Department. There is one officer who is presently a mechanic in the Police garage. There is one officer who is presently discharging an administrative role in the Stores Department. There is one officer who is presently performing an administrative role in the Prosecution's Department. There is one officer who is presently, I suspect, making traffic signs in the Traffic Department, it says traffic signs in brackets. There is one officer who is presently doing administrative, typing and reception duties in the Traffic Department. There are two officers who currently drive the transfer ambulance, that is to say, not the emergency ambulance but the ambulance that transfers usually elderly people to and from hospital and there is one officer currently engaged on public counter enquiries. Those, I hope add up to 12, I have not counted them, but those are the 12 posts which in the judgement of the Commissioner of Police and his senior officers are the 12 that they would wish to civilianise in order to facilitate this manpower recruitment policy.

Question put on the adjournment. Agreed to.

The adjournment of the House was taken at 6.30 pm on Monday 14th October 1996.